IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.10.2024

Pronounced on : 22.11.2024

CORAM

The Hon`ble Mr.Justice P.DHANABAL

CRL OP.No.11618 of 2022
CRL.M.P.Nos.6621 and 6617 of 2022

1. S.Subbaraman
   S/o. Seshamma Naidu

2. Saraswathi
   W/o. Subbaraman

3. R.S.Balachandar
   S/o.Subbaraman

4. S. Nandhakumar
   S/o.Subbaraman ... Petitioners/Accused No.1 to 4

Vs

1. State represented by
   Sub Inspector of Police
   District Crime Branch,
   Thiruvallur District.
   (Crime No.23 of 2020) ...1st Respondent / Investigation Officer

2. Arihant Kothi
   S/o. Ajithkumar Kothi ... Respondents / Defacto Complainant

PRAYER: - The Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, 2023, praying to call for the records in C.C.No.69 of 2021, on the file of the learned Judicial Magistrate No.1, Ponneri, Thiruvallur District and quash the same.

For Petitioner : Mr. R. Sasikumar

For Respondents : Mr.S.Vinoth Kumar for R1
: Mr.R.Anantha Ramakrishnan for R2

ORDER

This Criminal Original Petition has been filed to quash the proceedings in CC.No.69 of 2021 on the file of the learned Judicial Magistrate No.1, Ponneri, Thiruvallur District.

2. **The short facts necessary to dispose of the petition are as follows:-**

The 2nd Respondent / Defacto Complainant lodged a complaint before the 1st respondent stating that the 1st accused agreed to sell the property in favour of the defacto complainant and the sale price was fixed at Rs.3,00,000/-. On 06.08.2008, a sum of Rs.1,50,000/- was paid as advance by the defacto complainant and the time to complete the sale was fixed as three years. Thereafter, on 25.04.2009, the balance sale amount of Rs.1,50,000/- was paid to the 1st accused, but the accused are evading for execution of sale deed. While so, the 1st accused executed a settlement deed in favour of the 2nd accused, who is the wife of 1st accused on 05.08.2013. Thereafter, the property was mortgaged by the 2nd accused to a private finance. When the defacto complainant approached the 1st accused for execution of sale deed in the year March 2020, he demanded further sum of Rs.15,00,000/- and the defacto complainant also agreed to pay Rs.10,00,000/- and paid the same through the 3rd accused, who is the witness in the deed on 14.03.2020. Even after the payment, the accused refused to execute the sale deed as agreed by them and also failed to return the advance amount received by them. Therefore, he lodged the complaint before the police, and based on the complaint, the 1st respondent registered the case in Crime No.23 of 2020 for the offences under Sections 406, 417, 420 and 506(1) of IPC. After investigation, the 1st respondent filed final report as against the accused no.1 to 4. The 1st accused obtained Rs.13,00,000/- and thereafter executed settlement in favour of the 2nd accused and the 2nd accused in turn mortgaged the property. The 3rd accused, who is the attesting witness in the deed and 4th accused, who is the son of the 2nd accused misrepresented the defacto complainant and also threatened the defacto complainant and witnesses. Thereby, the 1st respondent police after investigation filed charge sheet against the petitioners. Based on the charge sheet, the Trial Court has also taken cognizance in C.C.No.69 of 2021. Now, the petitioners are challenging the said charge sheet and the CC.No.69 of 2021 on the file of the learned Judicial Magistrate No.1, Ponneri.

3. The learned counsel appearing for the petitioners would contend that the 2nd respondent has given a false complaint against the petitioners before the 1st respondent alleging that they entered into a sale agreement and also received money, and thereafter, they refused to execute sale deed. During the pendency of the sale agreement, the 1st accused executed a settlement deed in favour of the 2nd accused, who in turn mortgaged the property and all the accused threatened the defacto complainant and cheated to the tune of Rs.13,00,000/-. In fact, the sale

agreement was entered on 06.08.2008, as security for the money borrowed by the 1st accused from the defacto complainant. Since the petitioners were in dire need of money, the sale agreement was entered and also the power deed was executed in favour of father of the defacto complainant. Thereafter, the entire amount was repaid by the 1st accused. Even according to the complainant, the sale consideration was Rs.3,00,000/-. The defacto complainant has not taken any steps to enforce the alleged sale agreement till now after the lapse of 12 years and come forward with this criminal complaint. Even according to the allegations, all are pure civil in nature and there is no any commission of offence by the petitioners as alleged in the complaint and the charge sheet. Therefore, the pending proceedings against the petitioners are abuse of process of law and the same is liable to be quashed.

4. In support of his contention, the learned counsel appearing for the petitioners has relied upon the following judgments:-

(i) Mitesh Kumar J.Sha Vs. State of Karnataka reported in 2021 SCC Online SC 976

(ii) Dalip Kaur Vs. Jagnar Singh reported in (2009) 14 SCC 696

(iii) Murari Lal Gupta Vs. Gopi Singh reported in (2005) 13 SCC 699

(iv) Randheer Singh Vs. State of U.P. and others reported in 2021 SCC Online SC 942

(v) Noble Mohandass Vs. State reported in (1988) 2 MWN (Cri.) 184

(vi) Manik Taneja Vs. State of Karnataka reported in (2015) 7 SCC 423

(vii) Vikram Johar Vs. State of U.P., reported in (2019) 14 SCC 207

5. The learned counsel appearing for the 2nd respondent would submit that the petitioners have cheated to the tune Rs.13,00,000/- under the guise of sale agreement. When the same was questioned by the defacto complainant, all the accused threatened him with dire consequences and thereby, he lodged a complaint. In fact, the 1st accused entered into an agreement with the defacto complainant to sale of

property to the tune of Rs.3,00,000/- and also entered into a written agreement dated 06.08.2008. On the date of agreement itself, the 1st accused received a sum of Rs.1,50,000/- towards advance of sale price and the remaining amount has to be paid within three years. Thereafter, the 1st accused evaded from executing the sale deed as agreed by him. In the meantime, he executed the settlement deed in favour of the 2nd accused, who is the wife of 1st accused and thereafter, the property was mortgaged with private finance. After knowing the same, when the defacto complainant approached the 1st accused, he demanded another sum of Rs.15,00,000/-. The petitioners agreed to pay Rs.10,00,000/- and he paid the above Rs.10,00,000/- through the 3rd accused, who is the witness in the deed and the same was received by the 1st accused. Even after the receipt of additional amount of Rs.10,00,000/-, the 1st accused refused to execute the sale deed. When he questioned about the same, all the accused threatened him with dire consequences and thereby, he lodged the complaint before the police and based on the complaint, FIR has been registered and the matter was thoroughly investigated by the 1st respondent and thereby, they filed final report. Based on the final report, the learned Magistrate has taken cognizance as there are *prima facie* materials available as against the petitioners to proceed with the case further. Therefore, it is the matter of trial to decide the case, the petitioners have to face the trial and the present petition is liable to be dismissed.

6. The learned Government Advocate appearing for the 1st respondent would contend that there are money transactions between the parties in respect of sale agreement and the defacto complainant paid a sum of Rs.13,00,000/- to the petitioners. After receiving the amount, they neither executed the sale deed nor repaid the amount and thereby, the defacto complainant lodged the complaint before the 1st respondent and based on the complaint, the 1st respondent registered a case in Crime No.23 of 2020. Thereafter, they thoroughly investigated the case and filed final report and based on the final report, the Trial Court has taken cognizance for the offences under Section 406, 417, 506 (I) of IPC. There are *prima facie* materials available as against the petitioners to proceed with the case, therefore, the present petition is liable to be

dismissed.

7. This Court heard both sides and perused the materials available on record.

8. In this case, it is admitted fact that the 1st accused and defacto complainant entered into an agreement in respect of sale of property through the agreement dated 06.08.2008. As per the agreement, the sale price was fixed at Rs.3,00,000/-. On the date of agreement itself, an amount of Rs.1,50,000/- was paid and the remaining amount has to be paid within three years. According to the defacto complainant, the remaining amount was paid on 25.04.2009. While so, there is no reason stated by the defacto complainant / 2nd respondent as to why he has not taken any steps as against the 1st accused for getting sale deed in his name when the entire amount was paid on 25.04.2009 itself. Moreover, according to the defacto complainant, they already settled the property in favour of the 2nd accused on 05.08.2013 itself and even after that, he paid a sum of Rs.10,00,000/- without any documents. It is unbelievable that

when the entire amount was paid on 25.04.2009 itself, once again the defacto complainant paid a sum of Rs.10,00,000/- without any document, that too after the settlement deed was executed in favour of the 2nd accused.

9. Moreover, all the allegations levelled against the accused are civil in nature and there are money dispute pending between the parties in respect of the agreement. The date of agreement is 06.08.2008 and for the past 12 years, the defacto complainant has not taken any steps, either to file a suit for specific performance of contract or lodged any complaint before the concerned police. The present complaint was lodged in the year 2020 and the 1st respondent also without considering that the allegations are civil in nature has filed final report. The learned Magistrate has also without considering that the alleged transactions took place in the year 2008, there is no civil suit filed by the defacto complainant and it is a time-barred civil dispute. In order to settle the time-barred civil dispute, the same has been converted into a criminal case, which cannot be permitted and it is clear abuse of process of law.

However, the Trial Court has failed to consider the above said facts and erroneously taken cognizance as against the accused. Even as per the complaint, there is no any materials as to how the other accused no.2 to 4 have been involved and only with the vague and bald allegations, the other accused have been roped into the alleged offence under Section 506 (1) IPC and other offences. Therefore, the pending proceedings are abuse of process of law and the same are liable to be quashed.

10. In the result, this Criminal Original Petition is allowed and the proceedings pending against the petitioners in C.C.No.69 of 2021 on the file of the Judicial Magistrate No.1, Ponneri are quashed. No costs. Consequently, connected Criminal Miscellaneous Petitions are closed.

22 .11.2024

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

CRL O.P. No.11618 of 2022

P.DHANABAL,J

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To

1. The Judicial Magistrate No.1, Ponneri

2. The Sub Inspector of Police,
District Crime Branch,
Thiruvallur District.

2.The Public Prosecutor, High Court, Madras.

Pre-Delivery Judgment made in
CRL OP.No.11618 of 2022
CRL.M.P.Nos.6621 and 6617 of 2022

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