IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.10.2024

CORAM

The Hon`ble Mr. Justice P.DHANABAL

Crl. O.P. No.9897 of 2022
and Crl. M.P. Nos.5817 and 5819 of 2022

K.V. Sakthivel S/o. Vedachala Mudaliar ... Petitioner / Accused -5

vs.

1. The State represented by:-
The Inspector of Police,
District Crime Branch, Vellore.
[Cr. No.30 of 2017]

2. K. Govindasamy S/o. Kuppusamy .... 2nd Respondent / Defacto Complainant

PRAYER: The Criminal Original petition is filed under Section 482 of Criminal Procedure Code to call for records pertaining to Cr. No.30 of 2017 on the file of respondent police in C.C. No.365 of 2021 on the file of the Judicial Magistrate Court No.II, Vellore and quash the same.

For petitioner : Mr. P.K. Ilavarasan
For Respondents : Mrs. G.V. Kasthuri,
Additional Public Prosecutor,
High Court, Madras [for R1]
Mr. R. Sankara Subbu [for R2]

ORDER

This Criminal Original Petition has been filed to quash the pending proceedings in C.C. No.365 of 2021 on the file of the Judicial Magistrate Court No.II, Vellore.

2. According to the prosecution case, the accused 1 to 3 are the owners of the agricultural land to an extent of 4.85 acres situated at Kalathur Village and they agreed to sell the property to one K. Govindasamy, the 2nd respondent/defacto complainant, based on an oral agreement for a sum of Rs.27,88,750/-. Already, the said property was mortgaged with Corporation bank, Kaveripakkam and the accused 1 to 3 expressed their difficulty in selling the property immediately as the property was mortgaged with Corporation Bank and there are pending dues for the loans they had availed with the bank. Hence, before making the sale deed, the loan has to be cleared to make the title of the property clear. Thereby, the defacto complainant accepted to make an advance payment of Rs.4,22,000/- to clear the dues pending with the bank and also transferred the money and cleared the loan and obtained Loan Clearance Certificate from the Corporation Bank, Kaveripakkam Branch and the said Loan Clearance Certificate was also handed over to the

defacto complainant. A1 to A3 received cash of Rs.3,66,750/- and A5 received a sum of Rs.1 lakh towards brokerage charges. The defacto complainant paid the balance amount of Rs.19 lakhs to the accused 1 to 3 on 28.05.2014 through bank cheques. After clearance of two bank loans, the defacto complainant found that the redeemed properties had been mortgaged again and loan was availed from the bank by A1 to A3. Hence he lodged a complaint. Based on the complaint, FIR has been registered in Cr. No.30 of 2017 under Sections 120-B, 406, 420 and 506(i) of IPC. Thereafter, the respondent police have conducted investigation and filed final report and now the case is pending in C.C. No.365 of 2021 on the file of the learned Judicial Magistrate No.II, Vellore. Now the said case is under challenge by the petitioner / A5.

3. The learned counsel appearing for the petitioner would contend that based on the complaint given by the 2nd respondent, the 1st respondent police have registered the case against the petitioner and others under Sections 120-B, 406, 420 and 506(i) of IPC. In fact, there is no offence committed by the petitioner and money was paid only to A1 to A3. This petitioner had acted only as mediator and he received only

the commission of Rs.1 lakh from the defacto complainant. In fact, A1 to A3 are the owners of the agricultural land and the defacto complainant wanted to purchase the property and as per the oral agreement, the sale price was fixed at Rs.27,88,750/-, since already the property was mortgaged with the Corporation Bank, a sum of Rs.4,22,000/- was paid to clear the pending dues with the bank. Thereafter, a sum of Rs.3,66,750/- was paid to A1 to A3 by cash and Rs.19 lakhs was paid through cheques to A1 to A3. This petitioner had only received a sum of Rs.1 lakh towards his brokerage charge. This petitioner cleared the debts of Corporation Bank and also obtained Loan Clearance Certificate from the said bank.

3.1. Apart from that, he did not know about the subsequent mortgage of the properties by the land owners i.e., A1 to A3. Therefore, this petitioner has no any role to play above said cheating and criminal breach of trust. Even according to the prosecution case, he was not present at the time of alleged threatening by the other accused. Moreover, the defacto complainant has filed a Civil Suit as against the original owners of this property in O.S. No.11 of 2018 on the file of the

II Additional District Court, Ranipet, Vellore for recovery of money and the same was decreed as against the accused 1 to 3 and the Suit was dismissed as against this petitioner. Therefore, there are no materials to attract the offences under Sections 120-B, 406, 420 and 506(i) of IPC as against this petitioner.

3.2. The 1st respondent police have not conducted proper investigation and they filed final report without any materials. The learned Magistrate also without perusing the materials, has taken cognizance as against the petitioner. Hence the pending proceedings as against this petitioner are liable to be quashed.

4. The learned counsel appearing for the 2nd respondent would submit that the petitioner along with other accused have cheated to the tune of Rs.29 lakhs under the guise of sale of the property. A1 to A3 are the owners of the agricultural land to an extent of 4.85 acres situated at Kalathur Village and they agreed to sell their property to the defacto complainant for a sum of Rs.27,88,750/- and thereafter, they misrepresented that the property was mortgaged with Corporation Bank for a sum of Rs.4,22,000/-, thereby, they demanded to pay the above said

amount and the defacto complainant also paid the said amount and cleared the dues. Thereafter, it was decided that a sum of Rs.3 lakhs each to the accused 1 to 3 and to this petitioner and Rs.7 lakhs to one Poongodi and the remaining amount of Rs.8,88,750/- has to be paid to this petitioner for clearing the dues and the remaining amount has to be paid to the owners of the property and to this petitioner. While so, the petitioner issued receipts for Rs.3,16,200/- and Rs.1,60,000/- for payment to the bank and the remaining amount was given to the owners of the property. Thereafter, when clearing the debts, the petitioner along with others have cheated the money for a sum of Rs.28,67,500/- and hence he lodged a complaint before the 1st respondent police and they registered the case and investigated the matter. Already, the defacto complainant has filed a Suit as against the owners of the property and this petitioner. The said Suit was decreed in favour of the defacto complainant and as against the accused 1 to 3 and this petitioner has not contested the case and still he has to pay a sum of Rs.10 lakhs and the decree was passed for Rs.19 lakhs. The petitioner is liable to pay the remaining amount. As per the investigation, there are prima facie materials available as against this petitioner and others, thereby, the petitioner has to face the trial and hence the petition is liable to be dismissed. Therefore, this petition is liable to be dismissed.

5. The learned Additional Public Prosecutor appearing for the 1st respondent police would submit that the defacto complainant and A1 to A3 have entered into an oral agreement to sale of property and the 5th accused acted as mediator. The A1 to A3 have received a sum of Rs.29 lakhs towards sale consideration and A5 has received Rs.1 lakh towards commission. All the accused represented that there is a mortgage loan against the property and the same has to be redeemed prior to the sale, thereby they demanded money from the defacto complainant and he also paid money, but the accused suppressed the another loan and only disclosed the mortgage with Corporation Bank and remaining loan has not been paid, thereby cheated the defacto complainant. Based on the complaint given by the 2nd respondent, the 1st respondent registered the FIR in Cr. No.30 of 2017 for the offences under Sections 120-B, 406, 420 and 506(i) of IPC and investigated the case and filed final report.

Based on the final report, the trial Court has taken cognizance and now the case is pending in C.C. No.365 of 2021 on the file of the Judicial Magistrate Court No.II, Vellore. Therefore, the petitioner has to face the trial and the present petition is liable to be dismissed.

6. Heard both sides. Perused all the materials available on record.

7. The defacto complainant has lodged a complaint stating that this petitioner along with others have received a sum of Rs.27,88,750/- for execution of sale deed in respect of the property. Further the accused have misrepresented that the property is under mortgage with the Corporation Bank, thereby the said amount has to be settled before execution of sale deed and thereby, he paid money to the accused for a sum of Rs.8,88,750/- to settle the dues. The said fact has not been denied by the accused / petitioner herein. According to him, he only acted as mediator and the defacto complainant has also admitted in his complaint that a sum of Rs.8,88,750/- has been paid to the petitioner to clear the dues and as commission amount. While so, the petitioner has also admitted that a sum of Rs.3,16,200/- and Rs.1,60,000/- was paid to the

Corporation bank to clear the dues and the Clearance Certificate was also handed over to the defacto complainant. The defacto complainant also admitted that the petitioner gave receipts for loan amount paid to the Corporation Bank. Therefore, from the available records, it is clear that there is an agreement between the parties in respect of the sale of the immovable property and thereafter, the owners of the property have executed Power deed to the defacto complainant and thereafter, the Power deed was cancelled.

8. The petitioner is neither a party nor signatory of the document and he had only acted as mediator between the owners of the property and the defacto complainant. The defacto complainant himself admitted that he received receipts for the payment of the Rs.4,22,000/-. Even according to the FIR and charge sheet, A1 to A3 have subsequently mortgaged the property and the same was suppressed, thereby, they cheated and committed criminal breach of trust. Moreover, already a civil Suit has been filed by the defacto complainant as against this petitioner and the original owners and the Suit was decreed in his favour. In that suit, there is no any order passed by the Civil Court as against this petitioner and this

petitioner was acted only as a mediator for commission and he also received his commission amount. Even as per the prosecution, the petitioner obtained receipts from the bank for the amount of Rs.4,22,000/- and the same was also admitted by the defacto complainant and the main allegations are as against the other accused, who are the owners of the property. Therefore, there is no any materials to constitute offences under Sections 120-B, 406, 420 of IPC as against this petitioner.

9. As far as Section 506(i) of IPC is concerned, as per the prosecution, the other acused had only threatened the defacto complainant and this petitioner was not present at that time. Hence there are no prima facie materials available to proceed the case as against this petitioner. The respondent police have not conducted proper investigation and the trial Court also, without considering the materials, has taken cognizance as against this petitioner for the offence under Sections 120-B, 406, 420 and 506(i) of IPC. Therefore, the pending charge sheet without any materials, as against this petitioner is abuse of process of law and the same is liable to be quashed.

10. Accordingly, the Criminal Original Petition is allowed. The

proceedings pending C.C. No.365 of 2021 on the file of the Judicial Magistrate Court No.II, Vellore is quashed as against this petitioner alone. No costs. The connected miscellaneous petitions are closed.

29.10.2024

index: Yes/No
Internet: Yes/No
Speaking/Non Speaking order
mjs

P.DHANABAL,J

mjs

To

1. The Judicial Magistrate Court No.II, Vellore.
2. The Public Prosecutor, High Court, Madras.
3. The Inspector of Police, District Crime Branch, Vellore.

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