

Crl.R.C.(MD).No.35 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 18.03.2025

PRONOUNCED ON :28.03.2025

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

Crl.R.C.(MD)No.35 of 2023

Bilal Mohammed

... Petitioner/Complainant

Vs.

1.The Superintendent of Police,
Madurai District.

2.The Deputy Superintendent of Police,
District Crime Branch,
Madurai.

3.The Commissioner of Police,
Madurai City,
Madurai

: Respondent Nos.1 to 3/
Respondent Nos.1 to 3

4.Malaichamy Natarajan
5.Kiruthiga

: Respondent Nos.4 and 5/
Proposed Accused



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PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 Cr.P.C., to call for the records pertaining to the order dated 16.11.2022 made in Cr.M.P.No.3697 of 2022, on the file of the learned Judicial Magistrate No.I, Madurai and set aside the same.

For Petitioner : Mr.J.Lawrance

For Respondents : Mr.B.Thanga Aravindh
Government Advocate(Crl.Side)
for R.1 to R.3
: Mr.R.Suriyanarayanan
for R.4
: Mr.H.Lakshmi Shankar
for R.5

ORDER

This Criminal Revision is directed against the order passed in Crl.M.P.No. 3697 of 2022, dated 16.11.2022, on the file of the Court of the Judicial Magistrate Court No.I, Madurai, in dismissing the petition filed under Section 156(3) Cr.P.C.

2. The case of the petitioner is that he is running a Textile business in Melur Town and in order to extend his business, he agreed to purchase a property of an extent of 4 cents comprised in S.NO.243/2C1A at Ward No.9, Alagar Koil



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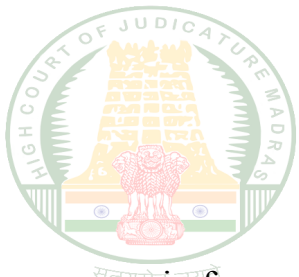
Road, Melur Town along with building therein from its lawful owners – the respondents 4 and 5 and one Prithika, daughter of the fourth respondent, that the said property originally belonged to the fourth respondent and his wife Veerachitra vide two sale deeds, that the said Veerachitra died intestate leaving behind the respondent No.4 and her daughters – Kiruthiga and Prithika and as such they have become the owners of half share of the property in dispute, that on 11.12.2018, the petitioner entered into a sale agreement with the respondents 4, 5 and Prithika fixing the sale consideration at Rs.10,200/- per sqft, that the petitioner paid a sum of Rupees One Crore as advance and agreed to pay the remaining amount within one month since the date of agreement, that the fourth respondent has received Rs.26,50,000/- on 26.12.2018, Rs.27,50,000/- vide cheques drawn on City Union Bank, Melur Branch, and Rs.27,50,000/- vide cheque drawn on State Bank of India, Melur Branch totalling Rs.1,81,50,000/- for which the fourth respondent has made an endorsement from time to time on the sale agreement, that the proposed accused were evaded to execute the sale deed as per the sale agreement with an intention to defraud and cheat the petitioner, that at the instance of the mediators, the fourth respondent has executed a sale deed with regard to his exclusive half share in the property in favour of the petitioner vide sale deed dated 22.04.2022 and the fourth



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respondent and his daughter Prithika have executed another sale deed in respect of their shares in the property belonging to Veerachitra, vide sale deed dated 22.04.2022, that the fifth respondent did not turn up for the registration of the sale deed as agreed and on enquiry, the respondents 4 and 5 have given evasive reply, that the fourth respondent at the intervention of the mediators assured that he should make arrangements to get the document executed from the fifth respondent, that the fourth respondent has informed that there existed some family disputes between him and the fifth respondent and in order to solve the said dispute, he demanded a sum of Rs.5,00,000/- and the same was also paid vide cheque drawn on Axis Bank, Melur branch, that the fourth respondent neither repaid that amount nor get the sale deed executed from the fifth respondent, that the petitioner has then approached the fifth respondent and insisted her to execute the sale deed, as the entire sale price was paid, that the fifth respondent refused to execute the sale deed by citing certain disputes with the fourth respondent in respect of their family properties, that the petitioner came to know that there were no dispute between the respondents 4 and 5, but with an intention to avoid the execution of the sale deed, they have started to project as if there were disputes among them, that the petitioner has also come to know that the fourth respondent with malafide intention has executed a sale deed

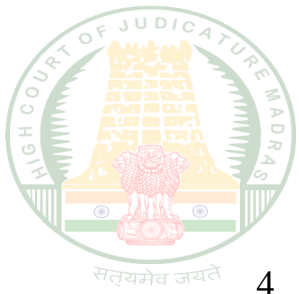


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in favour of the third party giving right to the purchaser to construct the building in the first floor of the property in dispute in which he is not entitled, that the petitioner with no other option lodged a complaint before the first respondent and at the enquiry, the fifth respondent has refused the receipt of any sale consideration, that the fourth respondent has repaid the loan amount of Rs.5,00,000/- borrowed by him, that the fifth respondent who is an Advocate in collusion with the fourth respondent has sent complaints to the Inspector General of Police, South Zone, Madurai levelling frivolous allegations and after enquiry, the same was ordered to be closed and that therefore, the petitioner was constrained to file the above petition under Section 156(3) Cr.P.C., before the jurisdictional Magistrate Court for registration of F.I.R., and for investigation.

3. The learned Judicial Magistrate, taking the petition filed under Section 156(3) Cr.P.C., on file in Crl.M.P.No.3697 of 2022 and upon considering the petition, petitioner's affidavit and other materials and on hearing the petitioner's side, has passed the impugned order dated 16.11.2022, by observing that the dispute is with regard to the sale agreement and as such, no commission of cognizable offence is made out, dismissed the petition.



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4. Before entering into further discussion, it is necessary to refer the judgment of the Hon'ble Supreme Court in ***M/S Indian Oil Corporation vs M/S NEPC India Ltd., and Others, in Crl.A.No.834 of 2002, dated 20.07.2002,*** wherein, the Hon'ble Apex Court has *deprecat*ed the practice of attempting to settle the civil disputes by applying pressure through criminal prosecution and the relevant passage is extracted hereunder:

“10. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable break down 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 claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged. In G. Sagar Suri vs. State of UP [2000 (2) SCC 636], this Court observed :

"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



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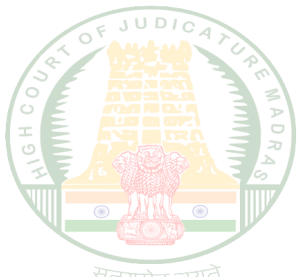


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other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which High Court is to exercise its jurisdiction 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."

While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law. One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power under section 250 Cr.P.C. more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant. Be that as it may."

5. In *Mitesh Kumar J Sha vs The State Of Karnataka (Crl.A.No.1285 of 2021, dated 26.10.2021)*, the Hon'ble Supreme Court has reiterated that cloaking a civil dispute with a criminal nature in order to get quicker relief is an abuse of

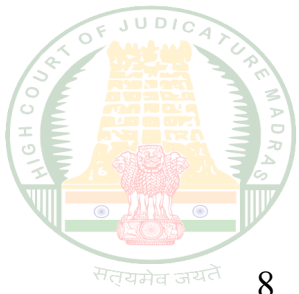


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process of law which must be discouraged. Bearing the above legal position on mind, let us consider the case on hand.

6. The learned Counsel for the petitioner would submit that after receiving the entire sale price agreed, the fifth respondent in collusion with his father – fourth respondent has refused to execute the sale deed, that the fourth respondent has executed a sale deed in respect of the first floor for which he was not entitled and that though the complaint discloses cognizable offences, the learned Magistrate by simply observing that the complaint is with regard to the failure to execute the sale deed as agreed in the sale agreement, mechanically dismissed the petition filed under Section 156(3) Cr.P.C., and as such, the same is liable to be interfered with.

7. When the matter was taken up for hearing, the learned Counsel appearing for the fourth respondent would submit that the fourth respondent was reported dead on 04.02.2025 and he also filed a memo along with the death certificate. The memo is recorded.

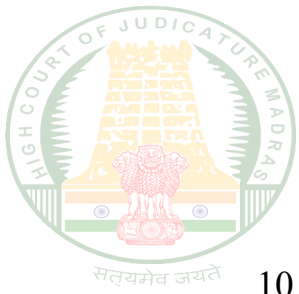


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8. The learned Counsel for the fifth respondent would submit that there existed serious disputes between herself and her father – fourth respondent, that the fifth respondent has never entered into any sale agreement nor received any sale price, that the fourth respondent in collusion with the petitioner has done all the commissions and omissions and he alone set up the petitioner to lodge a complaint so as to compel the fifth respondent to execute the sale deed and that the fifth respondent has nothing to do with any of the allegations levelled in the petition.

9. The learned Counsel for the fifth respondent would further contend that even according to the petitioner, agreement was entered on 11.12.2018 and even assuming that there was refusal on the part of the fifth respondent, they ought to have filed a suit for specific performance within three years from the time fixed for the performance in the agreement, but the petitioner without availing the civil remedy, has lodged the complaint on 16.08.2022 after the expiry of the period of limitation prescribed for civil action, that dispute complained of in the petition filed under Section 156(3) Cr.P.C., is purely civil in nature and that the petitioner has only been attempting to convert the civil dispute into a criminal case and that the very filing of the petition would amount to abuse of process of law.



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10. The learned Government Advocate (Crl.Side) would submit that on the basis of the complaint given by the petitioner, C.S.R., came to be registered and the enquiry was conducted and at the enquiry, the fifth respondent has informed that she does not know the petitioner, that she has not executed any agreement nor received any amount and as per the request made by the fifth respondent, enquiry was subsequently conducted by the Additional Deputy Superintendent of Police and that since there was no settlement between the parties and since they made an endorsement that they would sort out their dispute through Court, the complaint came to be closed.

11. The learned Counsel for the fifth respondent would rely on the decision of the Hon'ble Supreme Court in ***Suresh Vs. Mahadevappa Shivappa Danannava and Others*** reported in ***AIR 2005 SC 1047*** wherein, a sale agreement came to be entered into between the parties on 25.12.1988 and after exchange of legal notices, the complaint came to be lodged on 17.05.1999 and the Hon'ble Apex Court has specifically observed that the complaint filed after a lapse of 11 ½ years is not maintainable at that distance of time and the complaint would only reveal that the allegations are of civil in nature and do not prima facie disclose commission of criminal offence under Section 420 I.P.C.

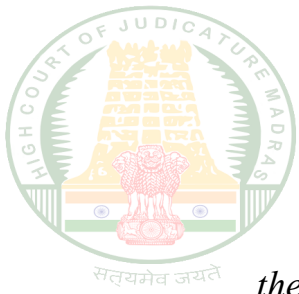


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12. The learned Counsel would also rely on the decision of Rajasthan High Court in ***Rupa Ram and others Vs. State of Rajasthan and another*** wherein also a sale agreement was executed on 21.06.2004 and the complaint came to be lodged on 08.10.2024. The High Court by referring to the decision of the Hon'ble Supreme Court has observed as follows:

“Thus, the case of the prosecution seems to be that neither agreement has been completed and nor the amount taken in lieu of the agreement has been taken and both are squarely covered by the precedent law cited by learned counsel for the petitioner where the Hon'ble Apex Court has held that no suit for specific performance was filed by the complainant for more than 10 years, the complainant (13 of 22) was abuse of process of the court to enforce civil rights which had become unenforceable. Furthermore, the Hon'ble Apex Court in the precedent law cited by learned counsel for the petitioner also made it clear that in case of a person not returning the amount taken in lieu of the agreement then also he shall not be entitled to be prosecuted in the criminal proceedings. The precedent law cited by learned counsel for the petitioner is absolutely applicable in the present case and original agreement was signed between the parties on 21.06.2004 whereas after all no civil proceedings whatsoever took place between the parties and a FIR was filed on 08.10.2014 after a delay of more than 10 years. The legally enforceable agreement which could not be enforced by



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the civil litigation due to limitation. This Court takes note of argument of learned Public Prosecutor that the land was sold by the petitioner but complainant himself gave a specific reason in FIR that the agreement could not culminate into execution because the variation of the price in the immovable property which resulted into failure of the agreement. In light of such specific complaint on the face of it, it is apparent that the present FIR is nothing but abuse of process of law with the ill-intention of executing the contract which had virtually failed in light of the limitation law.”

13. In this case, the agreement between the parties was executed on 11.12.2018, and the first police complaint was lodged on 16.08.2022, beyond the limitation period for civil action. This Court unequivocally holds that the present action constitutes an abuse of the legal process. As rightly observed by the learned Magistrate, the petitioner filed the complaint due to the fifth respondent's failure to execute the sale deed as per the alleged sale agreement, and this Court is of the clear view that the petitioner is attempting to cloak a civil dispute with criminality. Considering the above, the complaint does not disclose any cognizable offense, and hence, the impugned order dismissing the petition under Section 156(3) Cr.P.C. cannot be faulted. Consequently, this Court concludes that the Criminal Revision Case is devoid of merits and is liable to be dismissed.



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14. In the result, the Criminal Revision Case is dismissed.

28.03.2025

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

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To

1. The Judicial Magistrate Court No.I, Madurai.
- 2.The Superintendent of Police,
Madurai District.
- 3.The Deputy Superintendent of Police,
District Crime Branch,
Madurai.
- 4.The Commissioner of Police,
Madurai City,
Madurai.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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K.MURALI SHANKAR, J.

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Pre-Delivery order made in

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