



Crl.O.P.No.32624 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.01.2023

CORAM:

**THE HONOURABLE MS JUSTICE R.N.MANJULA**

Crl.O.P.No.32624 of 2019 and  
Crl.M.P.Nos.17982 & 17984 of 2019

1. Ramasamy
2. Srirangan
3. Latha
4. Dharmaraj
5. Palanivel
6. Murugesan
7. Velmurugan
8. Singaravelu
9. Gopal
10. Kumaravel
11. Chidambaram
12. Gunasekaran

...Petitioners

Vs.

1. The Inspector of Police,  
District Crime Branch, Salem.  
Crime No.3 of 2019

2. Sasivarthan

...Respondents



Crl.O.P.No.32624 of 2019

Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to call for the records with respect of the charge sheet in C.C.No.933 of 2019 on the file of the Judicial Magistrate No.VI, Salem and quash the same.

For Petitioners : Mr.Nithish Nataraj for  
Mr.Aniruth A Sriram

For 1<sup>st</sup> Respondent : Mr.A.Gopinath,  
Government Advocate (Crl. Side)

For 2<sup>nd</sup> Respondent : Mr.N.Manoharan

### **ORDER**

This Criminal Original Petition is filed to quash the charge sheet in C.C.No.933 of 2019 on the file of the Judicial Magistrate No.VI, Salem.

2. The petitioners are the accused 1 to 12. The petitioners 1 to 9 are the partners of the firm viz., M/s. Amman Finance, Thiruchengode, the 10<sup>th</sup> petitioner is the mediator who had introduced the 2<sup>nd</sup> respondent to the other petitioners and the petitioners 11 and 12 are the purchasers of the property which belonged to the 2<sup>nd</sup> respondent.

3. On the complaint given by the 2<sup>nd</sup> respondent that he had borrowed



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a sum of Rs.12 lakhs from M/s.Amman Finance at Thiruchengode and for which, he has executed two registered Sale Deeds in favour of the 6<sup>th</sup> and 12<sup>th</sup> petitioners in respect of the properties comprised in S.F.No.55/2A, Olakkachinnanur, Sankari Taluk, Salem District measuring an extent of 1.37acres on 02.09.2015. Even after settling the entire loan amount by the 2<sup>nd</sup> respondent, the 11<sup>th</sup> and 12<sup>th</sup> petitioner refused to execute re-conveyance of the property.

4. Heard the learned counsel for the petitioners, the learned Government Advocate (Crl. Side) appearing for the 1<sup>st</sup> respondent and the learned counsel appearing for the 2<sup>nd</sup> respondent.

5. The learned counsel for the petitioners submitted that there is no ingredient to make out the offence under Sections 120 B and 420 of IPC. The dispute is purely civil in nature. By executing the sale Deed in favour of the petitioners 11 and 12, as early as on 02.09.2015, the 2<sup>nd</sup> respondent has filed the criminal complaint by abusing the process of law. The civil dispute has been given with criminal colour. The 2<sup>nd</sup> respondent/defacto



complainant had executed the sale deeds and transferred the title in favour of the petitioners 11 and 12. After having done so, he is denying the validity of the same. Since the petitioner has attempted to convert the civil matter into criminal colour, the charge sheet is liable to be quashed.

6. The learned Government Advocate (Crl. Side) appearing for the 1<sup>st</sup> respondent submitted that the witnesses have spoken about the manner in which the petitioners have fraudulently obtained the sale deed from the 2<sup>nd</sup> respondent; the 11<sup>th</sup> petitioner is the husband of the 3<sup>rd</sup> petitioner and the 4<sup>th</sup> petitioner is the brother of the 12<sup>th</sup> petitioner; the petitioners 1 to 9 are the partners of the M/s.Amman Finance from which the 2<sup>nd</sup> respondent is said to have obtained the loan of Rs.12 lakhs, for which he had executed the sale deeds only as security; since re-conveyance was not done after repayment of the loan amount, the case has been registered; the witnesses have spoken about the fact that the sale deeds have been executed by the 2<sup>nd</sup> respondent by way of security and on the compulsion of the petitioners. Hence the petitioners should be subjected to undergo trial.

7. The learned counsel appearing for the 2<sup>nd</sup> respondent submitted that



the 2<sup>nd</sup> respondent had executed the sale deeds only as security for the loan availed by him from M/s.Amman Finance in which the petitioners 1 to 9 are partners; they had spoken about the fact that the 2<sup>nd</sup> respondent had repaid the loan amount, but the petitioners refused to give receipts for the said payment and that the petitioners 11 and 12 had refused to reconvey the property in favour of the 2<sup>nd</sup> respondent and they claimed exorbitant interest. The learned counsel for the 2<sup>nd</sup> respondent submitted that the 2<sup>nd</sup> respondent has also filed a suit in O.S.No.57 of 2016 before the learned Sub Judge, Sankari for cancellation of sale deeds only because the sale deeds were executed as security. Since there are sufficient ingredients to make out a case to subject the petitioners to undergo trial, this petition should be dismissed.

8. The material documents that is relevant for the submission of the petitioners are the sale deeds executed by the 2<sup>nd</sup> respondent in favour of the petitioners 11 and 12. After having executed the sale deeds in the year 2015, the 2<sup>nd</sup> respondent has given a criminal complaint in the year 2019. The 2<sup>nd</sup> respondent has stated that the sale deeds have been executed only



for the purpose of security. But the contents of the sale deeds would only show that it is an absolute sale deed and not a conditional one. Once the person executes the sale deed in respect of the property and conveys the same by virtue of the sale deed and the transaction is completed, the recitals of the sale deed would bind the parties to the sale deeds.

9. The learned counsel for the petitioner submitted that even though the sale deeds have been executed, the possession of the property was not taken by the petitioners 11 and 12 and hence it cannot be construed that the sale is complete. The 2<sup>nd</sup> respondent himself has submitted that the petitioners 11 and 12 have taken steps to transfer the original records in their name and he made a representation before the Regional authorities, objecting the transfer of original records in favour of the petitioners 11 and 12. The 11<sup>th</sup> petitioner is the husband of the 3<sup>rd</sup> petitioner, and 12<sup>th</sup> petitioner is the brother of the 4<sup>th</sup> petitioner who are partners to M/s.Amman Finance. By virtue of the said relationship alone, it cannot be presumed that the sale deeds have been executed by the 2<sup>nd</sup> respondent as a security.

10. As per Section 91 of the evidence Act, the transaction pertaining



to the registered instrument can be proved by the production of the very document. Even the 2<sup>nd</sup> respondent did not deny the execution of the sale deed in favour of the petitioners 11 and 12. However, after having the sale deeds executed, the title in respect of the property would have been transferred in the name of the purchasers. When it is possible for the petitioners to execute the registered mortgage, if he wanted to offer the property for the alleged loan availed by him from the petitioners 1 to 9, it is difficult to believe that a sale deed was created as security.

11. It is relevant to point out that the 2<sup>nd</sup> respondent's grandmother, father and his brother instituted a civil suit in O.S.No.57 of 2016 before the learned Subordinate Judge, Sankari to declare the Release Deed, dated 20.02.2015 executed in favour of the 2<sup>nd</sup> respondent and the Sale Deed executed by the 2<sup>nd</sup> respondent, dated 02.09.2015 in favour of the petitioners 11 and 12 as null and void. However, the said suit was dismissed for default on 04.07.2017.



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12. It may be true that some of the partners of Amman Finance in one way or other got related to the petitioners 11 and 12 and he could have offered his properties in favour of the petitioners 11 and 12 only as security. However, the 2<sup>nd</sup> respondent was at liberty to execute a mortgage deed, if at all he wanted to offer his immovable property as security for the loan availed by him. Having known about the impact of the Sale deed and after having executed the sale deed in favour of the petitioners 11 and 12, the 2<sup>nd</sup> respondent cannot turn around and state that he executed the settlement deed only as security. It is stated that the 2<sup>nd</sup> respondent himself has filed a suit challenging the sale deed executed in favour of the petitioners 11 and 12. Even in that context also, the matter is civil in nature. The delay of 3 to 4 years in lodging the complaint would show that after losing the suit filed by his grand mother in O.S.No.57 of 2016, he had filed the complaint.

13. The records would show that the 2<sup>nd</sup> respondent has not produced any document to show that he had availed a sum of Rs.12 lakhs from M/s.Amman Finance at Tiruchengode and the alleged loan amount has no connection with the subject property. Apparently, the 2<sup>nd</sup> respondent had



executed the registered sale deed in favour of the purchasers by knowing well that he is passing the title to his purchaser. By having a second thought, he cannot abuse the process of law by way of giving a criminal complaint for the transaction knowingly made by him. Since the recitals in the Sale Deed proves all the transaction therein, the oral evidence of witnesses can only be seen as superfluous and on that basis the sale transaction cannot be neglected.

14. It is reliably learnt from the learned counsel for the 2<sup>nd</sup> respondent that he had filed a civil suit against the petitioners 11 and 12 for cancellation of sale deeds. Since the 2<sup>nd</sup> respondent himself has invoked the civil remedy by filing the civil suit, there is no need to subject the petitioners to undergo trial. In the absence of any document to show that the 2<sup>nd</sup> respondent had availed a loan of Rs.12 lakhs from M/s. Amman Finance, and that the sale deeds have been obtained as security for the alleged loan amount, the Criminal proceedings will not serve any purpose. Since criminal colour has been given for the alleged civil cause of action, I feel the criminal proceedings should be quashed against the petitioners in



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order to meet the ends of justice.

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15. In the result, this Criminal Original Petition is allowed and the proceedings in C.C.No.933 of 2019 on the file of the Judicial Magistrate VI, Salem is hereby quashed. Consequently, connected miscellaneous petitions are closed.

**04.01.2023**

vum

Index:yes/No

Speaking order / Non speaking order

**To**

1. The Inspector of Police,  
District Crime Branch,  
Salem.
2. The Public Prosecutor,  
Madras High Court,  
Chennai.

**R.N.MANJULA,J.**

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