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Crl.OP.No.16756 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 04.042025

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No.16756 of 2023

and

Crl.MP.No.10765 of 2023

1. Vijay
2. Saravanan
3. Rajith @ Ranjith Kumars
4. Durai

... Petitioners

Vs.

1. The Inspector of Police,
Sankari Police Station,
Sankari, Salem District.

2. Prabakar

... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records pertaining to the FIR in Cr.No.265 of 2023 on the file of the first respondent police and quash the same against the petitioners/A1 to A3 and A6 alone.

For Petitioners : Mr.B.Gopalakrishnan

For Respondents : Mr.R.VinothRaja
Government Advocate (Crl.Side)
for R1



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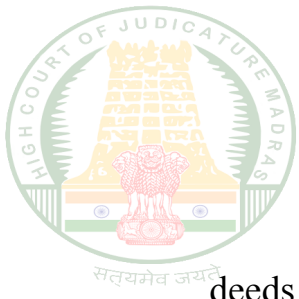
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ORDER

This petition has been filed to quash the FIR registered in Cr.No.265 of 2023 on the file of the first respondent.

2. Based on the complaint lodged by the second respondent, the first respondent registered an FIR in Crime No.265 of 2023 against the petitioners for offences punishable under Sections 420, 120-B, 406, and 506(ii) of IPC. The allegation is that the second respondent owned land comprised in Survey Nos. 360/2 and 360/1, to an extent of 11.09 acres, situated at Chunnambu Kuttai, Devakavundanur Village, Sankari, Salem District. In order to meet family expenses, including his daughter's marriage and his son's education, the second respondent decided to sell the said property and approached land brokers.

3. It is further alleged that there was a rumour regarding the absence of proper access to the said land. Consequently, the second respondent decided to avail a loan to the tune of Rs.1 crore. The land brokers allegedly insisted that the second respondent execute sale deeds in favour of the financiers first, after which the loan would be arranged. Believing their words, the second respondent executed sale



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deeds in favour of the petitioners, who were introduced by the land brokers as financiers. Accordingly, two sale deeds were executed in favour of the petitioners in respect of the subject property. The petitioners allegedly assured that the loan amount would be paid subsequently. However, even after registration of the sale deeds, when the second respondent approached the petitioners, they failed to pay the loan amount and thereby allegedly cheated him to the tune of Rs.1 crore.

4. The learned Government appearing for the respondent police reiterated the prosecution case and vehemently opposed to allow the petition.

5. Heard the learned counsel appearing for the petitioners and the learned Government Advocate (Crl.Side) and perused the materials available on record.

6. A perusal of the records reveals that the sale deeds were executed in favour of the second petitioner, and the property was valued at Rs.13,46,000/-, which was duly paid to the second respondent through RTGS to his bank account. Only upon receipt of the said sale consideration did the second respondent execute the two



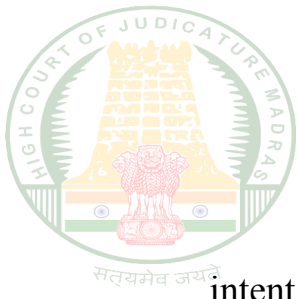
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sale deeds, which were registered vide Document Nos. 1926/2020 and 1927/2021 on 16.07.2021.

7. After the purchase, the petitioners have been in possession and enjoyment of the said property and have also caused the mutation of the revenue records in their favour. Despite this, the second respondent disturbed their peaceful possession and enjoyment of the property, prompting the petitioners to file separate suits in O.S. Nos. 77 and 78 of 2021 against the second respondent and his wife for permanent injunction. These suits are pending. Subsequently, the son of the second respondent filed a partition suit in O.S. No.356 of 2022 against the second respondent and others, seeking partition and declaration, which is also pending before the III Additional District Judge, Salem.

8. In the meantime, the third petitioner purchased the subject property from the second petitioner through a registered sale deed dated 08.04.2022, vide Document No.1533 of 2022, for valid consideration. Thereafter, the third petitioner sold the property, and the accused entered into an agreement of sale with his wife. Hence, the present complaint appears to be an afterthought, filed with the



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intent to extract more money from the petitioners. No prudent individual would execute a registered sale deed without receiving the sale consideration. Furthermore, even the allegations made, on their face, do not disclose the commission of any cognizable offence as alleged by the first respondent.

9. The defacto complainant has alleged in the complaint that the petitioners have committed offences under Sections 406 and 420 of IPC. It would thus be necessary to examine the of the above offences and whether the allegations made in the complaint, read on their face, attract those offences under the Penal Code. Section 405 of Penal Code reads thus:-

*405. Criminal breach of trust —
Whoever, being in any manner entrusted
with property, or with any dominion
over property, dishonestly
misappropriates or converts to his own
use that property, or dishonestly uses or
disposes of that property in violation of
any direction of law prescribing the
mode in which such trust is to be
discharged, or of any legal contract,*



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express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".

A careful reading of Section 405 of IPC shows that the of a criminal breach of trust are as follows:-

(i) A person should have been entrusted with property, or entrusted with dominion over property;

(ii) That person should dishonestly misappropriate or convert to their own use that property, or dishonestly use or dispose of that property or willfully suffer any other person to do so; and

(iii) That such misappropriation, conversion, use or disposal should be in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract which the person has made, touching the discharge of such trust.

Entrustment is an essential ingredient of the offence. A person who dishonestly misappropriates property entrusted to them contrary to the terms of an obligation imposed is liable for a criminal breach of



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trust and is punished under Section 406 of the Penal Code.

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10. It is relevant to extract the provisions under Section 420 of the Penal Code as follows :-

420. Cheating and dishonestly inducing delivery of property — Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

To constitute an offence under Section 420 of IPC are as follows :-

- (i) A person must commit the offence of cheating under Section 415 and
- (ii) The person cheated must be dishonestly induced to (a) deliver property to any person or (b) make, alter or destroy valuable security or anything signed or sealed



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and capable of being converted into valuable security.

Cheating is an essential ingredient for an act to constitute an offence under Section 420.

11. It is relevant to rely upon the judgment made by the Honourable Supreme Court of India in the case of *M/s. Indian Oil Corporation Vs. NEPC India Limited and others* reported in (2006) 6 SCC 736, held that the civil liability cannot be converted into criminal liability and it is necessary to take notice of a growing tendency in business circle to convert purely civil dispute in criminal case. This is obviously on account of prevalent impression that civil law remedies are time consuming and do not adequately protect the interest of lender/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable breakdown of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claim which do not involve any criminal offence by applying pressure through criminal prosecution should be deprecated and dishonoured.



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12. In the case of **G.Sagar Suri Vs. State of Uttar Pradesh** reported in **2000 (2) SCC 636**, the Honourable Supreme Court of India held as follows:-

“It is to be seen if a matter, which is essentially of civil nature, has been given a cloak of criminal offence, criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal Court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this Section has to be exercised to prevent abuse of the process of any Court or otherwise to secure the ends of justice.”

13. Insofar as the offence under Section 506(ii) of I.P.C is concerned, threat should be a real one and not just a mere words when the person uttering does not exactly mean what he says and also when the person to whom threat is launched does not feel threatened actually. Whereas, in the case on hand, there is no averment to attract the offence under Section 506(ii) of I.P.C.



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14. It is relevant to rely upon the land mark Judgment of the Hon'ble Supreme Court of India in the case of ***State of Haryana and others Vs. Bhajanlal and others*** reported in ***1992 Supp (1) SCC 335***, in which, the Hon'ble Supreme Court of India has laid down the following categories of instances wherein inherent powers can be exercised in order to secure the ends of justice as follows:-

“(a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(c) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the



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commission of any offence and make out a case against the accused;

(d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(e) 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;

(f) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(g) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an



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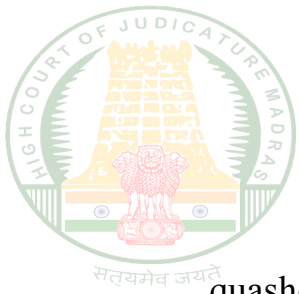


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ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

It has to see that, whether a matter which is essentially of a civil nature has been given a cloak of a criminal offence. Where the required to constitute a criminal offence are not made out from a bare reading of the complaint, the continuation of the criminal proceeding will constitute an abuse of the process of the Court. In the present case, the averments in the complaint, read on its face, do not disclose the necessary to constitute offences under the Penal Code. An attempt has been made by the respondent to cloak a civil dispute with a criminal nature despite the absence of the necessary to constitute a criminal offence. The complaint filed by the respondent against the petitioners constitutes an abuse of process of Court and is liable to be quashed.

15. It is also relevant to extract the judgement reported in **(1992) SCC Crl. 426** in the case of ***Bajanlal v. State of Haryana***, wherein the Hon'ble Supreme Court of India has listed out the following category of case in which the criminal proceedings can be



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quashed using the inherent jurisdiction of the High Court under

Section 482 Cr.P.C.:

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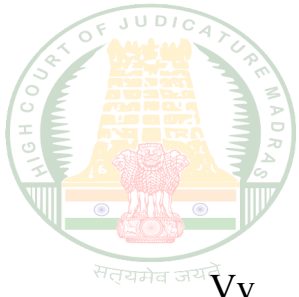
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7. Where a criminal proceeding is manifestly attended with malafide and/or where the proceedings is maliciously instituted with an ulterior motive for wrecking vengeance on the accused and with a view to spite him due to private and personal grudge."

Therefore, the impugned complaint is nothing but clear abuse of process of law and it cannot be sustained as against the petitioners.

16. Accordingly, the FIR registered in Cr.No.265 of 2023 on the file of the first respondent is hereby quashed as against the petitioner and this Criminal Original petition is allowed. Consequently, the connected miscellaneous petition is closed.

04.042025



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Vv
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To

1. The Inspector of Police,
Sankari Police Station,
Sankari, Salem District.
2. The Public Prosecutor,
Madras High Court,
Chennai.

G.K.ILANTHIRAIYAN, J.

Vv



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