



WEB COPY

Crl.O.P.(MD)No.13812 of 2020



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 13.12.2023

Delivered on : 14.03.2024

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.O.P.(MD)No.13812 of 2020

and

Crl.M.P.(MD).No.6323 of 2020

1.Radhakrishnan
2.Chinnadaikkan
3.Sathya

... Petitioners

Vs.

1.The Inspector of Police,
Melavalavu Police Station,
Madurai District.
In Crime No.214 of 2019.

2.Rajkumar

... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the FIR in Crime No.214 of 2019 on the file of the first respondent Police and quash the same as illegal and devoid of merits.

For petitioners : Mr.M.Jegadeesh Pandian
For 1stRespondent : Mr.M.Muthumanikkam
Government Advocate (Crl. Side)

For 2nd Respondent : Mr.R.Alagumani



WEB COPY

CrI.O.P.(MD)No.13812 of 2020



ORDER

The petitioners/Accused Nos.1 to 3 have filed this petition to quash the FIR in Crime No.214 of 2019 on the file of the first respondent Police.

2. The brief fact of the case is that the first petitioner is the owner of the property in Survey No.309 and 310 situated at Kidarripatti, Madurai District. In the year 2013, one Patchamuthu broker introduced the first petitioner to the second respondent/defacto complainant for the sale of 8 acres of land by the first petitioner. On 25.07.2013, he gave an initial amount of Rs.10,50,000/- to the first petitioner. Thereafter, on 26.07.2013, the second respondent/defacto complainant entered into an unregistered agreement with the first petitioner. As per the agreement, the balance amount of Rs.11,00,000/- was received by the first petitioner from the second respondent/defacto complainant. The first petitioner sold the said property to the third parties without adhering to the terms of agreement and he refused to pay the above said amount. Hence, the second respondent/defacto complainant gave a complaint before the first respondent stating that the petitioners cheated the defacto complainant.

On the basis of the complaint given by the second respondent, the



respondent police registered the case in Crime No.214 of 2019 for the offence under Sections 406, 420, 294(b) and 506(i) of IPC. To quash the same, the petitioner filed the present petition.

3. The learned counsel appearing for the petitioners submitted that no allegations were made against the petitioners and the only allegation against the first petitioner is that he entered into an agreement with the defacto complainant agreeing to sell his property. Hence, the said averment has not constituted any offence under Sections 406, 420, 294(b) and 506(i) of IPC.

4. The learned counsel appearing for the second respondent/defacto complainant submitted that the first petitioner has received a sum of Rs.31,50,000/- from the defacto complainant. Thereafter, the first petitioner without adhering to the terms of the contract, neither executed the sale deed nor returned the said amount. Therefore, the first petitioner has committed the offence under Sections 406 and 420 of IPC. He further submitted that without making the repayment, the first petitioner and his wife and the father of the first petitioner, criminally intimidated him and refused to give the said amount and hence, they have committed the offences under Sections 294(b) and



506(i) of IPC. Therefore, there is sufficient averment in the complaint to constitute the offence against the petitioners and hence he seeks for dismissal of the quash petition.

5. The learned Additional Public Prosecutor reiterated the submission of the learned counsel appearing for the second respondent/defacto complainant. Hence,he seeks for dismissal of the quash petition.

6. This Court considered the rival submissions and also perused the records.

7.1. Upon perusal of the FIR, it is clearly stated that the first petitioner is the owner of the property in Survey No.309 and 310 situated at Kidarripatti, Madurai District. There is an agreement between the parties. On the basis of the sale agreement, the first petitioner is said to have received the advance amount. But, he refused to execute the sale deed and to repay the advance amount. The said transaction has taken place in the year 2013. The complaint was made after several years in the year 2019. In these circumstances, it is purely a civil dispute and hence, the FIR is abuse of process of law. The defacto complainant



without approaching the Civil Court to redress his grievance, has given a criminal profile to the civil transaction and approached the respondent Police to register the case.

7.2.(i).The Honourable Supreme Court in ***M/s.Pepsi Foor Ltd. V. Special Judicial Magistrate*** reported in ***1998 UPCR 118***

27. Summoning of an accused in a criminal cases is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any



offence is prima facie committed by all or any of the accused.

7.2.(ii). In *Paramjeet Batra v. State of Uttarakhand*, (2013) 11

SCC 673 at page 676

12... A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash the criminal proceedings to prevent abuse of process of the court.”

7.2.(iii) In *Sarabjit Kaur v. State of Punjab*, (2023) 5 SCC 360 at page 363

“13. A breach of contract does not give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction. Merely on the allegation of failure to keep up promise will not be enough to initiate criminal proceedings. From the facts available on record, it is evident that Respondent 2 had improved his case ever since the first complaint was filed in which there were no allegations against the appellant rather it was only against the property dealers which was in subsequent complaints that the name of the



appellant was mentioned. On the first complaint, the only request was for return of the amount paid by Respondent 2. When the offence was made out on the basis of the first complaint, the second complaint was filed with improved version making allegations against the appellant as well which was not there in the earlier complaint. The entire idea seems to be to convert a civil dispute into criminal and put pressure on the appellant for return of the amount allegedly paid. The criminal courts are not meant to be used for settling scores or pressurise parties to settle civil disputes. Wherever ingredients of criminal offences are made out, criminal courts have to take cognizance. The complaint in question on the basis of which FIR was registered was filed nearly three years after the last date fixed for registration of the sale deed. Allowing the proceedings to continue would be an abuse of process of the court.”

It is categorically stated that these type of cases namely the recovery of the advance amount under the sale agreement entered between the parties, the registration of the FIR is abuse of process of law. Hence, this Court is inclined to quash the FIR.



WEB COPY

8. Accordingly, this Criminal Original Petition is allowed and the impugned FIR in Crime No.214 of 2019 is quashed. Consequently, the connected criminal miscellaneous petition is closed.

14.03.2024

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

To

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



WEB COPY



Crl.O.P.(MD)No.13812 of 2020

K.K.RAMAKRISHNAN. J.

vsg

Crl.O.P.(MD)No.13812 of 2020

14.03.2024