



Crl.O.P.(MD).No.12761 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :26.09.2023

CORAM:

THE HONOURABLE MR. JUSTICE P.DHANABAL

Crl.O.P.(MD).No.12761 of 2021

and

Crl.M.P(MD)No.6565 of 2021

1.Mr.Sundararajan

2.Mrs.S.Panchakalyani

3.Mr.S.Balamurali

4.Mr.S.Arunachalam

... Petitioners/Accused Nos.1 to 4

Vs.

1.The State rep. by

Inspector of Police,

(Crime No.21 of 2021)

District Crime Branch,

Ramanathapuram District.

... 1st Respondent/Complainant

2. Mr.J.Sabastian

... 1st Respondent/Defacto
complainant

PRAYER: This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, to call for the records in Crime No.21 of 2021 on the file of the first respondent and quash the same sofaras the petitioners are concerned.

For Petitioners : Mr.V.Veerapandian
for M/s.Vastlaw Associates

For R.1 : Mr.R.M.Anbunithi
Additional Public Prosecutor

For R2 : Mr.R.Velmurugan



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ORDER

This Criminal Original Petition has been filed to quash the First Information Report in Crime No.21 of 2021 on the file of the first respondent.

2. According to the petitioners, the first petitioner and the second respondent had entered into the sale agreement dated 21.09.2020. As per the sale agreement, sale consideration was fixed at Rs.1,40,00,000/-. A sum of Rs.91,00,000/- was paid as advance amount. Thereafter, the parties have not performed their part of contract and thereby, the second respondent has given a complaint as against the petitioners and the same was registered in Cr.No.21 of 2021 for the offences under Sections 417 and 420 of IPC. The first petitioner alone had entered into the sale agreement with the second respondent. The second petitioner is the wife of the first petitioner, third petitioner is son of the first petitioner and the fourth petitioner is the grand-son of the first petitioner. The petitioners have received a sum of Rs.91,00,000/- as sale advance, however, the sale could not be concluded since the second respondent has failed to make the balance sale consideration as per the sale agreement. Therefore, the petitioners requested the second respondent to take back the advance amount paid by him, but he is not



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ready to return back the money. Therefore, on 28.04.2021 a complaint was preferred by the second respondent alleging that the petitioners herein had offered to sell their own Nanja land comprised in SF.No.282/2 which is situated at Paramakudi Taluk, Kattuparamakudi Group, Pambuvilunthan Village to an extent of 2.68.5 acres. After the sale agreement, the petitioners sold some portion of the land to an extent of 1200 sqft., in favour of one Harivas and thereby, the second respondent gave a complaint dated 11.02.2021 before the Paramakudi Town Police Station. Thereafter, the petitioners filed an application in Crl.O.P. (MD)No.2443 of 2021 seeking a direction not to interfere with the civil dispute pending between the petitioners and the second respondent and the same was dismissed. The Inspector of Police, Paramakudi Town Police Station closed the petition with an instruction to the parties to approach the Court of law or to the District Crime Branch for the relief. Thereafter, the second respondent filed an application in Crl.M.P.No.428 of 2021 before the learned Judicial Magistrate No.II, Ramanathapuram and the same was forwarded under Section 156(iii) Cr.P.C., to the first respondent. Based on the complaint, the first respondent has registered the case in Cr.No.21 of 2021, dated 05.05.2021. The petitioners have not committed any offences. The petitioners are ready to return the advance amount to the second respondent, but the second respondent has refused to receive the same. Therefore, the present FIR is abuse of process of Court and the same is liable to be quashed.



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3. No counter has been filed by the respondents.

4. The learned counsel appearing for the petitioners submitted that the first petitioner and the second respondent entered into an agreement of sale of the property and the sale price was fixed as Rs.1,40,00,000/- and a sum of Rs.91,00,000/- was received as advance for the above said sale price. However, the sale could not be concluded, since the second respondent failed to make the payment as per the sale agreement. The petitioners are ready to repay the advance amount, but the second respondent has refused to receive the said amount. Since the matter is civil in nature, the second respondent has filed a civil suit before the learned Principal District Munsif, Paramakudi for specific performance. Since the matter is pending before the civil Court and the dispute is also civil in nature, the offences under Sections 417 and 420 are not attracted and these petitioners have no intention to cheat the second respondent at any point of time, therefore, it is abuse of process of law.

5. The learned counsel appearing for the second respondent contended that the petitioners entered into the sale agreement with the second respondent and thereafter, they are evading to perform the part of contract. The petitioners have already received a sum of



Rs.91,00,000/- as advance amount from the second respondent. After the agreement, they executed a sale deed to an extent of 1200 sqft., in favour of one Harivas, thereby, they have cheated the second respondent. Already the second respondent filed a suit for specific performance before the Principal District Munsif, Paramakudi and the same is pending. The petitioners intention is to cheat the second respondent from the inception and thereby, the second respondent has given a complaint. Based on the complaint, the first respondent police has registered a case. The case is under investigation and therefore, this criminal original petition is liable to be dismissed.

6. The learned Government Advocate (Crl.side) appearing for the first respondent would contend that based on the complaint given by the second respondent, the first respondent police has registered a case in Cr.No.21 of 2021 for the offences under Sections 417 and 420 of IPC. Investigation has been completed and the final report has been filed before the concerned Court and the same was taken on file in C.C.No.122 of 2022. As per the final report, the offences are made out as against the petitioners and thereby, this petition is liable to be dismissed.

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



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8. On perusal of records it shows that the petitioner and the second respondent entered into an agreement and the advance amount of Rs.91,00,000/- was also paid. According to the petitioner, the second respondent only evading from performing of part of the contract and has failed to get sale deed in his favour by paying the balance amount. The petitioners are ready to repay the advance amount and the second respondent is not willing to receive the said amount. It is admitted fact that already the second respondent filed civil suit and the same is pending. In order to attract the criminal case for the offence under Section 417 and 420 IPC the accused shall have dishonest intention to cheat the complainant, but in this case, the dispute is arising out of contract and already civil suit also filed and the same is pending. The matter is civil in nature and there is no intention to the petitioners to cheat the second respondent. The petitioners have already deposited the entire amount in the Indian Bank, Southveli Street and also produced the copy of the deposit receipts.

9. At this juncture, the learned counsel appearing for the second respondent contended that he has incurred a sum of Rs.30,00,000/- for developing the land. Now, the petitioners are ready to settle the advance amount of Rs.91,00,000/-. Since the second respondent has already filed a civil suit before the Principal District Court, Ramnad. Therefore, the



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petitioner and the second respondent can work out their remedy in respect of the Rs.30,00,000/- in the civil suit which is pending before the Civil Court. Further, the matter is purely civil in nature and would not attract the offence under Section 417 and 420 of IPC. Hence, the pendency of FIR as well as the charge sheet is pure abuse of process of law and thereby they are liable to be quashed. Since the petitioners are agreed to pay the advance amount and the same is lying on the fixed deposit, the second respondent is at liberty to receive the same with accrued interest and the petitioners shall pay the said amount as and when the second respondent demanded.

10. Though respondent police have filed final report, since the matter is civil in nature and no offence made out, the pending proceeding is abuse of process of law and hence as against these petitioners, who are A1 to A4, the First Information Report and the Charge sheet in C.C. No. 122 of 2022 on the file of the learned Judicial Magistrate No.II Ramanathapuram are liable to be quashed. Since the civil suit is pending, the second respondent can work his remedy before the civil court.



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11. Accordingly this Criminal Original Petition is allowed and the First Information Report and the Charge sheet in C.C. No.122 of 2022 on the file of the learned Judicial Magistrate No.II, Ramanathapuram are hereby quashed. Consequently connected miscellaneous petition is closed.

26.09.2023

Index : Yes / No
Internet : Yes / No
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To

- 1.The Inspector of Police,
District Crime Branch,
Ramanathapuram District.
- 2.The Judicial Magistrate No.II,
Ramanathapuram.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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P.DHANABAL, J.

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