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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.08.2023

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.O.P No.10308 of 2022
and Crl.MP.Nos.6108 & 6110 of 2022

N.P.Sivakami, F/A-55
W/o.A.Arumugam

.. Petitioner /Accused 4

.Vs.

K.Siyamala
W/o.Sivakumar

..Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to in C.C.No.65 of 2022, on the file of Judicial Magistrate Court No.I at Erode and quash the same.

For Petitioner : Mr.S.Arivazhagan

For Respondent : No appearance

ORDER

This criminal original petition has been filed to quash the proceedings in C.C.No.65 of 202, pending on the file of Judicial Magistrate Court No.I, Erode.

2.Heard Mr.S.Arivazhagan, learned counsel for the petitioner. The respondent has been served and the name of the respondent has also been printed in the cause list. However, there is no representation for the respondent either in person or through counsel.



3.The allegation made by the respondent in the complaint is that A1 had approached the husband of the respondent for sale of a house site in Survey No.325/4, House Site No.49 measuring an extent of 880 sq.ft. They have entered into a construction agreement and it is claimed by the respondent that a sum of Rs.7,00,000/- was also remitted to the Bank account of A1. It is alleged that A1 did not keep up his promise and he cheated the Complainant. A2 and A3 are the brother and son of A1. Insofar as the petitioner (A4) is concerned, she is the owner of the property and that she did not take any steps to execute the sale in favour of the complainant with respect to the subject property. Based on this complaint, the Court below has taken cognizance for offence u/s.420,406 r/w 120B IPC.

4.On carefully reading the complaint, it is seen that there is absolutely no allegation as to whether the complainant had initially got in touch with the petitioner (A4), who is the actual owner of the property. The petitioner has not executed any power in favour of A1 and therefore, A1 seems to have unilaterally entered into an agreement with the complainant. Such agreement entered into by A1 is not with the concurrence of the petitioner. Since the petitioner was not aware of the agreement, the petitioner refused to execute any document in favour of the Complainant.

5.In the considered view of this Court, no offence of cheating or criminal breach of trust has been made out against the petitioner. It is not even alleged in the complaint that any amount was paid to the petitioner (A4), who is the actual



owner of the property. Hence, the continuation of the proceedings as against A4 will amount to an abuse of process of Court. Even on reading the sworn statement that was recorded by the Court below, it is seen that the petitioner was nowhere in the scene when the agreement was going on between the complainant and A1 and only after the payment was made to A1, the complainant seems to have contacted the petitioner (A4).

6.In the light of the above discussion, the proceedings in C.C.No.65 of 2022, pending on the file of Judicial Magistrate Court No.I, Erode is hereby quashed insofar as the petitioner/A4 is concerned and this criminal original petition is accordingly allowed. Consequently, connected miscellaneous petitions are closed.

09.08.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
KP

To

Judicial Magistrate Court No.I
Erode.



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