



CrI.O.P.(MD)No.20190 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.07.2023

CORAM

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CrI.O.P.(MD)No.20190 of 2021

and

CrI.M.P(MD).No.11431 of 2021

1.Govindaraj
2.Senpagavalli
3.Ramya

... Petitioners

Vs.

1.The State rep. by
The Inspector of Police,
District Crime Branch,
Theni,
Theni District.

2.Rajeshkanna

... Respondents

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records in connection with Crime No.12 of 2021 on the file of the Inspector of Police, District Crime Branch, Theni, Theni District and quash the same.

For Petitioners	: Mr.B.Jeyakumar
For R1	: Mr.Mr.Meenakshi Sundaram Additional Public Prosecutor
For R2	: Mr.A.Jeyaram



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ORDER

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This petition has been filed to call for the records in connection with Crime No.12 of 2021 on the file of the Inspector of Police, District Crime Branch, Theni, Theni District and quash the same.

2. The petitioners are A1 to A3 in Crime No.12 of 221, which was registered for the offence under Section 420 of IPC.

3. The petitioners 1 and 2 had entered into the sale agreement with the second respondent/defacto complainant on 31.07.2019, in which, the defacto complainant agreed to purchase the land to an extent of 87 cents situated in Allinagaram Village, Thenikkal Puthuvayal, Theni District. This property was purchased by the petitioners 1 and 2 along with one Seethalakshmi and Soundarapandian and a sum of Rs.3,60,000/- (Rupees Three Lakhs Sixty Thousand only) was fixed as price for each cents and they have purchased 43 ½ cents and a sum of Rs.1,56,60,000/- (Rupees One Crore fifty lakhs and sixty thousand only) was fixed as sale consideration. In pursuance of the sale agreement, a sum of Rs. 15,00,000/- (Rupees Fifteen Lakhs only) has been paid as advance



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amount. Thereafter, on 23.05.2020, another sum of Rs.3 lakhs was paid and on 14.08.2020, another sum of Rs.2 lakhs was paid. In total, Rs.20 lakhs was paid to the petitioners 1 and 2. While entering into the sale agreement, a specific undertaking was given by the petitioners that since there was a partition suit pending between the petitioners 1 and 2 and Seethalakshmi, Senthilkumar and Jeyasingh, after the judgment in the suit, the sale deed will be executed. Contrary to the same, the petitioners 1 and 2 were attempting to sell the property to the third party. Thereby, they are cheating the defacto complainant. Hence, the second respondent lodged a complaint against the petitioners and the same was registered in Crime No.12 of 2021.

4. The learned counsel for the petitioners submitted that the petitioners are A1 to A3 and at the stage of admission, the petitioners are ready to deposit the advance amount of Rs.20,00,000/- (Rupees Twenty Lakhs only), which was received from the second respondent/defacto complainant to the credit of O.S.No.19 of 2021 on the file of the Principal District Court, Theni. This Court recorded the said undertaking and granted interim stay of proceedings in Crime No.12 of 2021. On the



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earlier occasion, the second respondent/ defacto complainant has approached this Court by filing Crl.O.P(MD).No.20359 of 2021, seeking direction and at that time, the petition filed by the accused in Crl.O.P(MD).No.20190 of 2021 was not brought to the notice of this Court by the learned Additional Public Prosecutor as well as the defacto complainant and hence, this Court has issued a direction to complete the investigation in Crime No.12 of 2021 within a period of four months.

5. As per the direction of this Court, the respondent police has filed the final report before the Judicial Magistrate, Theni and the same was taken on file in C.C.No.47 of 2022. Thereafter, summons were issued to the petitioners/accused and later, the petitioners approached this Court and informed about the earlier stay obtained from this Court and on 29.04.2022, the order passed in Crl.O.P(MD).No.20359 of 2021 was recalled. In view of the same, the trial Court on 17.06.2022 had closed the final report, in sum and substance. Now, the investigation in Crime No.12 of 2021 is pending.



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6. The learned counsel for the petitioners submitted that in this case, the third petitioner is the daughter of the petitioners 1 and 2 and third petitioner is working in a Bank and settled in Theni. The third petitioner has no knowledge about the transaction between the petitioners 1 and 2 and the second respondent/defacto complainant. He further submitted that the defacto complainant has given a criminal colour to the civil dispute. He further submitted that the defacto complainant was very much aware of the pendency of the suit and he has also agreed to enter into the sale agreement and agreed to pay the advance amount. The suit in O.S.No.64 of 2018 was decreed on 31.01.2021 and the same was informed to the defacto complainant/second respondent and thereafter, the defacto complainant paid a sum of Rs.5,00,000/- and on 14.08.2022 and a sum of Rs.3,00,000/- (Rupees Three lakhs only). Later, the defacto complainant failed to make any further payments despite the petitioners calling upon to complete the sale. The petitioners came to know that the defacto complainant is only a land broker waiting for good purchaser, for this reason he had not come forward to settle the balance amount of sale consideration in time as agreed in the sale agreement dated 31.07.2019.



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The sole intention of the defacto complainant is to lock the property of the petitioners 1 and 2 without making the balance sale consideration, thereafter to demand for lesser payment by taking advantage and need of the urgency of the petitioners 1 and 2.

7. He further submitted that the defacto complainant filed O.S.No. 19 of 2021 suit for specific performance before the District Court, Theni and on the contrary giving criminal colour for civil dispute to file a complaint. Suppressing filing of the civil suit. Hence, he prayed for quashing of the FIR.

8. The learned counsel for the second respondent/defacto complainant submitted that the defacto complainant is ready with balance payment, as per the sale agreement, which could not be done, since there was no proper boundaries. The petitioners herein received a sum of Rs.15,00,000/- (Rupees Fifteen Lakhs only) on 31.07.2019, citing the dispute with the co-owners, not executed the sale deed despite suit ended in petitioners favour, preliminary decree was passed on 13.01.2020. The metes and bounds of the property not fixed. Only after apportion of



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properties with boundaries, sale deed can be executed and registered.

The petitioners till date has not partitioned the properties with metes and bounds.

9. The defacto complainant is willing to pay the balance amount and get the sale deed. The defacto complainant had filed O.S.No.19 of 2021 for specific performance. The defacto complainant submits that the petitioners has received a sum of Rs.20 Lakhs, four years back and thereafter, cheated the defacto complainant by non-executing the sale deed. Hence, he lodged a complaint.

10. The learned Additional Public Prosecutor appearing for the respondent police submitted that in this case, after registration of the FIR, the investigation completed by the respondent police. Thereafter, it was brought to the notice about the stay and this Court by order dated 29.04.2022 in Crl.O.P(MD).No.20359 of 2021 issued some directions. Thereafter, it was recalled. He further submitted that in this case, there is predominant flavour of civil dispute and in the complaint civil suit particulars not mentioned. During the course of investigation only, the



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real intention of the petitioners can be found and the investigation may be directed to be continued and he opposed to quash of FIR.

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

12. A perusal of report shows that there is a sale agreement between the petitioners and the defacto complainant/second respondent. As per the sale agreement, the petitioners have received a sum of Rs.15 lakhs and the petitioners stated that the civil dispute is pending between the petitioners and the co-owners of the property. After knowing the same, the defacto complainant entered into the sale agreement. The partition suit in O.S.No.64 of 2018 was decreed on 31.01.2020. Thereafter, the same has been informed to the defacto complainant and the defacto complainant further paid a sum of Rs.3 lakhs on 23.05.2020 and paid a sum of Rs.2 lakhs on 14.08.2020. Later, no payment was made by the defacto complainant and he has not approached the petitioners for return of advance amount paid by him. Thereafter, the petitioners had sold the property to the third person. It is seen that the defacto complainant has filed the suit in O.S.No.19 of 2021 before the



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learned Additional District Court, Theni for specific performance. The complaint was lodged on 10.10.2021 and the FIR was registered on 11.10.2021.

13. It is also not in dispute that as per the direction of this Court in Crl.M.P(MD).No.11431 of 2021 in Crl.O.P(MD).No.20190 of 2021 dated 17.12.2021, the petitioners herein had deposited a sum of Rs.20 Lakhs in O.S.No.19 of 2021 pending on the file of the learned Additional District Court, Theni on 07.01.2022 vide Challan No.20220107001446.

14. It is seen that the third petitioner is the daughter of the petitioners 1 and 2 and he is not aware of the transaction and she was working in a private bank, married, having separate family at Theni.

15. From the above, it is seen that some dispute between petitioners and the co-owners of the property. The defacto complainant already aware of the civil suit pending between them. Thereafter only, the defacto complainant/second respondent entered into the sale agreement dated 31.07.2019. The entire advance amount deposited as per directions of this Court. The case is predominantly civil in nature.



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16. This Court finds proceeding of Crime No.12 of 2021 is a clear abuse of process of law. Therefore, this Court is inclined to quash the First Information Report in Crime No.12 of 2021. The observations made herein is the disposal of the above criminal case, reserving the rights of the petitioner and the defacto complainant with regard to the property which is pending in O.S.No.19 of 2021, which is to be decided on its own merits.

In the result, this petition is allowed. Consequently, the connected miscellaneous petition is closed.

14.07.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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- 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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M.NIRMAL KUMAR, J

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