



Crl.O.P(MD).Nos.1059 and 1277 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On: 25.04.2023

Delivered On : 06.06.2023

CORAM:

THE HONOURABLE MRS. JUSTICE R.THARANI

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and

Crl.M.P.(MD)No.626 of 2021

1.S.Parimukilan
2.S.Kapildevan
3.P.Mayakannan

...Petitioners in Crl.O.P.(MD)No.1059 of 2021

1.P.Premkumar
2.Vanmathi
3.M.Kasirajan
4.Rajasekaran

...Petitioners in Crl.O.P.(MD)No.1277 of 2021

Vs

1.State represented by
The Inspector of Police,
Chekkanurani Police Station,
Madurai District.
(Crime No.1939 of 2020)

2.P.Ganapathy

...Respondents in both Crl.O.Ps.

COMMON PRAYER: Criminal Original Petitions filed under Section 482 of the Code of Criminal Procedure, praying this Court to call for the records relating to the case in Crime No.1939 of 2020 on the file of the 1st respondent Police dated 21.10.2020 and quash the same so far the petitioners is concern



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For Petitioner	: Mr.A.Chandrakumar
For 1 st Respondent	: Mrs.M.Aasha Government Advocate (Crl. Side)
For 2 nd Respondent	: No Appearance

COMMON ORDER

These petitions are filed to quash the FIR in Crime No.1939 of 2020 on the file of the first respondent Police.

2.The case against the petitioners is that on 12.09.2018, a sale agreement was entered into between A1 and the defacto complainant for purchasing a land in S.No.106/2, A.Kokkulam Village, Thirumangalam Taluk, Madurai District, a sum of Rs.51,00,000/-. Originally the above said land belonged to the petitioners. A1 was the power agent of the petitioners. When the defacto complainant approached A1 to execute sale as per the agreement, he delayed execution stating that the power of attorney deed was missing. The defacto complainant lodged a complaint in C.S.R.No.293 of 2019. When the defacto complainant approached the petitioners and demanded them to execute the sale deed, they demanded more amount. Aggrieved by the same, on 15.09.2020, a panchayat was held in the village wherein the defacto complainant accepted for payment of extra amount but later he came to understand that A2, A3 and A6 along with accused colluded together and they



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sold the land to A4 and A5 and hence, the complaint.

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3. On the side of the petitioners, it is stated that the case for cheating is not made out against the petitioners. There was no direct transaction between the petitioners and the defacto complainant. There is no prima facie case made out against the petitioners. The sale agreement with the power agent was not informed to the petitioners. Hence, the petitioners cancelled the power of attorney executed in favour A1 and sold the property to A4 and A5. The petitioners have a right to sell their property. The defacto complainant ought to have approached the civil court to establish his rights. A civil case is given a color of criminal case. The third petitioner is only an attesting witness. The first respondent without conducting any enquiry has registered a case and the case to be quashed.

4. The learned counsel for the petitioners would rely upon a judgment of the Hon'ble Supreme Court in the case of ***Sarabjit Kaur v. The State of Punjab and another*** reported in ***2023 Live Law (SC) 157***, wherein it is stated as follows:

“A breach of contract does not give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction.



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Merely on the allegation of failure to keep up promise will not be enough to initiate criminal proceedings. From the facts available on record, it is evident that the respondent No. 2 had improved his case ever since the first complaint was filed in which there were no allegations against the appellant rather it was only against the property dealers which was in subsequent complaints that the name of the appellant was mentioned. On the first complaint, the only request was for return of the amount paid by the respondent No.2. When the offence was made out on the basis of the first complaint, the second complaint was filed with improved version making allegations against the appellant as well which was not there in the earlier complaint. The entire idea seems to be to convert a civil dispute into criminal and put pressure on the appellant for return of the amount allegedly paid. The criminal Courts are not meant to be used for settling scores or pressurise parties to settle civil disputes. Wherever ingredients of criminal offences are made out, criminal courts have to take cognizance. The complaint in question on the basis of which F.I.R. was registered was filed nearly three years after the last date fixed for registration of the sale deed. Allowing the proceedings to continue would be an abuse of process of the Court.”

5. On the side of the prosecution, it is stated that A1 is the power agent of A2 and A3. The sale agreement in favour of the defacto complainant was



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executed through A1. Even though the defacto complainant was ready to pay extra amount as demanded by the petitioners, the petitioners sold the property to one Muniyammal and with an intention to cheat the defacto complainant, they have cancelled the power deed in favour of A1.

6.In the case cited on the side of the petitioners, the first complaint was lodged demanding refund of money and a second complaint was lodged to improve the allegation. The facts of the case is not similar to the facts of the present case. Hence, the judgment cited on the petitioners is not applicable to the facts of the present case.

7.Admittedly there was a power deed executed by the petitioners in favour of A1. A1 has entered into a sale agreement with the defacto complainant but subsequently the petitioners cancelled the power deed and they executed a sale deed in favour of A4 and A5. Whether the petitioners are aware of the sale agreement, whether the sale agreement is binding on the petitioners, whether there was any collusion to cheat the defacto complainant, whether the petitioners are having an intention to cheat the defacto complainant are to be decided only after the completion of the trial.



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R. THARANI,J.

Mrn

8.In view of the above, these Criminal Original Petitions are **dismissed**.

Consequently connected miscellaneous petition is closed.

06.06.2023

NCC : Yes/No

Internet : Yes/No

Index : Yes/No

Mrn

To

1.The Inspector of Police,
Chekkanurani Police Station,
Madurai District.

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

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