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Crl.O.P(MD).No.4664 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 10.07.2023

Pronounced on : 18 .07.2023

CORAM:

THE HONOURABLE MR. JUSTICE P. DHANABAL

Crl.O.P(MD).No.4664 of 2020

1. Jaiganesh
2. Thangapandi

...Petitioners

Vs

1.The Inspector of Police
Tirunelveli City CCB,
Tirunelveli District

2. Chandranagum

...Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, praying this Court to call for the records in C.C. No.1616 of 2019 on the file of the learned Judicial Magistrate No.I, Tirunelveli and to quash the same as against the petitioners/accused No. 5 and 6.

For Petitioner : Mr.V.Kannan
For R-1 : Mr.M.Sakthikumar
' Government Advocate(Crl.Side)
For R-2 : No appearance

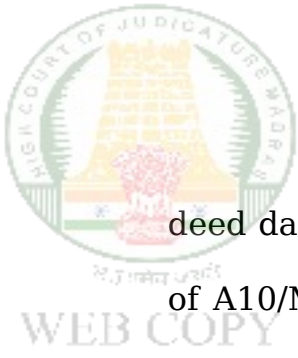
ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C. No.1616 of 2019 on the file of the learned Judicial Magistrate No.I, Tirunelveli as against the petitioners/accused No. 5 and 6



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2. According to the petitioners the case has been registered against the petitioners and others in Crime No. 28 of 2017 for the offences under sections 420,465,467,468,471 and 120(B) of IPC. The defacto complainant gave complaint stating that he is the owner of the property measuring 34 cents in Survey No.44/4B in Kulavanigarpuram Village, Tirunelveli Corporation, Ward No.28, T.S. No. 18/1,Palayamkottai Taluk, Tirunelveli District. Infact the said property originally belongs to one V.A.Chandrasekaran by way of registered sale deed in the year 1996. After the demise of said V.A.Chandrasekaran on 06.10.2012 his legal heirs namely Thomas Ramesh, Nirmalamary Jesudoss and Vivekpaul were in possession and enjoyment of the property. Thereafter on 11.10.2012 the legal heirs of the deceased executed power of attorney deed in favour of the second respondent namely Chandranagum and he was managing the properties. While the facts are being so, A1/Muthu fabricated the false document namely power deed in favour of A2/Sankar and A3/Shanmugasundaram and the same was registered on 02.08.2010. Based on the said power deed A2 and A3 executed sale deed in favour of A4/Mariappan, A5/Jaiganesh, A6/Thangapandi and A7/Rajkumar through registered sale deed dated 04.08.2010. In turn A4 to A6 executed sale deed in favour of A8/Marshall through registered sale deed dated 04.02.2011. A7 and A8 executed sale deed in favour of A9/Ramesh through registered sale



deed dated 05.04.2011. Thereafter A9 had executed sale deed in favour of A10/Manikandan through registered sale deed dated 05.09.2011. In turn A10 executed sale deed in favour of A11/Dr.Silambu Selvi through sale deed dated 11.07.2012. All the accused persons criminally conspired to grab the land knowing well that they were executed by false documents without having any right or interest over the said property. Thereafter on 22.09.2017 the first respondent police registered the present case Crime No. 28 of 2017 for the offences under sections 420,465,467,468,471 and 120(B) of IPC. After completing investigation the respondent police filed final report as against the accused persons and the same was taken on file by the learned Judicial Magistrate No.I, Tirunelveli in C.C. No.1616 of 2019. Aggrieved by the filing of the final report the petitioners being A5 and A6 have challenged the final report through this petition.

3. The learned counsel for the petitioners would contend that the petitioners are *bonafide purchasers* and they have purchased the property for valuable consideration. After purchase of properties they have sold the same to two other persons. The sale deed executed by these petitioners are not false documents and thereby there is no forgery and neither section 467 of IPC and nor section 461 of IPC would attract. Further the offence under section 420 of IPC is not made out as the ingredients of cheating as stated in section 415 of IPC are not



all found. The second respondent/defacto complainant filed suit for declaration of title to the said property and for recovery of possession as against A10 and A11 in O.S.No.106 of 2015 on the file of the I Additional District Munsif, Tirunelveli and the same was decreed on 16.02.2018. The criminal complaints which were given earlier were closed saying that the issues are of civil in nature and there is no *iota* of materials to constitute any offence as charged against the petitioners by the respondent police. The complainant has lodged complaint suppressing the pending suit in the earlier complaint. A11 has moved this Court to quash the charge sheet in this case by filing compromise memo entered with the defacto complainant in Crl.O.P(MD) No.1301 of 2020 and the same was allowed by this Court on 27.01.2020. The defacto complainant caused to covert a purely civil dispute into a criminal case on account of a prevalent impression in the criminal case. It is the effort of the defacto complainant to settle the civil disputes and claims which do not involve any criminal offence by applying pressure through criminal prosecution. Hence the proceedings in C.C. No.1616 of 2019 on the file of the learned Judicial Magistrate No.I, Tirunelveli is liable to be quashed.

4. The learned Government Advocate(Crl.Side) appearing for the first respondent contended that the second respondent had given complaint before the first respondent, based on which the first



respondent police registered a case in Crime No. 28 of 2017 for the offences under sections 420,465,467,468,471 and 120(B) of IPC. After examining witness and thorough investigation filed final report against all the accused person and the same was taken on file by the learned Judicial Magistrate No.I, Tirunelveli in C.C. No.1616 of 2019. The first respondent has conducted fair investigation and then filed final report based on the *prima facie* materials. He further represented that the petitioners already involved in same type of offences and in this case *prima facie* materials available as against the accused persons and the petitioners have to approach the trial court for trial and hence the petition is liable to be dismissed.

5. Though name printed in the cause list none appeared on behalf of the second respondent.

6. In this case the main contention of the petitioners is that the petitioners have purchased the disputed property from A2 and A3 for valuable consideration and they have *bonafidely* purchased the properties. The petitioners have also alienated the property and so many transactions were taken place and lastly the entire property was sold to A11. There was a compromise arrived at between A11 and the defacto complainant with regard to the entire property and A11 got



the sale deed from the defacto complainant by paying sale consideration and thereby the matter was settled between the parties.

According to the petitioners once the matter has been settled between the parties and the property was conveyed by the defacto complainant to A11, nothing survives for further adjudication in this case. But on persual of records it is observed that after execution of power deed all the transactions have taken place within a short span. Further the defacto complainant has settled the matter with A11 and what else prevented the defacto complainant to settle amicably with these petitioners There is no answer for this question. Even the matter has been settled between the parties as far as the offence committed by the accused persons cannot be compromised except in the manner known to law. In this case already the first respondent police examined so many witnesses during investigation and the investigation reveals that these petitioners involved in the crime and only after *prima facie* materials , the first respondent police filed final report before the concerned Court and the trial court has also taken the case on file in C.C. No.1616 of 2019. If no *prima facie* materials available it is for the trial court to decide the case while framing charges. Since the offences are grave in nature, this Court cannot invoke the provision under section 482 of Cr.P.C., unless there is any abuse of process of law. In the case on hand, there is no *prima facie* material available to establish the abuse of process of law. Therefore this petition is liable to be dismissed.



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7. At this juncture, the learned counsel for the petitioners relied on the common order passed by this Court in CrI.O.P(MD) Nos.28679 and 29046 of 2018, wherein this Court had relied on the judgement in the case ***Mohammed Ibrahim and others .vs. State of Bihar and another*** reported in ***(2009)8 SCC 751***, has held that the complainant are not attempting to give the cloak of a criminal offence to the matters which are essentially and purely civil in nature, obviously either to apply pressure on the accused to harassment. Further held that the criminal courts should ensure that proceedings before it are not used for settling the scores or to pressurize parties to settle civil disputes.

8. On careful reading of the said judgement it will not be applicable to the present facts of the case because in the case on hand no civil suit is pending between these petitioners and the second respondent and no grounds to invoke the inherent powers. The trial court after satisfying that there are *prima facie* materials available, had proceeded further, and taken the case on file as per law. Therefore the contention of the petitioners is not acceptable and the petitioners can very well agitate the same before the trial court.



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9. In view of the same, this Criminal Original Petition stands dismissed. Since the case pertains to the year 2017, it is appropriate to direct the trial Court to complete the trial proceedings within the stipulated time. Accordingly the trial Court is directed to complete the trial proceedings as early as possible preferably within a period of six months from the date of receipt of a copy of this order.

18.07.2023

NCC : Yes/No
Internet : Yes/No
Index : Yes/No
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To

1. The Judicial Magistrate No.I, Tirunelveli
2. The Additional Public Prosecutor
Madurai Bench of Madras High Court,
Madurai



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P. DHANABAL,J.

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