



CrI.O.P(MD).No.3586 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On : 12.07.2023

Delivered On : 25.07.2023

CORAM:

THE HONOURABLE MR. JUSTICE P. DHANABAL

CrI.O.P(MD).No.3586 of 2019

and

CrI.M.P.(MD)Nos.2039 and 2529 of 2019

1.Saminathan
2.Rajalingam @ Kannan
3.Mahalingam
4.Kaniammal

...Petitioners

Vs

1.State:
Rep. by the Inspector of Police,
Arumuganeri Police Station,
Thoothukudi District.
(Crime No.45 of 2019)
2.Thamim Ansari

...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 impugned FIR in Crime No.45 of 2019 on the file of the first respondent and to quash the same.

For Petitioners	: Mr.C.Christopher
For 1 st Respondent	: Mr.R.M.Anbunithi
	Additional Public Prosecutor
For 2 nd Respondent	: Mr.S.Muniyandi



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ORDER

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2.According to the petitioners, they have been arrayed as accused by the first respondent for the alleged offence under Sections 467, 468, 470, 420, 506(ii) of IPC.

3.The prosecution case is that A1 is parental uncle of A2 and A3. The accused A2 and A3 are sons of A4. The defacto complainant approached A1 who is land broker, for purchasing a house and A1 introduced A2 and A3 who are jointly owned two houses in Door Nos.18A and 18B1 situated in Survey No.160/2 and 160/3 at Lakshmipuram Village. The sale consideration was fixed as Rs.9,62,500/-. The registration fee and broker commission comes around Rs.2,16,450/-, which was paid and on 08.11.2018, A2 and A3 executed registered sale deed in favour of the defacto complainant. The sale deed was executed in the presence of A1 and A4. After purchasing the house, the defacto complainant came to know that the suit property was mortgaged to Arumuganeri Co-operative Housing Board Society. Thereafter the defacto complainant contacted A1 to A4 and enquired about the loan transaction for which they did not give any proper reply and they threatened the defacto



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complainant with dire consequences. Therefore, the defacto complainant has lodged the present complaint.

4.No counter was filed by the respondents.

5.The learned counsel appearing for the petitioner would contend that the petitioners 2 and 3 executed a sale deed in favour of the defacto complainant. A1 and A4 are not aware of the sale deed. According to the prosecution, A2 and A3 alone executed sale deed but A1 is acting as a mediator. No overt act against the fourth petitioner. This matter is purely civil in nature. Even according to the prosecution, no offence is made out against the petitioners and the FIR is liable to be quashed.

6.The learned Additional Public Prosecutor appearing for the first respondent would contend that the second respondent had given a complaint before the respondent police and on that basis, they registered FIR and thereafter, investigated the case and filed a final report. As per final report, the offences made against all the accused. Therefore, the petition is liable to be dismissed.

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



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8. The main contention of the petitioners is that they have no intention to cheat the second respondent and originally the father of the petitioners 2 and 3 and husband of the fourth petitioner purchased the property in the year 2005 and they are in possession and enjoyment of the property and in the year 2015, they entered into partition and thereafter, some property was sold to the defacto complainant in the year 2018 by the petitioners 2 and 3. It is admitted fact that the petitioners 2 and 3 executed a sale deed in favour of the defacto complainant with regard to the disputed property. According to the defacto complainant, A1 and A4 are mediators. After investigation, the first respondent have filed final report as against all the accused.

9. As per final report, the vendor of the father of the petitioners 2 and 3 mortgaged the property to Arumuganeri Co-operative Housing Board Society and thereafter, the said Society filed a civil suit as against the vendor and thereafter, sale notice was affixed in the disputed property. After seeing that, all the petitioners approached One Innocent, who was the original owner and asked about he mortgage to the Manager of Arumuganeri Co-operative Housing Board Society and thereafter the said Innocent narrated about the mortgage of the property and then the A2 and A3 sold the property to the defacto complaint. A1 and A4 are also attested in the said sale deed. Thereby,



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they cheated defacto complainant and forged the document in order to cheat

the defacto complainant. Therefore, from the final report filed by the first

respondent, prima facie materials are available to proceed with the case and at

this stage, this Court need not go into the veracity of the above said final

report. At this juncture, this Court relied upon the decision of the Hon'ble

Supreme Court in the case of ***Neeharika Infrastructure Pvt. Ltd. v. State of***

Maharashtra and Others reported in ***2021 SCC Online SC 315***, some

important guidelines reads as follows:

“i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into a cognizable offence;

ii) Courts would not thwart any investigation into the cognizable offences;

iii) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on;

iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the ‘rarest of rare cases (not to be confused with the formation in the context of death penalty).

v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;”



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P. DHANABAL,J.

Mrn

10.In view of the dictum laid by the Hon'ble Supreme Court, this Court is not inclined to quash the FIR at this stage. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petitions are closed.

25.07.2023

NCC : Yes/No

Internet : Yes/No

Index : Yes/No

Mrn

To

1.The Inspector of Police,
Arumuganeri Police Station,
Thoothukudi District.

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25.07.2023