



CRL.OP(MD). No.897 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.11.2024

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THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

CRL.OP(MD). No.897 of 2023

and

CRL.MP(MD). No. 810 of 2023

Krishnan

... Petitioner / Sole Accused

Vs.

1. The State,

Rep by the Inspector of Police,

Puliangudi Police Station,

Tenkasi District.

(Crime No.523 of 2022)

... 1st Respondent / Complainant

2. M.Marimuthu

... 2nd Respondent /

De-facto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in Crime No. 523 of 2022 on the file of the Inspector of Police, Puliangudi Police Station, Tenkasi District and quash the same.

For Petitioner : M/s.R.Anand

For R-1 : M/s.A.Albert James,



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Government Advocate
(Crl. Side)

For R2 : Mr.V.Rajiv Rufus

ORDER

This petition has been filed to quash the FIR in Crime No. 523 of 2022 pending investigation on the file of the first respondent police.

2. The second respondent gave a complaint to the police to the effect that one Palaniammal conspired with the petitioner and executed a power of attorney in favour of one Subramanian for the property in Survey No. 196/7. The said property was purchased by the petitioner from the said power of attorney agent through a registered sale deed dated 26.04.2005. That apart, the remaining portion of the property was also purchased by the petitioner through two sale deeds dated 05.05.2005 (from the power of attorney agent) and 17.06.2005 directly from Palaniammal. Further case of the second respondent is that since the petitioner did not get any purchasers, two cancellation deeds were executed on 18.07.2006. The second respondent was running a welding shop just opposite to this property. The petitioner befriended the second



respondent and gave an impression as if he is having title over the property. Believing the same, the second respondent purchased the land through a registered sale deed dated 27.04.2009 registered as Document No. 1074 of 2009. When the second respondent went to the land, one Ponnukizhiammal prevented the second respondent from entering the land by claiming to be the owner of the land.

3. The second respondent complained about the same to the petitioner and the petitioner made arrangement to file a suit in O.S. No. 46 of 2009 before the Sub Court, Sankarankovil. The suit was filed against the said Ponnukizhiammal seeking for the relief of declaration of title and for permanent injunction. The suit was dismissed by judgment and decree dated 03.09.2006. Thereafter, an appeal was filed in A.S. No. 73 of 2012 and the said appeal also was dismissed by the Additional District Judge No.III, Tirunelveli vide the judgment dated 04.04.2016. It is only at this point of time, the second respondent came to know that the petitioner had intentionally cheated the second respondent by concealing the fact that the petitioner does not have any right or title over the subject property. Thereby, the second respondent had parted a sum of Rs.



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16,75,000/- which was an unlawful gain for the petitioner. The complaint was given to the police in this regard and the FIR came to be registered against the petitioner.

4. When the matter came up for hearing on 04.11.2024, this Court passed the following order:-

“Heard the learned counsel for the petitioner and the learned Government Advocate appearing on behalf of the first respondent.

2. On going through the records, it is seen that the defacto complainant along with one Mani has actually instituted a suit against one Ponnukili in O.S.No.46 of 2009 seeking for the relief of declaration of title and permanent injunction. This suit was filed after they purchased the property in Survey No.196/7 through a registered sale-deed dated 27.04.2009. The suit was dismissed by judgment and decree dated 11.03.2010. Thereafter, they filed an appeal in A.S.No.73 of 2012



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before the III Additional District Court, Tirunelveli and the appeal was also dismissed vide judgment and decree dated 04.04.2016 and thereby, the judgment and decree passed by the trial Court was confirmed. Once the defacto complainant failed before the civil Court, he started initiating criminal proceedings by giving a complaint to the first respondent which resulted in the registration of the FIR in Crime No.7 of 2022 for offences under Section 420, 468 and 471 of IPC.

3. The learned counsel for the second respondent sought for time to make his submissions.

4. Post the case finally on 06.11.2024.”

5. Heard the learned counsel on either side and perused the materials placed on record.



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6. The short issue that arises for consideration in the present case is as to whether the allegations made in the FIR considered along with the materials placed before this Court, makes out an offence against the petitioner.

7. The specific allegation that has been made against the petitioner is that he was aware of the fact that he did have any right/title over the property and with an intention to cheat the second respondent, he projected as if he had valid title and he received a total sum of Rs. 16,75,000/- from the second respondent and made unlawful gain.

8. In the case in hand, the property was purchased by the second respondent from the petitioner. When the dispute arose regarding the right and title over the property from one Ponnukizhiammal, the second respondent along with one Mani filed the suit in O.S. No. 46 of 2009 before the Sub Court, Sankarankovil. It is an admitted case on the part of the second respondent that it is only the petitioner who made all the arrangements for filing the suit and in fact, the petitioner also examined himself as P.W.2 on the side of the plaintiffs. The Trial Court as well as



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the Appellate Court found that the right and title of the petitioner from whom the second respondent had purchased the property has not been established and that the plaintiffs ought to have examined Palaniammal who is the vendor to the petitioner. Ultimately, it was held that the plaintiffs, who had filed the suit, did not properly establish their title over the property and therefore, they failed to discharge the burden of proof and as a result, the suit came to be dismissed and it was further confirmed in the appeal.

9. The learned counsel for the second respondent brought to the notice of this Court the answers that were given by the petitioner who was examined as P.W.2 in the suit during cross examination. It was contended that those answers given by the petitioner will go to show that the petitioner knew about the fact that he did not have right and title and in spite of the same, he sold the property in favour of the second respondent and cheated the second respondent.

10. This Court is not in agreement with the submissions made by the learned counsel for the second respondent. The fact remains that it is



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the petitioner who helped the second respondent to conduct the suit and also the appeal and in fact, had also examined himself as P.W.2. This shows that the petitioner was not attempting to run away from the case and he was trying to provide all the assistance to the second respondent to conduct the civil suit. Ultimately, the civil court, on appreciation of evidence, came to a conclusion that the right and title over the property has not been established with the available materials.

11. The answers given by the petitioner who was examined as P.W.2 during cross examination and the findings rendered by the civil court, cannot become the cause of action for initiating a fresh criminal case against the petitioner. If in every case where the title of the vendor is found to be not established and hence, criminal cases are registered, there will be no end to the dispute. The fact that there was a defective title for the petitioner, by itself will not constitute an offence of cheating. The petitioner was attempting to project his case by tracing his title in a particular manner and it was found by the civil court to be not sustainable. That finding will not give rise to a cause of action for proceeding with a fresh criminal case as if the petitioner has cheated the



second respondent.

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12. In the light of the above discussion, this Court holds that even if the allegations made in FIR read along with the materials placed before this Court, is taken as it is, no offence of cheating has been made out in this case. That apart, the offence under Section 294(b) of IPC is also not made out since the so called abuse made by the petitioner was not in the public place. That apart, the oral threat by itself will not constitute an offence of criminal intimidation under Section 506(i) of IPC.

13. The continuation of the criminal proceedings against the petitioner will result in abuse of process of law warranting the intervention of this Court under Section 482 of the Code of Criminal Procedure. Accordingly, the FIR in Crime No. 523 of 2022 on the file of the first respondent is hereby quashed and the criminal original petition stands allowed. The order passed in the present petition will not stand in the way of the parties to work out their civil remedy in the manner known to law.



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14. In the result, the criminal original petition is allowed.

Consequently, the connected miscellaneous petition is closed.

06.11.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To

1. The Inspector of Police,
Puliangudi Police Station,
Tenkasi District.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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N.ANAND VENKATESH,J.

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Order made in
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