



CRL OP(MD). No.12021 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Date : 28.02.2024

CORAM

The Hon`ble Mr.Justice M. DHANDAPANI

CRL OP(MD) No.12021 of 2022

and

CrI.M.P(MD) Nos.2477 of 2024, 7600 and 7601 of 2022

1. Sivagana Malaiyandi

2. Sithagurubalan

3. Sitharanjan

... Petitioners/Accused

Vs.

1.The Inspector of Police,
District Crime Branch,
Dindigul.
Crime No.15 of 2021.

...1st Respondent/Complainant

2.S.M.Syed Meeran

...2nd Respondent/Defacto
Complainant

PRAYER :- Criminal Original Petition file under section 482 of Cr.P.C., to call for the records pertaining to the Final Report filed by the 1st Respondent Police in C.C.No.676 of 2021 on the file of the Learned Judicial Magistrate-II, Dindigul.

(Amended as per the order of this Court, vide order dated 25.08.2022 in CrI.M.P(MD) No.9583 of 2022 in CrI.O.P(MD) No.12021 of 2022)



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For Petitioners : Mr.Venkatachalam.D
For R1 : Mr.P.Kotaichamy,
Government Advocate (Crl.Side)
For R2 : Mr.C.M.Arumugam

ORDER

This petition has been filed to call for the records pertaining to the Final Report filed by the 1st Respondent Police in C.C.No.676 of 2021 on the file of the learned Judicial Magistrate-II, Dindigul.

2. The case of the prosecution is that the petitioners are the owner of the property in Survey No.605/5B to an extent of 7 Acres and 57 Cents at Ayyalur Village, Vendasandur Taluk, Dindigul District. They entered a sale agreement in respect of above property with the defacto complainant thereby fixing the amount of Rs.1,13,35,000/-. As per the agreement, the petitioners have executed the sale deed in respect of 102 plots to the beneficiary, who was identified by the defacto complainant and in respect of the remaining 27 plots, sale deed was not executed. Hence, the defacto complainant lodged a complaint before the respondent Police and the same was registered in Crime No.15 of 2021, dated 14.05.2021 for the offences punishable under Sections 406, 420 and 506(i) of IPC. After



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conducting an investigation, the respondent Police filed a Charge Sheet against the petitioners in C.C.No.676 of 2021 before the learned Judicial Magistrate No.II, Dindigul. Challenging the same, the present petition has been filed.

3. The learned counsel for the petitioners would submit that it is purely a civil dispute between the petitioners and the second respondent/defacto complainant. The second respondent/defacto complainant has not honoured the sale agreement and he has violated the conditions. The petitioners executed the sale deed in respect of 102 plots in favour of the beneficiary, who was identified by the defacto complainant. However, the sale price was not paid periodically to the petitioners. Thereby, the petitioners refused to execute the sale deed in respect of remaining 27 plots, for which, the defacto complainant filed a suit for specific performance and the same is pending for adjudication and for the very same issue, the defacto complainant, by giving a criminal colour, made a complaint before the respondent Police.



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4. The learned counsel for the petitioners would submit that in respect of cheating, it depends upon the intention of the accused at the time of inducement, which may be judged by his subsequent conduct, however, the subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent/dishonest intention is shown right at the beginning of the transaction, ie., the time when the offence is said to have been committed. However, in the present case, the sale agreement was entered into between the petitioners and the defacto complainant in the year 2015. However, the complaint has been given only in the year 2021. In between the said period, there were several transactions and nearly 102 plots were transferred in favour of the beneficiary, who was identified by the defacto complainant and the remaining 27 plots were not alienated. However, the defacto complainant has not parted the amount to the petitioners. Hence, he prays to allow this petition.



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5. The learned counsel for the 2nd respondent would submit that admittedly, the sale agreement was entered into between the petitioners and the defacto complainant in the year 2015 for purchasing the land to an extent of 7 Acres and 57 Cents at Ayyalur Village, Vedasandur Taluk, Dindigul District for the sale consideration of Rs.1,13,35,000/- and the defacto complainant paid the entire sale consideration to the petitioners. Even then, the petitioners refused to execute the sale deed in respect of 27 plots, which is not sustainable one and it is a clear intention to cheat the defacto complainant. Hence, he prays to dismiss this petition.

6. The learned Government Advocate (Crl. Side) would submit that there are materials available to proceed with the case as against the petitioners herein and at the threshold, the criminal proceedings cannot be quashed and the charges against the petitioners have to be gone into only at the time of trial and not before this Court under Section 482 of Cr.P.C. and hence, he prayed for dismissal of the petition.



7. Time and again, this Court as well as the Supreme Court has cautioned the Courts about the necessary precautions to be taken while quashing the charge sheet at the initial stage. Useful reference in this regard can be had to the decision of the Hon'ble Apex Court in ***State of Haryana – Vs - Bhajan Lal (1992 SCC (Crl.) 426)***, wherein, the Hon'ble Apex Court held as under :

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Code of Criminal Procedure, which we have extracted illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an to give an exhaustive list of myriad kinds of cases wherein such power should be exercised:

..



(3) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

..

(5) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;”

8. It is seen that after lapse of six years, the complaint has been preferred against the petitioners. The petitioners have executed the sale deed in respect of 102 plots and since the petitioners have not been honoured the sale agreement in respect of 27 plots, the petitioner have not executed the sale deed. When the de-facto complainant has rightly knocked the doors of the civil Court and when the suit is pending between the parties, invoking the criminal jurisdiction, without awaiting for the judgment and decree by the civil Court, is *per se* illegal and needs interference. Hence, this Court is inclined to quash the proceedings in C.C.No.676 of 2021 on the file of the learned Judicial Magistrate No.II,



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Dindigul, insofar as the petitioners are concerned.

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9. In the result, this Criminal Original Petition is allowed and the proceedings in C.C.No.676 of 2021 on the file of the learned Judicial Magistrate No.II, Dindigul is hereby quashed in respect of the petitioners alone. Consequently, connected miscellaneous petitions are closed.

28.02.2024

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TO

- 1.The learned Judicial Magistrate No.II,
Dindigul.
- 2.The Inspector of Police,
District Crime Branch,
Dindigul.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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M.DHANDAPANI. J

Indu

**ORDER
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CRL OP(MD) No.12021 of 2022**

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