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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 15/02/2023

Pronounced on : 16/03/2023

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Cr1.RC(MD)No.502 of 2021

Sundari : Petitioner/Petitioner

Vs.

1.Mr.V.Indirakumar
2.V.Chandrasekar @ Selva
3.Babu
4.G.Ramalingam
5.Ravi Khader Mohaideen : Respondents/Respondents

Prayer: Criminal Revision is filed under Section 397 r/w 401 of the Criminal Procedure Code, to call for records relating to the impugned order, dated 02/07/2018 in Cr.M.P No.6514 of 2018 on the file of the Judicial Magistrate No.1, Tirunelveli and set aside the same in so far as the petitioner is concerned and pass such further or other orders.

For Petitioner : Mr.V.Sasi Kumar

For R1 to R3 : Mr.AR.L.Sundaresan
Senior counsel
for Mr.S.Mani Maran

For 5th Respondent : Mr.R.Ramasamy

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This criminal revision has been filed seeking in order to set aside the impugned order, dated 02/07/2018 in Cr.M.P No.6514 of 2018 on the file of the Judicial Magistrate No.1, Tirunelveli.

2.The facts in brief:-

The petitioner herein as complainant filed a private complaint before the trial court and that was enquired in Crl.MP No.6514 of 2017 seeking a direction to the District Crime Branch to enquire the complaint. It was dismissed. Against which, this petition has been preferred.

3.The facts in brief, as mentioned, in the complaint:-

The 5th respondent namely Ravi Khader Mohaideen approached her father stating that the property measuring about 4 acre and 77 cents belongs to the first respondent namely V.Indirakumari and she is willing to sell the same. They visited the property, which was assisted by the 4th respondent, who is the land broker. They perused the records and finding that the property is standing in the name of the 2nd respondent herein namely V.Chandrasekar @ Selva. The father informed that he can make negotiation only with the second respondent. At that time, the first



respondent stated that the second respondent is her son-in-law and also informed that the property was purchased by her in the name of her son-in-law. So on the basis of the above said representation, they agreed to sell the property for Rs.2,82,00,000/-. On 26/02/2009 itself, they gave Rs.1,00,00,000/- to the first respondent. The respondents 1 to 3 signed in the above said agreement. Later, on 15/04/2022, another Rs.60,00,000/- was also paid by her father, which was received by the first respondent in the presence of the third respondent. They also requested them to transfer the money through Bank transaction. Totally, Rs.1.22 crores was transacted. The total amount paid was Rs.2.82 crores, which was the agreed amount. On 13/07/2009, a power of attorney was executed in favour of her father. In pursuance of the above said power of attorney deed, her father sold 2.99 acres to the third parties. The remaining extent was in his possession.

4.Later without informing her father, the power of attorney was cancelled by the first respondent. When contacted through phone, they did not give any proper reply. Later, demanded returning of the above said property. They also promised to return Rs.2.01 crores. Later on 10/12/2010, he sold the property in favour of 12 persons. Later, they were informed that they could not return the amount.



5.Now for taking action against the accused, the above said complaint was filed.

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6.That was dismissed by the trial court on the ground that it is purely a civil issue. Against which, this revision has been preferred.

7.The learned counsel appearing for the petitioner would submit that the trial court has not gone into the documents that were filed by her along with the complaint. Totally Rs.2.10 crores have cheated by the respondents. The intention to cheat the petitioner and her father can be gathered from the subsequent conduct also. The sale agreement was only an unregistered document. After getting money, which is a sale consideration in its entirety, they cheated.

8.Per contra, the learned Senior counsel appearing for the respondents 1 to 3 would submit that it is purely a contractual obligation that arose between the parties. The father of the petitioner during his life time, he did not take any action, either for recovering the money or for enforcing the contractual obligation for about seven years. Had there been civil action initiated by the father, it would have given a solution to the issue. But the inaction on the part of the father for about seven years is not explained by this petitioner.



9. In reply to this argument, it was contended that on 04/11/2006 itself, the agreement was cancelled and continuous negotiations took place between the parties and because of the above said negotiations only, there was a delay.

10. No doubt that huge money is involved in the above said issue and the first respondent is not even cared to return the above said money, either to the father of the petitioner or to this petitioner. But whether in those situation, the offence of cheating is made out is the only point for consideration.

11. As pointed out by the respondents, for about seven years, the father of the petitioner did not take any action. The argument that because of the negotiation that was undertaken between the parties, there was no action by the father, cannot be taken into account at all.

12. Contractual obligation will and should be resolved only through proper civil process. Failure to initiate civil action should not lead to criminal action to overcome lapses, limitations etc.



13.In the above said circumstances, I find no reason to interfere into the order of dismissal passed by the trial court. The petitioner can work out her remedy through appropriate civil process, if so advised.

14.In the result, this criminal revision is **dismissed**, of court with liberty as noted above.

16/03/2023

Index:Yes/No
Internet:Yes/No
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To,

The Judicial Magistrate No.1,
Tirunelveli.



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G. ILANGO VAN, J

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