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Crl.O.P.No.32104 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.03.2023

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THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.O.P.No.32104 of 2019

and

Crl.M.P.Nos.17636 & 17638 of 2019

1.Manjunathan
2.K.T.Kalaiselvi

... Petitioners

Vs.

1. State Rep. by
Inspector of Police,
District Crime Branch,
Erode District,
(CR.No.9/2014)

2.Narmatha, V.

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code seeking to call for the records pertaining to C.C.No.875/2019 on the file of the learned Judicial Magistrate No.II, Erode and quash the same.

For Petitioners : Mr.B.Kumarasamy for
M/s.P.Kalaimuthu

For Respondents : Mr.A.Damodaran (Additional
Public Proctor) [R.1]
: Mr.John Sathya (Sr.Advocate) for
Mr.M.Roshan Atiq [for R.2]



ORDER

This Criminal Original Petition has been filed to quash the final report filed for the offence under Section 420 IPC read with Section 109 IPC.

2. It is alleged in the final report that on 01.01.2013, the petitioners entered into a sale agreement with the de facto complainant agreeing to sell the lands measuring 5043sq.ft. and 1935 sq.ft. to construct a building over the said land for a total sale consideration of Rs.95,00,000/-; that on the date of agreement, the de facto complainant paid Rs.40,00,000/- as advance; that the petitioners on 09.01.2013, executed a registered sale agreement in favour of one Kandasamy in respect of 1935 sq.ft. of land which was agreed to be sold to the de facto complainant; that on 19.06.2013, the de facto complainant made another payment of Rs.40,00,000/-; that on 15.07.2013, the petitioners executed a sale agreement in respect of 5043 Sq.ft. of land in favour of A.3; that on 18.10.2013, the sale agreement was cancelled and a sale deed was executed in favour of A.4. Thus, the petitioners were accused of offences under Section 420 IPC read with Section 109 IPC.

3. The learned counsel for the petitioners would submit that the



agreement dated 01.01.2013 said to have been executed between the 1st petitioner and the 2nd respondent/de facto complainant is a fabricated document prepared by misusing the blank papers taken from the petitioners. The petitioners never agreed to sell their property to the de facto complainant. Likewise, he would submit that the receipt evidence in the payment of Rs.40,00,000/- on 19.06.2013 is also fabricated by the de facto complainant by misusing the blank papers obtained from the petitioners.

4. The learned counsel for the petitioners therefore submitted that even assuming that the entire allegations were proved, the de facto complainant ought to have filed a suit for specific performance. The dispute of a civil nature has been given colour of criminal offence. In this regard the learned counsel relied upon the judgment of the Hon'ble Apex Court in ***Vijay Kumar Ghai and Ors. Vs. State of West Bengal & Ors*** passed in ***S.L.P (Crl.) No.10951 of 2019.***

5. The learned Senior counsel for the 2nd respondent would submit



that this is not a case of a civil transaction and the allegations constitute the offences alleged. The intention of the petitioners to deceive the de facto complainant is evidenced from the fact that on 01.01.2013, the petitioners received Rs.40,00,000/- and on 09.01.2013 they had executed a sale agreement in favour of one Kandasamy in respect of 1935 Sq.Ft of land. Further, without disclosing the sale agreement they had obtained another sum of Rs.40,00,000/- on 19.06.2013. Thereafter, they had executed a sale agreement in favour of A.3 (sister of A.1). Thereafter, this sale agreement was cancelled and a sale deed was executed in favour of A.4 who is also a close relative of A.3. All these circumstances would show that the petitioners had dishonestly induced the de facto complainant to part with Rs.80,00,000/-.

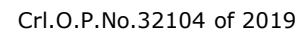
6. The learned Additional Public Prosecutor reiterated the submissions of the learned senior counsel and prayed for the dismissal of the quash petition.

7. This Court finds that the transaction alleged in the impugned final



report prima facie discloses the offence of 420 IPC. The allegation reveals that the petitioners had received Rs.40,00,000/- on 01.01.2013, and had executed a sale agreement on the same day. Within eight days the petitioners had executed a sale agreement in favour of third party in respect of a portion of the land. That apart, another sum was received by the petitioners on 19.06.2013 for the 2nd respondent. Thereafter, they had executed a sale deed in favour of the 4th accused who happens to be a close relative. All the above facts prima facie disclose the offence of 420 IPC. Hence, this Court is not inclined to quash the final report. The petitioners' contention is that the agreement dated 01.01.2013 and the subsequent receipt on 19.06.2013 were taken on blank papers and misused by the de facto complainant cannot be decided in a petition under Section 482 Cr.P.C. Those issues have to be adjudicated only before the Trial Court.

8. Therefore, this Court is not inclined to entertain this quash petition. However, the petitioners are at liberty to raise all their contentions before the Trial Court. The Trial Court shall independently consider the evidence adduced before it without being influenced by any of the observations made in this order. The appearance of the petitioners before the Trial Court is



9. With these observations, the Criminal Original Petition stands dismissed. Consequently, the connected Miscellaneous Petitions are closed.

Index : Yes/No
Internet : Yes/No
Neutral Citation :Yes/No
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To

1. The Inspector of Police,
District Crime Branch,
Erode District.
2. The Judicial Magistrate No.II, Erode.



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SUNDER MOHAN. J.

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