



Crl.O.P(MD).No. 16703 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 15.03.2023

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THE HON'BLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.O.P(MD)No.16703 of 2017

and

Crl.M.P(MD) Nos.11027 and 11028 of 2015

Syed Ibrahim

... Petitioner/ Respondent

Vs

A.Sheik Tarik @ Abdul Azis

... Respondent/Petitioner

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the entire records pertaining in C.C.No.200 of 2013 on the file of the learned Judicial Magistrate, No.II, Dindigul and quash the same.

For Petitioner : Mr.K.Chegiz Khan

For Respondent : Mr.R.Ganeshprabhu



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ORDER

The petitioner filed this petition to quash the proceedings in C.C.No.200 of 2013 on the file of the learned Judicial Magistrate No.II, Dindigul emanated from the private complaint preferred by the respondent for the alleged offence under Section 420 IPC.

2. The respondent preferred the private complaint before the learned Judicial Magistrate alleging that he is the owner of the property comprised in Survey Nos.2/1, 8/2, 468, 469 of Chinnamanur village. He entered into a registered sale agreement with the petitioner on 07.09.2007 in respect of the above properties. Total sale consideration was fixed at Rs.17,00,000/- and Rs.7,20,000/- paid as advance. Before the completion period, the respondent requested the petitioner to cancel the agreement. So, on 07.01.2008, the said agreement was cancelled and the above advance amount was repaid. According to the respondent, he repaid the said advance amount upon execution of the sale deed dated 14.01.2008 in favour of one Company, namely, Ramco Bio Tech Pvt. Ltd. Company. Further, it is the specific case of the respondent that only at the instigation and threatening of the



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petitioner, he executed the sale deed for lesser value in favour of the said company and hence, he was cheated by the petitioner. Thereafter, he preferred the complaint before the concerned jurisdictional police and the same was enquired and closed as 'mistake of fact'. Thereafter, he filed this private complaint and the same was taken on file for the above said offence.

3. The learned counsel appearing for the petitioner would submit that it is only a civil dispute. If the defacto complainant is aggrieved over the execution of the sale deed at the instigation of the accused under threat or coercive, he has to approach the competent civil Court to set aside the said sale deed by impleading the purchaser and other necessary parties with the material averment of coercion and others as per law. There is no offence made out in the complaint against the petitioner. He would further submit that earlier, the jurisdictional police registered the case and investigated the matter and closed as 'mistake of fact' and the same was accepted by the learned Judicial Magistrate. Therefore, the second complaint is not maintainable and hence, he prays for dismissal.



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4. Per contra, the learned counsel appearing for the respondent / defacto complainant would submit that as per the law laid down by the Hon'ble Supreme Court in ***AIR 2002 -483 (Kishore Kumar Gyanchandani V. G.D.Mehrotra and another)***, even though on the earlier occasion, the learned Judicial Magistrate accepted the final report submitted by the Investigation Officer, there was no bar for taking cognizance of the private complaint, when the offence is made out. He has further relied upon the following judgments:

(i) In ***Kishore Kumar Gyanchandani V. G.D.Mehrotra and another*** reported in ***AIR 2002 -483***.

(ii) In ***Narayanamma and others V. Chikka Venkateshaiah*** reported in ***(2019) 4 MLJ (Crl) 616***.

(iii) In ***Alaguthangamani and others V. Saravanan*** reported in ***(2022) 4 MLJ (Crl) 156***.

5. Without going to the issue of maintainability of the impugned private complaint, after acceptance of the closure report of the police case in respect of the same offence, this Court considered the submission of the learned counsel for the petitioner that the complaint does not disclose any cognizable offence and also the same is civil in nature and the private



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complaint filed by giving criminal colour to the civil dispute after a very long time.

6. A perusal of the complaint would show that the complainant in the private complaint is the owner of the property stated above and he has entered into a sale agreement on 07.09.2007 for the total sale consideration of Rs.17,00,000/- and he has paid Rs.7,20,000/- as advance. Before the completion of the sale agreement period, he requested the petitioner to cancel the agreement and hence, the petitioner cancelled the agreement on 07.01.2008. Subsequently, the respondent executed a sale deed in favour of one Ramco Bio Tech Company on 14.01.2008 and he made the repayment of the advance amount to the petitioner. It is the further case of the respondent that at the instigation and threatening of the petitioner, the respondent executed the sale deed in favour of the Company without proper sale consideration and thereby he was cheated. The above averment in the opinion of this Court did not constitute any offence and the respondent filed this private complaint by giving criminal colour to the civil dispute. Further, the said transaction took place in the year 2008. The complaint is given in



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the year 2015 and hence, the petitioner without resorting the civil proceedings to cancel the sale deed on the ground of coercion and other filed this private complaint and hence, as rightly pointed out by the learned counsel for the petitioner, on the basis of the proposition of law reported in 2013 (3) SCC 86, 2019(3)MLJ(Cri)339, in this case, neither offence under Sections 420, 467 IPC nor 471 IPC is made out against the petitioner. This Court found that the delay in preferring the complaint also shows his intention to file this private complaint by settling his score without approaching civil Court which amount to the abuse of process of law and the same was fortified by the judgment reported in **2013(11) SCC 673 [Paramjeet Batra v. State of Uttarakhand]** as follows:

“12. While exercising its jurisdiction under Section 482 of the Code the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash the criminal proceedings to prevent abuse of process of the court.”



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So, in all aspect, the impugned C.C.No.200 of 2013 on the file of the learned Judicial Magistrate, No.II, Dindigul deserves to be dismissed.

7. In the result, this Criminal Original Petition is allowed and the impugned C.C.No.200 of 2013 on the file of the learned Judicial Magistrate, No.II, Dindigul is quashed. Consequently, connected Miscellaneous Petitions are closed.

15.03.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To
The Judicial Magistrate No.II,
Dindigul.



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K.K.RAMAKRISHNAN, J.

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