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Crl.O.P.No.29512 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No.29512 of 2017

1. P.Kanniammal
2. P.Murugan
3. P.Vadivel
4. Mottaiayan @ Rajendiran
5. Rajendiran

...Petitioners

-Vs-

1. State by Sub Inspector of Police,
District Crime,
Salem District.

2. Parvathi

... Respondents

Prayer: Criminal Original Petition filed under Section 482 of Code of Criminal Procedure, to call for the records and quash the charge sheet in C.C.No.45 of 2015 pending on the file of Judicial Magistrate No.1, Attur, Salem District.

For Petitioners : Dr.N.Vijayaraj

For R1 : Mr.L.Baskaran
Government Advocate (Crl.side)

For R2 : Mr.T.S.Arthanareswaran



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ORDER

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This Criminal Original Petition has been filed calling for the records and quash the charge sheet in C.C.No.45 of 2015 pending on the file of the learned Judicial Magistrate No.1, Attur, Salem District.

2. Heard the learned counsel for the petitioners, the learned Government Advocate (Crl.side) for the first respondent, the learned counsel for the second respondent and perused the materials available on record.

3. The case of the prosecution is that on 18.12.2013, the second respondent lodged a complaint alleging that the second respondent's father purchased a property, on 15.10.1969 to an extent of 0.60 ½ cents out of 1.21 cents comprised in Survey No.344/7 situated at Yethapur Village, Salem District from one Thangaraj and Pichamuthu vide registered Document No.967 of 1969. It is alleged that from the date of purchase, the second respondent's family were in absolute possession of the same. Thereafter, with an intention to defraud the second respondent and to grab the property, the first petitioner entered into a forged sale deed with one Chinnamal vide Document No.333 of 2007 dated



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12.02.2007 in respect of 0.66 cents in Survey No.344/7 situated at Yethapur Village, Salem District. Hence, the complaint.

4. On receipt of the complaint, the first respondent registered FIR in Crime No.11 of 2014 for the offences under Sections 420, 465, 471 and 506(1) of IPC. After completion of investigation, the first respondent filed final report and the same has been taken cognizance by the Trial Court in C.C.No.45 of 2015. There are totally five accused and the petitioners are arrayed as A1 to A5.

5. A perusal of records revealed that the first petitioner's husband had purchased the property ad-measuring 55 cents out of 1.21 acres comprised in Survey No.344/7 situated at Yethapur Village, Salem District from its original owners Chinnammal and Alagammal, wives of one Alagan, vide registered Document No.698 of 1982. Thereafter, the first petitioner also purchased the remaining portion of the land out of 1.21 acres from Chinnammal, who derived title through patta by the registered sale deed dated 12.02.2007 vide Document No.333 of 2007. The husband of the first petitioner died intestate on 25.06.2003 leaving behind the his legal heirs viz., the petitioners 1 to 4 herein. After his



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demise, the petitioners 1 to 4 herein are in joint possession and enjoyment of the said property. In fact, all the revenue records were mutated in their favour. They also obtained pathway rights with one Ayyakannu on 07.07.2008 and laid the pathway. While being so, the petitioners 1 to 4 had entered into a sale agreement with the fifth petitioner herein on 16.09.2013. Thereafter, they also filed a suit in O.S.No.400 of 2013 on the file of the District Munsif Court, Attur, Salem challenging the alleged partition deed between the defacto complainant and her family members. After laying the suit, the second respondent lodged the present complaint with the above said allegations. That apart, they are in possession and enjoyment of the land which is situated on the eastern side of the petitioners' property viz., comprised in S.No.344/17, 357/4A and 357/4B Yethapur Village, Salem District. The defacto complainant and her family members are not in possession and enjoyment of the property comprised in S.No.344/7. The second respondent had purchased the land comprised in S.No.357/4A, 357/4B with Well. However, the survey number was wrongly mentioned as S.No.344/7 instead of 357/4. The vendors of the second respondent had no title over the said property viz., land comprised in S.No.344/7 to sell the same in favour of the second respondent.



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6. A perusal of the said document also revealed that the boundaries mentioned in the said sale deed vide Document No.967 of 1969 dated 15.06.1969 was purchased by the predecessors of the second respondent and it covers only the lands comprised in S.Nos.357/4A, 357/4B and not the land comprised in S.No.344/7 situated at Yethapur Village, Salem District. Therefore, the second respondent and her family members had no title over the property comprised in S.No.344/7. That apart, the petitioners instituted a civil suit in O.S.No.400 of 2013 on the on the file of the District Munsif Court, Attur, Salem for declaration declaring the sale deed executed by the second respondent as null and void and also sought for permanent injunction in respect of the said property and it is pending. It is also seen that after laying the suit by the petitioners, the second respondent lodged a complaint that too for the sale deed executed in the year 1982 and 2007. That apart, the petitioners are in possession and enjoyment of the said property. Therefore, the second respondent attempted to give criminal color on the civil dispute.

7. It is relevant to extract the provisions under Section 420 of the Penal Code as follows :-

“ 420. Cheating and dishonestly inducing delivery



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of property — *Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.*”

The ingredients to constitute an offence under Section 420 of IPC are as follows :-

- (i) A person must commit the offence of cheating under Section 415 and
- (ii) The person cheated must be dishonestly induced to (a) deliver property to any person or (b) make, alter or destroy valuable security or anything signed or sealed and capable of being converted into valuable security.

Cheating is an essential ingredient for an act to constitute an offence under Section 420.

8. It is relevant to rely upon the judgment made by the Honourable Supreme Court of India in the case of *M/s. Indian Oil Corporation Vs. NEPC India Limited and others* reported in (2006) 6 SCC 736, held that the civil liability cannot be converted into criminal liability and it is



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necessary to take notice of a growing tendency in business circle to convert purely civil dispute in criminal case. This is obviously on account of prevalent impression that civil law remedies are time consuming and do not adequately protect the interest of lender/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable breakdown of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claim which do not involve any criminal offence by applying pressure through criminal prosecution should be deprecated and dishonoured.

9. In the case of ***G.Sagar Suri Vs. State of Uttar Pradesh*** reported in ***2000 (2) SCC 636***, the Honourable Supreme Court of India held as follows:-

“It is to be seen if a matter, which is essentially of civil nature, has been given a cloak of criminal offence, criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal Court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this Section has to be exercised to prevent abuse of the process of any



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Court or otherwise to secure the ends of justice.”

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10. In view of the above, the entire proceedings cannot be sustained as against the petitioners and it is liable to be quashed. Accordingly, the proceedings in C.C.No.45 of 2015 pending on the file of Judicial Magistrate No.1, Attur, Salem District, is hereby quashed.

11. In the result, this Criminal Original Petition stands allowed.

01.11.2023

Internet: Yes
Index : Yes/No
Speaking/Non Speaking order
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To



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1. The Judicial Magistrate No.1, Attur, Salem District.
2. Sub Inspector of Police,
District Crime,
Salem District.
3. The Public Prosecutor,
High Court, Madras.

G.K.ILANTHIRAIYAN. J.

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