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Crl.O.P(MD).No.1359 of 2021



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On: 27.03.2023

Delivered On : 24.04.2023

CORAM:

THE HONOURABLE MRS. JUSTICE R.THARANI

Crl.O.P(MD).No.1359 of 2021

and

Crl.M.P.(MD)Nos.652 and 1577 of 2021

1.J.Prasath
2.J.Pritham
3.S.Rajendran

...Petitioners

Vs

1.State represented by
The Inspector of Police,
Kodaikanal Police Station,
Dindigul District.
(Crime No.158 of 2017)

2.B.Vanisree

...Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, praying this Court to call for the records pertaining to the First Information Report in Crime No.158 of 2017 dated 02.05.2017 on the file of the first respondent Police and quash the same as far as the petitioners are concerned as illegal.

For Petitioners	: Mr.C.M.Arumugam
For 1 st Respondent	: Mrs.M.Aasha
	Government Advocate (Crl. Side)
For 2 nd Respondent	: Mr.M.Chandrasekaran

**ORDER**

This petition is filed to quash the First Information Report in Crime No. 158 of 2017 dated 02.05.2017, on the file of the first respondent Police.

2.The case against the petitioners is that the defacto complainant is the owner of the landed property in Survey No.5/2 of Kodaikanal Town and the total extent of the property is 46 cents and the defacto complainant agreed to sell the property for a sum of Rs.1,29,50,000/- (Rupees One Crore Twenty Nine Lakhs Fifty Thousand only). The petitioners remitted a sum of Rs. 54,00,000/- (Rupees Fifty Four Lakhs only) as part of the sale consideration and they assured to pay the balance sale consideration of Rs.75,00,000/- at the time of registration of the sale deed. The sale deed was registered in favour of the petitioners 1 and 2 on 10.12.2012. But the petitioners did not pay the balance sale consideration as assured by them. The defacto complainant lodged a complaint before the Kodaikanal Police and the Superintendent of Police, Dindigul who directed her to file a complaint before the Commissioner of Police, Madurai.

3.Before the Commissioner of Police, the petitioners 1 and 2 admitted the offence. The third petitioner being the friend of the first petitioner has admitted the liability and he issued three cheques drawn at HDFC Bank, North Veli Street, Madurai to the tune of Rs.90,00,000/-. Since



the account was closed before two months, the complainant cannot get the balance amount. The defacto complainant lodged a complaint on 11.01.2016 before the Superintendent of Police, Dindigul and on 12.07.2016, another complaint was lodged before the Anti land grabbing Unit. Since no action was taken, the defacto complainant lodged a private complaint before the District Munisf cum Judicial Magistrate, Kodaikanal in Crl.M.P.No.934 of 2017.

4.On the side of the petitioners, it is stated that two sale deeds were registered in the name of the petitioners 1 and 2. The total sale consideration was fixed as Rs.1,15,00,000/-. Out of which, a sum of Rs.54,00,000/- was paid. The petitioners are always ready to remit the balance sale consideration. But during the time of registration, the petitioners came to know that some other share holders are there and that some material facts were suppressed by the defacto complainant. In order to avoid legal impediments, the petitioners expressed their willingness that they are ready to remit the balance sale consideration, if the other share holders rectified the sale deed by way of a deed of consent. Since the defacto complainant accepted the proposal, as security, three cheques were issued by the third petitioner to avoid complications. The defacto complainant intentionally failed to bring the other share holders and refused to provide their address and hence, the petitioners could not settle the issue.



5. On the side of the petitioners, it is stated that the second respondent pressurised the first respondent to initiate legal action and the petitioners were compelled to file an application for anticipatory bail in Crl.O.P.(MD)No. 10593 of 2017 before this Court. On 11.12.2017, the defacto complainant intervened the proceedings and she has admitted that she would repay the sale consideration on or before 31.01.2018. The petitioners also admitted that they would execute a sale deed as per the wish of the defacto complainant. By recording all the facts, this Court has passed an order directing the defacto complainant to repay the sale consideration of Rs.51,00,000/- on or before 31.08.2018 and on the date of returning the said amount, the petitioners shall execute a sale deed. Since the quantum of sale consideration paid was Rs. 54,00,000/- and since the same was not brought to the notice of this Court, petitions in Crl.M.P.(MD)Nos.1035 of 2018 and 10593 of 2017 were filed before this court and this Court has passed an order directing the petitioner to cancel the sale deed on 15.09.2012 on receipt of Rs.54,00,000/- (Rupees Fifty Four Lakhs only).

6. The defacto complainant intentionally failed to comply the direction of this Court and till date she has not repaid the amount as agreed by her. It is very clear that in the entire transaction, no criminality is attached on the part of the petitioners. Only because of failure on the part of the defacto complainant the matter is yet to be resolved. Part of the sale



consideration was already paid to the defacto complainant without any use to the petitioners so far. There is no criminal breach of trust on the part of the petitioners. The petitioners failed to initiate any action by invoking criminal jurisdiction. The failure on the part of the defacto complainant to comply the direction of this Court dated 17.03.2018 made the petitioners to absolve them from any legal action especially to invoke criminal proceedings. Only to convert a civil dispute into a criminal case, this case was instituted and the same is to be quashed.

7. On the side of the petitioners, it is stated that the third petitioner issued three cheques for a sum of Rs.90,00,000/- but the defacto complainant failed to present the same for collection and that almost a compromise was arrived at before this Court at the time of filing the anticipatory bail petition. Five conditions were imposed by this Court. The defacto complainant was directed to deposit Rs.54,00,000/- on or before 10.04.2018 on return of the sale amount, the petitioners were ready to execute a sale deed as per the wish of the defacto complainant. Even now the defacto complainant is not ready to repay the amount and even in the counter, the defacto complainant has admitted that she could not make the payment in time due to the ill health of her husband and that the failure on the part of the defacto complainant was admitted by her.



8. On the side of the second respondent, it is stated that the agreement was in the year 2012. Only after verifying the documents and encumbrance certificate, the petitioners agreed to purchase the property. This Court has to decide whether there is a prima facie case made out in the FIR. The petitioners themselves have admitted that the defacto complainant is the owner and only Rs.54,00,000/- was given as an advance and that they promised to pay the balance at the time of registration of sale deed. The defacto complainant went to the registrar office. The defacto complainant's husband, who was a Senior Advocate was suffering from paralysis attack and the defacto complainant went to registrar office all alone and the petitioners advised her not to count the amount in the public and advised her to go to Hotel Aristo and to count the amount there. But they went away with the cash without paying the amount. The defacto complainant was shocked and she could not do anything, since the sale deed was already executed.

9. On the side of the second respondent, it is stated that the defacto complainant lodged a complaint before the Kodaikanal Police and on their instructions, she made a complaint before the Superintendent of Police, Dindigul and on his advice, she gave a complaint before the Assistant Commissioner of Police, Madurai where the accused were residing. The Assistant Commissioner, Madurai, conducted an enquiry and all the accused appeared and they agreed to pay the balance amount and they issued three



cheques for a sum of Rs.78,00,000/-. They promised to settle the amount in two months or to pay the amount with Rs.2/- interest rate and that after payment of the amount, they will get back the cheque leaves. Subsequently, the defacto complainant came to know that already the account was closed. She lodged a complaint before the CM cell and to the other higher officials and she filed a complaint before the Anti Land Grabbing Unit. Later she filed a petition before the learned District Munsif cum Judicial Magistrate under Section 156 of Cr.P.C. Only on the direction of the learned Magistrate under Section 156 of Cr.P.C., this case was registered on 02.05.2017.

10.On the side of the second respondent, it is stated that at the time of filing the anticipatory bail petition in Crl.O.P.(MD)No.10593 of 2017, the petitioners promised to get back the amount and that they undertake to cancel the sale deed. Again the petitioners filed petitions in Crl.M.P.(MD)Nos.1035 and 2144 of 2018, to modify the amount as Rs.54,00,000/- and then the amount to be paid by the second respondent was fixed as Rs.54,00,000/-. In Crl.O.P.(MD)No.1359 of 2021, the case was referred to mediation. In the mediation, the petitioners refused to receive the amount.

11.On the side of the second respondent, it is stated that admittedly the petitioners registered the sale deed without giving the full sale consideration. Registering the sale deed without paying the full consideration



itself reveals that there was some criminal intention. If there was any encumbrance, there was no chance for the petitioners to have purchased the property at all. What was the encumbrance was not stated in the petition. If at all there is any encumbrance, they should have come forward to get back the advance amount and to cancel the sale deed. They did not mention anything regarding the encumbrance even before in the mediation.

12.On the side of the second respondent, it is stated that only now during the argument in this petition, the petitioners have submitted that they are ready to the pay the balance consideration amount, which itself clearly reveals that there was no encumbrance in the property. Throughout all the proceedings, they have demanded only the advance amount. Even before the mediation, they claimed only interest. They have not stated anything regarding the encumbrance.

13.On the side of the second respondent, it is stated that only two ingredients are mentioned under Section 420 of IPC, which is dishonest intention and entrustment. The petitioners have registered the sale deed without paying the sale consideration and that itself is sufficient to prove that they have dishonest intention. The defacto complainant entrusted the property and thereby, this is a clear case under Section 420 of IPC.



14. On the side of the second respondent, it is further stated that before the Assistant Commissioner of Police and before this Court, the petitioners have admitted that they have to pay the balance and now to escape the clutches of law, the petitioners are stating that there was some encumbrance. The property is not in the hands of the defacto complainant. The balance amount was also not received by the complainant. The sale deed is in the name of the petitioners. The balance sale consideration is with the petitioners. They are enjoying the amount as well the property. If the FIR is quashed, there will be no remedy for the lady who has lost her property.

15. On the side of the second respondent, it is stated that it is sufficient to verify whether a prima facie case was made out against the petitioners and that since the petitioners admit that they have not paid the balance of sale consideration, this petition is to be dismissed. To substantiate this stand, the following judgments of the Hon'ble Supreme Court are cited:

(i) ***Crl.A.No.709 of 2021*** dated 16.05.2018 in the case of ***State of Madhya Pradesh v. Kunwar Singh***.

(ii) ***Crl.A.No.787 of 2021*** dated 13.08.2021 in the case of ***Kaptan Singh v. The State of Uttar Pradesh and others***.

(iii) ***Crl.A.No.1455 of 2021*** dated 11.12.2021 in the case of ***State of Odisha v. Pratima Mohanty Etc.***

(iv) ***Crl.A.No.296 of 2021*** reported in L 2021 SC 154 in the case of

***Priti Saraf and another v. State of NCT of Delhi and another.***

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16. On the side of the petitioners, by way of reply, it is stated that even in the sale deed, it was mentioned that there was a civil case and that there was some proceedings before the Revenue Divisional Officer which reveals that there was some encumbrance. Though sale consideration was mentioned as Rs.56,25,000/-, the petitioners have fairly admitted that the original sale amount was One Crore and Fifteen Lakhs, which reveals that there was no intention of cheating. For the balance of the sale consideration of Rs.75,00,000/-, three cheques were issued at the time of registering the sale deed and not before the Assistant Commissioner of Police. The defacto complainant did not take action against the petitioners before the Criminal Court under the Negotiable Instruments Act on the basis of three cheques issued to her.

17. It is further stated that the defacto complainant did not send even a legal notice and that she has not filed any complaint against the petitioners and that there was no enquiry either before the Kodaikanal Police or before the Madurai Police. Only in the year 2017, this case was registered against the petitioners. This petitioners have admitted to pay the balance provided, she brings the other legal heirs. The time limit for filing a suit for cancellation of sale deed before the civil Court was time lapsed. In the presence of



complainant's advocate, the previous order of this Court was passed. She disobeyed the order of this Court. She has not produced any DD to substantiate her claim. She failed to utilise the opportunities given by this Court. The petitioners are ready to file an undertaking affidavit to pay the balance of Rs.75,00,000/-. No other civil or criminal case was pending against the petitioners and prayed the FIR to be quashed.

18.It is seen that there is no dispute regarding the balance of sale consideration to be paid by the petitioners. On the side of the petitioners, it is stated that three cheques were issued before the Sub Registrar for a sum of Rupees Seventy Five Lakhs at the time of registration of the sale deed. At the same time, the petitioners are claiming that there was some encumbrance and that the petitioners failed to bring the other legal heir to register a consent deed. If at all there was some encumbrance, there is no chance for the petitioners to give the cheque leaves before the Sub Registrar. This contra stand clearly reveals that no cheque leaves was issued on the date of registration.

19.If at all there is an encumbrance, there is no necessity for the petitioners to have registered the sale deed at the first instance. Even after the registration of the sale deed, the petitioners have not taken any steps to call upon the complainant to bring the other legal heirs to execute a consent deed.



Not even a notice was sent by them. Even before this Court the petitioners have made a representation in this petition that they are willing to file an undertaking affidavit to pay the balance of sale consideration. The action of the petitioners proves that there was no encumbrance.

20.The petitioners have admitted that three cheque leaves were given. If the cheque leaves were given at the time of registration, it should have been mentioned in the sale deed. Since there is no possibility of the issuance of the cheque leaves at the time of registration of the sale deed, it can be presumed that the cheques ought to have been given later. Though sale deed was registered in the name of the petitioners 1 and 2, cheque leaves were not issued by them. The reason for giving the cheque leaves by the third petitioner was not explained. Only when the second respondent approached this Court for anticipatory bail, they have agreed to receive back the advance amount and agreed to cancel the sale deed. Until then the petitioners have not taken any steps to pay the balance amount.

21.On the side of the petitioners, it is stated that the second respondent failed to comply the order of this Court. It is true that when this Court fixed a time frame for returning the sale consideration, the petitioners could not comply the order. On the side of the second respondent, it is stated that her husband was suffering due to paralysis attack and hence, this



respondents could not comply the conditions on the date fixed by this Court.

To substantiate this statement, she has produced copies of medical reports.

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22. When the matter was placed before the mediation as per the order of this Court dated 10.03.2021, the second respondent was ready to pay the advance amount but it was the petitioners who refused to received the same. The mediation report was signed by the second petitioner, his counsel and the second respondent.

23. It is stated that the petitioners claim interest for Rs.54,00,000/- before the mediation. Since the sale was of the year 2012, balance sale consideration was not paid to the defacto complainant. She could not enjoy the interest for the unpaid Rs.75,00,000/-. The loss of interest on the side of the petitioners is not due to the fault of the complainant.

24. For the first time, during the arguments in this case, the petitioners have expressed their willingness to pay the balance sale consideration. Even now they are not ready for making the payment. They offered only to file an undertaking affidavit. There is not even a suggestion that the petitioners are ready to pay interest for the sum of Rs.75,00,000/- from 2012 till date of realization.



25.It is admitted that the petitioners gave three cheques for the balance of sale consideration. The cheques were given by the third respondent, who was not the purchaser in the sale deed. The third petitioner is no way connected with the sale deed and the account too was closed. Hence, the second respondent cannot approach the criminal Court under Section 138 of Negotiable Instruments Act and she cannot prove consideration for the cheque leaves.

26.A copy of the complaint dated 11.01.2016 filed by the petitioners before the Kodaikonal Police Station, a copy of the complaint given by the petitioners through her lawyer dated 12.06.2016 before the Land Grabbing Special Wing of Police were filed. It is stated that the intention of the petitioners is clear. For the past 12 years, the second respondent could not enjoy her property and she could not get the balance of sale consideration and that it is the petitioners who are enjoying the property without paying the major portion of the sale consideration.

27.Non compliance of the order of this Court by the second respondent within the time fixed by this Court alone is not a ground sufficient enough to quash the FIR. Admittedly the document was registered without payment of full consideration. The property was entrusted with the petitioners and the sale deed was registered in the name of the petitioners. The



ingredients for a prima facie offence under Section 420 of IPC is made out.

Allowing someone to enjoy the fruits of an offence is not fair.

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28. Considering the previous antecedents of the parties concern and considering the unique facts and circumstance of this case, this Court hereby directs the following:

(i) The sale deed in doct no.2519 dated 10.12.2012 regarding the property in S.No.5/2, Kodaikonal Town is hereby cancelled with immediate effect.

(ii) Any other documents subsequent to the above sale deed with regard to property in Survey No.5/2, Kodaikanal Town is hereby cancelled with immediate effect.

(iii) The Registry is directed to send a copy of this order to the concerned Sub Registrar immediately.

(iv) The petitioners are liable to set right any encumbrance in the property subsequent to the execution of the sale deed.

(v) The second respondent is directed to deposit Rs.54,00,000/- before the trial Court in Crime No.158 of 2017 within a period of three weeks from the date of receipt of this order, failing which, the order of this Court shall stand automatically cancelled.

(vi) On such deposit, the trial Court is directed to keep the amount in a bank Deposit and the petitioners are permitted to withdraw the same from the Court by filing appropriate petition.



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R. THARANI,J.

Mrn

(vii) If there is any disputes regarding the cancellation of the sale deed or subsequent documents, liberty is given to the second respondent to approach the civil forum without any question as to the limitation.

(viii) If the entire matter is amicably settled, the petitioners are given liberty to approach this Court.

29. Since prima facie case is made out against the petitioners, this case requires a trial and hence, this Criminal Original Petition is **disposed of** with the above directions. Consequently, connected miscellaneous petitions are closed.

24.04.2023

NCC : Yes/No

Internet : Yes/No

Index : Yes/No

Mrn

To

1. The Inspector of Police,
Kodaikanal Police Station,
Dindigul District.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

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