

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.04.2021

(Reserved on 22.12.2020) CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRL.OP(MD)No.13123 of 2020

and CRL.MP(MD)Nos.6753 and 6991 of 2020

1)M.K.M.Mohamed Shafi 2)Ayisha Dowlath 3)Charles

4)Annamalai 5)Abdul Kareem

... Petitioners

vs.

1) The State rep. by Inspector of Police,

District Crime Branch(ALGSC), Tirunelveli,

Tirunelveli District. (In Crime No.17/2016)

2) Ganapathiraman

... Respondents

Prayer : Petition filed under Section 482 of the Criminal Procedure Code, to call for the records relating to the FIR in Crime No. 17 of 2016 on the file of 1st respondent police and quash the same as the matter is amicably settled between the parties.

For Petitioner : Mr.P.Mohamed Nainar For R1 : Mr.V.Neelakandan

Additional Public Prosecutor

For R2 : Mr.V.Karthik Raja

## ORDER

The present petition has been filed to call for the records relating to the FIR in Crime No.17 of 2016 on the file of 1st respondent police and quash the same as the matter is amicably settled between the parties.

2. The 2nd respondent/defacto complainant has lodged a complaint against the petitioners alleging that the petitioners 1 and 2 are engaged in a real estate business under the name and style of "Shifa Golden City", Kongathanparai Village and Palayamkottai Village. The 4th petitioner has purchased a plot bearing No.E7 to an extent of 5.5 cents from the petitioners 1 and 2 through a registered sale deed in Document No.1181 of 2008. On the strength of the said sale deed, the 4th petitioner had executed a general power to the 5th petitioner and subsequent to the same, the defacto complainant has purchased the above said plot from the 5th petitioner on 10.07.2009 vide Document No.6061 of 2009. It is submitted that a Trust by name, "Sanakaranarayana Swami 11th day Aadi Thapasu Mandagapadi Utsavam Trust" filed a suit against the petitioners/accused and the subsequent purchasers in O.S.Nos.117/2010 and 85/2011 on the file of the 1st Additional District Court, Tirunelveli, for declaration and for recovery of possession and also for mandatory

injunction in respect of the above property. The said suit was decreed as prayed for in favour of the Trust. According to the 2nd respondent/defacto complainant, the property was sold to him without disclosing that the property belongs to the said Trust. Hence, the complaint. On the strength of the complaint, a case was registered in Crime No.17 of 2016 for the offences punishable under Sections 417, 420, 506(ii) and 120(b) IPC. The petitioners were arrayed as A1 to A5. The judgment and decree passed in the above suit is the immediate cause of action for registration of FIR. The petitioners 1 and 2 earlier filed CrI.O.P(MD)No.15262 of 2016 before this Court to quash the FIR. The same was vehemently opposed by the defacto complainant/2nd respondent and the said criminal original petition was dismissed on 16.03.2020.

3. CRL.MP(MD)Nos.6753 and 6991 of 2020 have been filed by the proposed parties to implead themselves stating that the accused party had entered into a criminal conspiracy and fabricated fake documents and on the strength of those fictitious documents, had defrauded the proposed parties and several individuals by luring them to purchase the property and hence they should be impleaded in the above criminal original petition. One Subbaiah also filed a petition to implead himself as the respondent in the present criminal original petition and the said petition

is not numbered.

4. The petitioners would submit that pending investigation, a compromise was entered into between the petitioners and the defacto complainant. A joint memo signed by the parties and their respective counsels is filed before this Court to the effect that the defacto complainant has no objection for quashing the FIR. But, it was opposed by few others as intervenors claiming that they have also purchased plots from the petitioners and they are also aggrieved by the judgment and decree passed against the petitioners herein. It is pertinent to refer that these intervenors are parties to the suit and supported the case of the petitioners in the trial court.

5. The 1st respondent police filed a status report in the above criminal original petition and the entire report shows that there is a bonafide civil dispute between the parties resulting in filing appeals in A.S.Nos.84 and 85 of 2016 on the file of this Court. The respondent/police would state that the second petition for quash of FIR by way of compromise is not maintainable. It is another colusive attempt by the accused and an extension of their wrongful act. The claim that the second quash petition is filed in view of the compromise with one of the

affected persons viz., 2nd respondent/defacto complainant is misconceived and mischievous. The respondent/police would further state that the accused party had fabricated title documents and has sold the property by luring the purchasers to believe that they have valid title to execute the sale. The accused party had cheated by forging title documents. The respondent/police would also state that the above Trust has suffered huge loss because of the criminal activities of the accused party. The fraudulent act committed by the accused persons includes criminal breach of trust, falsification of records, forgery, creating false documents and cheating many persons including the Trust. Therefore, the complaint cannot be quashed by way of compromise. The respondent/police would rely on the judgment of the Hon'ble Supreme Court in the case of Gian Singh vs. State reported in 2012 (10) SCC 303, wherein, it has been observed that it needs no emphasis that exercise of inherent power by the High Court would entirely depend on the facts and circumstances of each case. It is neither permissible nor proper for the court to provide a strait-jacket formula regualting the exercise of inherent powers under Section

482. No precise and inflexible guidelines can also be provided. Further,

J.NISHA BANU, J.

bala it is held that quashing of offence or criminal proceedings between an offender and victim is not the same thing as compounding of offence. Therefore, the second application of the petitioners/accused for quashing the FIR by way of compromise is not maintainable.

6.In view of the status report filed by the respondent/police, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petitions are closed.

27.04.2021

Index : Yes / No Internet: Yes / No bala

To

- 1) The Inspector of Police, District Crime Branch(ALGSC), Tirunelveli,  
Tirunelveli District. (In Crime No.17/2016)
- 2) The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai.

PRE-DELIVERY ORDER MADE IN CRL.OP(MD)No.13123 of 2020