



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2024

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

**CRL.OP.No.8129 of 2024
and
CRL.MP.Nos.5915 & 5916 of 2024**

1.Moorthy
2.Kamal Basha
3.Arunachalam
4.Ramajayam

... Petitioners

Vs

Kannan

... Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records in CC.No.162 of 2022 on the file of Judicial Magistrate Court, Chengam, Tiruvannamalai District and quash the private complaint pending against the petitioners.

For Petitioner : Mr.S.Silambuselvan

For Respondent : Mr.P.S.Kothandaraman

ORDER

The petitioners herein are the accused in CC.No.162 of 2022 on the file of the Judicial Magistrate Court, Chengam, Tiruvannamalai District. A private complaint instituted under Section 200 of Cr.P.C.,



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2. The sum and substance of the complaint is that the ancestral property of the complainant was purchased by these accused persons for a sale consideration of Rs.1.09,00,000/- and a sale agreement on 04.11.2015 was executed. Thereafter, after paying a part of sale consideration, the possession was taken over by the petitioners and promoted as residential plots. But the balance sale consideration was not paid. Memorandum of Understanding was executed on 07.01.2016. Pursuant to that, certain cheques were issued on 12.09.2016 and 05.10.2016. They were returned as “in-sufficient funds”. Thereafter, only a sum of Rs.15 lakhs were paid by the petitioners on 03.05.2019 and still a sum of Rs.35 lakhs due and payable. Claiming that with the dishonest intention, the petitioners have acted upon, the private complaint been lodged and the same has been taken cognizance by the Judicial Magistrate, Chengam. The said complaint is challenged by the petitioners under Section 482 of Cr.P.C., on the ground that the complaint was a malicious prosecution upon the civil transaction which was completed 7 years ago and pursuant to the sale transaction, property been developed and a portion mentioned as public utility donated to the local body and third party (property sold to third parties) as residential plots.

3. This court, on perusing the records, at the time of admission,



granted stay of further proceedings and ordered notice to the defacto complainant. The defacto complainant, through the counsel appeared and filed counter wherein after narrating the facts, it is contended that since 2020, after the end of corona pandemic, petitioner been persuading the matter and at last resorted to private complaint process since the police failed to take action on the complaint.

4. The learned counsel would submit that the defacto complainant, persuading the petitioners to pay the money and though they promised to pay the amount, they did not pay the entire amount but only part of a sum, that too after entering into Memorandum of Understanding. Therefore, breach of Memorandum of Understanding dated 07.01.2024 would clearly show their deceptive conduct which attracts criminal prosecution.

5. This court after perusing the documents would clearly see that it is a transaction of immovable property between the parties which has been completed in the year 2016 by way of a registered sale deed executed by 26 vendors jointly. Thereafter, the land has been promoted and sold to the parties and gifted to the local body for public utility. Even



if part of sale consideration not failed, the remedy available for the vendor is for recovery of money which they would have resorted within a period of limitation prescribed having failed, the complaint been filed privately giving criminal colour. It is clear case of abuse of process of law and therefore by applying the parameters laid down by the Hon'ble Supreme Court in **State of Haryana and Others Vs. Bhajan Lal and Others** reported in **1992 Supp (1) SCC 335**, it is held that the civil dispute which is barred by limitation, been given the criminal colour to harass the petitioners.

6. Being abuse of process of law, this court is bound to interfere in this case to meet the ends of justice. Hence, this petition is allowed and the complaint in CC.No.162 of 2022 on the file of Judicial Magistrate Court, Chengam, Tiruvannamalai District, stands quashed. Consequently, connected miscellaneous petitions are closed.

28.06.2024

Index: Yes/No
Speaking/Non-speaking order
gv



WEB COPY To

1. The Judicial Magistrate Court, Chengam,
Tiruvannamalai District

2. The Public Prosecutor,
High Court of Madras,
Chennai.

Dr.G.JAYACHANDRAN,J.



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gv

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