



Crl.O.P(MD).No.11022 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 24.08.2023

Delivered On : 25.09.2023

CORAM:

THE HONOURABLE MR. JUSTICE P. DHANABAL

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and

Crl.M.P.(MD)No.5013 of 2020

1.J.Gnanam
2.M.Jeyaraj
3.J.Muthukumar
4.J.Anandakumar
5.A.Anbu
6.S.Ravi
7.P.Karuppasamy

...Petitioners

Vs

R.Sivasami

...Respondent

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 private complaint in C.C.No.1300 of 2019 on the file of the Judicial Magistrate No.VI, Madurai and quash the same as illegal.

For Petitioners

: Mr.T.Seeni Syed Amma

For Respondent

: Mr.C.Gangai Amaran

ORDER

This petition is filed to quash the charge sheet in C.C.No.1300 of 2019 pending on the file of the learned Judicial Magistrate No.VI, Madurai



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District.

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2.According to the petitioners, based on the private complaint given by the respondent before the learned Judicial Magistrate No.VI, Madurai, the Magistrate Court has taken cognizance in private complaint in C.C.No.1300 of 2019 against for the offence under Sections 120B, 420, 406, 467, 468, 471 and 506(i) of IPC.

3.According to the prosecution case, the first petitioner sold the property to an extent of 1605 sq. ft. in S.No.18/B/1B, Karadipatti, Nagamalaipudukkottai, Madurai District to the respondent fraudulently by suppressing the encumbrance in respect of the property. All the petitioners suppressed together and sold the property without disclosing the fact that there is previous encumbrance. Therefore, the respondent has preferred a complaint alleging that this petitioner have committed under Sections 120B, 420, 406, 467, 468, 471 and 506(i) of IPC. In fact the private complaint is false and the petitioners did not involve any offence as alleged in the private complaint. The complaint was filed only with ulterior motive. The second petitioner is the husband of the first petitioner and the petitioners 3 and 4 are her sons. Originally the first petitioner has purchased the property to an extend of 3200 square feet in S.No.18/B/1B, Karadipatti Village,



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Nagamalaipudukkottai, Madurai District from Gurusamy on 31.10.1984.

When the first petitioner purchased the property, the first petitioner has verified the encumbrance for the past 30 years and only after proper verification, she had purchased the property. The first petitioner was in peaceful enjoyment of the property for more than 28 years.

4.While the facts are being so, the respondent herein and his brother's wife namely Pratheeba, offered to buy the property from the first petitioner. Hence, the first petitioner sold the property by way of sale deed dated 23.02.2012 in favour of the respondents and his brother's wife. The respondent and her brother's wife have also verified all the records pertaining to the property and then entered into sale. There is no encumbrance in respect of the property as alleged by the respondent. Thereafter, in the year 2018 onwards, the respondent started insisting the first petitioner to get back the property on the pretext that there is some encumbrance and the property belongs to one Lakshmi Janarthanan. The allegation made in the complaint is completely false and baseless. The matter is purely civil in nature. The respondent started insisting the first petitioner to buy the property from him since, now the Railway Department has extended the railway track. Therefore, there is no offence as alleged in the complaint. Therefore, the pending charge sheet is abuse of process of law.



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5.No counter was filed on the side of the respondent.

6.The learned counsel appearing for the petitioners has argued that these petitioners are owners of the property to an extent of 3200 square feet in S.No.18/B/1B, Karadippati Village, Nagamalaipudukkottai, Madurai District and the first petitioner purchased the property in the year 1984 and thereafter, the first petitioner was in peaceful possession and enjoyment of the property. Thereafter the respondent and his brother's wife offered to purchase the property and after due verification, they purchased the property through sale deeds in the year 2012 I.e. on 23.04.2012. While so, the respondent and her brother's wife, after six years from the date of sale, now insisted the petitioners to get back the property by alleging that there is some encumbrance over the property. The petitioners at the time of purchase of property, after proper enquiry only purchased and at that time no any encumbrance over the property. Even at the time of selling the property to the respondent also, there was no any encumbrance over the property. Now with ulterior motive that the Railway Department expanding railway track, the respondent insisted the petitioners to buy back the property. Since they are not amenable for the demand of the respondent, the respondent filed a complaint before the learned Judicial Magistrate No.VI, Madurai. The pending



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complaint is nothing but abuse of process of law. Hence, the complaint is liable to be quashed.

7.The learned counsel appearing for the respondent contended that the petitioners have suppressed the encumbrance over the property and executed a sale deed in favour of the respondent. After knowing the encumbrance when the respondent approached the petitioners, they threatened the respondent and in order to cheat the respondent, they made false representation and knowing very well that there is encumbrance over the property by suppressing the same, they sold the property to the complainant and thereby, all the accused suppressed and created the forged document and thereby, he filed complaint before the learned Judicial Magistrate No.VI and the same was taken cognizance in C.C.No.1300 of 2019. Therefore, at this stage, the petition is not maintainable and the petitioners have to face the trial and the petition is liable to be dismissed.

8.Heard both sides and perused the materials available on records.

9.On perusal of records, it is observed that the respondent has lodged the complaint before the learned Judicial Magistrate No.VI, Madurai alleging that these petitioners conspired together and created the documents. When the



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same was questioned by the respondent, they threatened him. Originally the property was belonged to one Lakshmi Janarthanan and they restrained the respondent when he attempted to construct the house. Thereafter, he went to the Sub Registrar office and know about the encumbrance dated 21.03.1917. Further alleging that after purchase of the property by the petitioners, one Gurusamy executed power deed and the same was brought to the knowledge of the petitioners. After knowing that they sold the property to the respondent. Therefore, he filed the complaint. In this case, it is admitted fact that the petitioners sold the property to the respondent on 23.02.2012. Prior to that the first petitioner purchased the property on 30.10.1984.

10. According to the petitioners, at the time of purchase of property in the year 1984, they verified the encumbrance and then only they purchased property and they had been in possession of the property and thereafter, the respondent and his brother's wife wanted to purchased the property and the first petitioner also sold the property on 23.02.2012. At the time of purchase itself, the respondent has also verified all the parental documents and encumbrance and then only he purchased the property. Since the dispute is with regard to purchase of property, there is no question of cheating. The property was sold in the year 2012. But the complaint was given in the year 2019. For the past seven years, the respondent is in possession and enjoyment



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of the property. Prior to that, for more than 28 years, the petitioner was in possession and enjoyment of the property. While so the respondent ought to have verified the encumbrance then only he has to purchase the property. It is the duty of the complainant to enquire about the encumbrance and other defects over the property. Obviously there is no any document to produce to show that there is an encumbrance over the property and further these petitioners have no intention to cheat the complainant.

11.On perusal of the complaint, it shows that in order to rope the other petitioners, the complaint was drafted to attract the conspiracy. There is no piece of evidence available to show the conspiracy. The petitioners 2 to 7 are no way connected with the sale between the petitioners and the respondent/defacto complainant. The respondent/defacto complainant also bound by the principle of *caveat emptor* and he has to verify the documents prior to the purchase of sale. After six years from the date of purchase, he has filed the complaint in order to convert the civil dispute into colour of criminal dispute. Hence, the pending complaint is liable to be quashed.

12.Therefore as discussed supra, this Criminal Original Petition is allowed and the impugned complaint in C.C.No.1300 of 2019 pending on the



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P. DHANABAL,J.

Mrn

file of the learned Judicial Magistrate No.VI, Madurai District is hereby
quashed. Consequently, connected miscellaneous petition is closed.

25.09.2023

NCC : Yes/No

Internet : Yes/No

Index : Yes/No

Mrn

To

1.The Judicial Magistrate No.VI, Madurai District.

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