



Crl.O.P(MD).No.9297 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 15.09.2023

CORAM:

**THE HONOURABLE MR. JUSTICE P. DHANABAL**

Crl.O.P(MD).No.9297 of 2021

1.Manimozhi

2.Murugesan

...Petitioners

Vs

1.State represented by  
The Inspector of Police,  
District Crime Branch,  
Theni,  
Theni District.  
(Crime No.8 of 2021)

2.Gurusamy

...Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, praying this Court to call for the First Information Report pertaining to the case in Crime No.8 of 2021 on the file of the first respondent and quash the same.

|                                |                                 |
|--------------------------------|---------------------------------|
| For Petitioners                | : Mr.S.Ramasamy                 |
| For Respondents 1 and 2        | : Mr.M.Sakthi Kumar             |
|                                | Government Advocate (Crl. Side) |
| For 2 <sup>nd</sup> Respondent | : Mr.R.J.Karthick               |

### **ORDER**

This petition has been filed to quash the FIR in Crime No.8 of 2021 on the file of the first respondent.



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2. According to the petitioners, the second respondent is the owner of the property and she entered into agreement with one Rajagopal for sale of property and thereafter, the amount was repaid to the said Rajagopal and the said agreement was also cancelled. While so, the second respondent herein who is the driver of said Rajagopal, filed a complaint as against these petitioners alleged that the petitioners and others paid a sum of Rs.14,25,000/- for the development of land and after the receipt of the said amount, they neither executed sale deed nor repaid the said amount. In spite of repeated requests and demands made by the second respondent, they are evading from paying the said amount. On 30.08.2019, when the second respondent and one Prabhakar went to the house of the petitioners asking to level the land and they failed to do so.

3. Per contra they sold the property to one Ganesan without the knowledge of the second respondent. The petitioners have returned the advance amount of Rs.40,00,000/- and they represented balance amount of Rs. 14,25,000/- would be paid through cheque. But thereafter, they cheated the second respondent without repaying the aforesaid amount. When the same was questioned by the defacto complainant, he abused obscene words and caused criminally intimidation. These are all the allegations made in the



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complaint. Even according to the complaint, the averments would not constitute any offence, since the matter is civil in nature. Based on the complaint given by the second respondent, the first respondent registered a case Crime No.8 of 2021 for the offence under Sections 120B, 420, 294(b), 506(i) of IPC and now the case is under investigation. In fact the petitioners have not committed any offence as alleged in the FIR. Offence under Section 420 of IPC, is not made out, since there is no whisper about the initial inception they had an intention to cheat the second respondent and the offence under Section 294(b) and 506(i) of IPC are not made out. Hence, FIR is liable to be quashed.

4.No counter has been filed on the side of the respondents.

5.The learned counsel appearing for the petitioners would contend that the petitioners have not committed offence as alleged in the FIR. The petitioners are land owners of Survey Nos.94/3B1, 94/4A, 93/1B and 93/2B1 for a total extend of 3 acres in Kunur village, Theni District. The second respondent entered into agreement with the first petitioner and entered into agreement with one Rajagopal for the sale of aforesaid property and received a sum of Rs.40,00,000/- as advance and thereafter, due to non performance of contract, the aforesaid amount was returned to the said Rajagopal. Now in



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order to grab money from the petitioners, the second respondent has filed false complaint alleging that they paid Rs.14,25,000/- towards development of the land. Even according to the complaint, the offence under Sections 120B, 420, 294(b), 506(i) of IPC would not attract. There is no ingredients to attract the aforesaid offences. Hence, pending FIR is liable to be quashed.

6.The learned counsel appearing for the second respondent would contend that the second respondent and others have intended to purchase the property from the petitioners and thereby, Rajagopal entered into agreement with the petitioners and collected money and paid a sum of Rs.40,00,000/- as advance and thereafter, due to the non performance of the contract, the aforesaid money was returned but the amount paid towards development of the land i.e. to level the land Rs.14.25,000/- was not returned. Thereby, they cheated the defacto complainant and others. When the same was questioned by the second respondent, they abused obscene words and threatened with dire consequences. Thereby, they gave a complaint and based on the complaint, FIR was registered. The case is at initial stage and detailed investigation is required in this case and thereby, this petition is liable to be dismissed.

7.The learned Government Advocate appearing for the first respondent



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would contend that the second respondent has given complaint before the first respondent. Based on the complaint, the first respondent has filed FIR in Crime No.8 of 2021 and the same is pending for investigation. Since this Court has granted interim stay, they are unable to investigate the case. At this stage, this petition is not maintainable. Thereby, this petition is liable to be dismissed.

8.This Court head both sides and perused the materials available on records.

9.On perusal of records, it is observed that based on the complaint by the second respondent, the first respondent registered a FIR in Crime No.8 of 2021 for the offences under Sections 120B, 420, 294(b) and 506(i) of IPC. It is admitted fact that the petitioner and one Rajagopal entered into agreement to sale the property and also admitted the receipt of advance of Rs.40,00,000/- and the said amount was also repaid to the agreement holder. The receipt of Rs.14,25,000/- is denied by the petitioners and as per the allegation made in the FIR, some offences are made out. It is for the Investigating Officer to investigate the matter in a fair manner.



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10. At this stage, this Court would like to rely upon the guidelines issued by the Hon'ble Supreme Court in the case of *Neeharika Infrastructure Pvt. Ltd. v. State of Maharastra and Others* reported in *2021 SCC Online SC 315*, investigation of the case cannot be scuttled.

11. Considering the stage of the case, this Court is declined to quash the FIR as against the first petitioner. The first petitioner is at liberty to challenge the charge sheet if any filed against him.

12. As far as the second petitioner is concerned, the allegation as against the second respondent is that she also present at the time of the receipt of amount. Apart from that, there is no averments as against the second respondent and agreement was also entered between the first petitioner and one Rajagopal and the second respondent is not a party to the agreement. Therefore, there is no material as against the second petitioner and in the absence of specific allegation as against the second petitioner, pending FIR is against the second petitioner is liable to be quashed. In the absence of specific allegation, the second petitioner need not face the ordeal of trial. In the above circumstances, it is appropriate to quash the FIR as against the second petitioner.



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13. Therefore, as discussed above, this Criminal Original Petition is partly allowed and FIR in Crime No.8 of 2021 as against the second petitioner alone is quashed.

**15.09.2023**

NCC : Yes/No  
Internet : Yes/No  
Index : Yes/No  
Mrn

To

1. The Inspector of Police,  
District Crime Branch,  
Theni,  
Theni District.

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



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**P.DHANABAL, J.**

Mrn

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