



Crl.O.P.No.27973 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.03.2024

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

Crl.O.P.No.27973 of 2022
and Crl.M.P.Nos.17186 & 17187 of 2022

Basheeragani

... Petitioner

Versus

1.The Inspector of Police,
District Crime Branch,
Thiruvallur.

2.Kannan

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to the case in C.C.No.48 of 2018 on the file of Judicial Magistrate – II, Ponneri, and quash the same.



Crl.O.P.No.27973 of 2022

WEB COPY

For Petitioners : Mr.V.P.Dillibabu
For Respondent 1 : Mr.S.Vinoth Kumar
Govt. Advocate (Crl. Side)
For Respondent 2 : Mr.T.N.Rajagopalan

ORDER

This petition has been filed to quash the proceedings in C.C.No.48 of 2018 on the file of Judicial Magistrate – II, Ponneri, in which cognizance was taken for the offences under Sections 406, 420, 506(2) of IPC, against the petitioner.

2. The prosecution's case is that in 2014, the petitioner and one Nithiayandam jointly borrowed a hand loan of Rs.45,00,000/- from the defacto complainant and shared the amount equally. Nithiyanandam agreed to repay his share of Rs.22,50,000/-. Since the petitioner expressed her inability to repay her share of the debt, she agreed to sell her house sites situated at Aandarkuppam village, comprised in Survey No.144/2 - Plot No.8, measuring 2571 sq.ft., and in Survey Nos.338/1A



Crl.O.P.No.27973 of 2022

and 338/40 - Plot No.25A, measuring 1445 sq.ft., totaling 4016 sq.ft.

They fixed the sale price at Rs.45 lakhs. The defacto complainant paid Rs.21,50,000/- on 22.12.2014, in addition to the debt amount of Rs.22,50,000/- that she had already received. The petitioner was to execute the sale deed after receiving the balance sale consideration of Rs.1,00,000/-. A sale agreement was entered into between the petitioner, the defacto complainant, and his brothers on 23.12.2016, and she handed over her original documents bearing Nos.2125/11 and 6290/2011.

3. The learned counsel for the petitioner submitted that since the petitioner delayed the execution of the sale deed for two years, when the 2nd respondent applied for an Encumbrance Certificate for the properties, to his shock, the petitioner had already sold the properties to third parties and failed to repay the loan. Hence, the 2nd respondent lodged a complaint on 27.12.2016 before the 1st respondent, and an FIR was registered on 13.01.2017. He also submitted that the 1st respondent failed to verify the documents submitted by the 2nd respondent. It is purely a civil dispute. The material documents relied on by the 1st



Crl.O.P.No.27973 of 2022

WEB COPY

respondent include the alleged unregistered sale agreement dated 23.12.2014. The non-execution of the sale deed subsequent to the sale agreement by either party attracts Section 53-A of the Transfer of Property Act only and not criminal proceedings. In the alleged unregistered sale agreement, it was mentioned that on failure by either party, they should approach the concerned Civil Court by invoking the Specific Performance Act. Accordingly, the 2nd respondent filed a Civil Suit in O.S.No.227 of 2017 for Specific Performance and declaration, which is pending before the Additional District Court IV, Ponneri, for trial. He also submitted that the petitioner is living without any male support. Taking advantage of this, Nithiyanandam colluded with the defacto complainant with an intention to cheat the petitioner and grab properties valued at more than a crore. Hence, they lodged a false complaint against the petitioner.

4. The learned Government Advocate (Crl.Side) submitted that based on the complaint lodged by the defacto complainant, an FIR was registered in Crime No.1 of 2017. The case has been taken up in



CrI.O.P.No.27973 of 2022

C.C.No.48 of 2018 on the file of Judicial Magistrate – II, Ponneri, in which cognizance was taken for the offences under Sections 406, 420, and 506(2) of IPC.

5. Considering the submissions made by both sides and perusal of the records, it is evident that there was a dispute among Nithiyanandam, the petitioner, and the defacto complainant regarding the purchase of property and borrowing of loan. If there is no dishonest intention on the part of the petitioner, she must prove this before the trial Court. Since the petitioner has also challenged the signature in the sale agreement, a detailed investigation is necessary. Therefore, I am not inclined to quash the proceedings against the petitioner in C.C.No.48 of 2018 on the file of Judicial Magistrate – II, Ponneri. However, liberty is granted to the petitioner to work out her remedy before the Civil forum.

6. However, the petitioner is aged about more than 60 years, her personal appearance before the trial Court is dispensed with, and she is directed to appear only if her presence is necessary.



WEB COPY



Crl.O.P.No.27973 of 2022

T.V.THAMILSELVI, J.

rri

7. Accordingly, this Criminal Original Petition is dismissed.

Consequently, the connected Miscellaneous petitions are closed.

04.03.2024

Index: Yes/No

Internet: Yes/No

rri

To

1.The Judicial Magistrate – II, Ponneri.

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

3.The Public Prosecutor,
High Court, Madras.

CRL.O.P.No.27973 of 2022

and

Crl.M.P.Nos.17186 & 17187 of 2022