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CRL.OP.(MD)No.2960 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 07.11.2022

DELIVERED ON : 13.06.2023

CORAM

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CRL.OP.(MD)No.2960 of 2022

and

CRL.MP(MD).No.2218 of 2022

J.Suresh Paul

: Petitioner/Accused

Vs.

1. The Inspector of Police,
Central Crime Branch – Trichy (CCB),
New Raja Colony,
Bhima Nagar, Sangillyandapuram,
Tiruchirappalli.
(Crime No.21 of 2021)

: 1st Respondent

2. M/s. Thamizh Constructions
Rep. By Managing Director
E.R.P.Prabhakaran
T4 Rana Block,
ThathaChariyar Garden
Srirangam,
Thiruchirappalli

:2nd Respondent/*De facto Complainant*

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records and quash the FIR filed against the Petitioner in Crime No.21 of 2021 on the file of the Inspector of Police, CCB, Tiruchirappalli.



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For Petitioner : Mr.K.K.Udayakumar

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For Respondents : Mr.B.Nambi Selvan
Additional Public Prosecutor for R-1

: Mr.N.S.Karthikeyan for R-2

ORDER

This Criminal Original Petition has been filed to quash the FIR filed against the Petitioner in Crime No.21 of 2021 on the file of the Inspector of Police, CCB, Tiruchirappalli.

2. The brief facts which are necessary to appreciate the facts of the case are as follows:

The Petitioner is the owner of the property admeasuring an extent of 14,828 sq. ft situated at No.253, MTH Road, Venkatapuram, Ambattur, Chennai and the said property is mortgaged to M/s.Cholamandalam Finance Limited. The Petitioner had been paying the requisite monthly installments for the said Loan. Because of the financial constraints suffered by the Petitioner due to the mortgage, the Petitioner had been looking for offers to sell the property.

2.1. The *De facto Complainant*/second Respondent approached the



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Petitioner with a proposal to construct Apartments at their own cost in consideration of ownership of over 60% of the flats to be constructed at the site (remaining 40% to be allotted to the Petitioner/Accused). The Petitioner had informed the *De facto Complainant* that the said property had been mortgaged to M/s.Cholamandalam Finance Limited. The Petitioner is unable to pay the EMI and therefore, he cannot wait till the completion of the construction and has to sell the property. However, the *De facto Complainant* assured that he shall upfront pay a sum of Rs.1,50,00,000/- (One Crore Fifty Lakhs only), out of which, Rs.1,00,00,000/- was directly to be paid to the loan account. It was also agreed that the upfront payment was agreed to be adjusted against the sale proceeds of the 40% of the Flats payable to the Petitioner/Accused. With this understanding, the Joint Venture Agreement dated 28.03.2019, was entered into between the parties. Out of this agreed upfront payment, only a sum of Rs.16,50,000/- was paid by the *De facto Complainant/Builder*, and thereafter for the reasons best known to the *De facto Complainant*, he abstained from performing his part of the agreement and committed breach of contract. The Petitioner submits that the *De facto Complainant* had refused to pay the balance upfront amount nor commenced the construction work and owing to the failure of the *De facto Complainant*, till date, the subject land remains vacant.



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2.2. Under those circumstances, the *De facto Complainant* had lodged the impugned Complaint dated 18.10.2021, before the first Respondent with a false allegation that the Petitioner suppressed the existence of mortgage/loan and entered into the Joint Venture Agreement, obtained a sum of Rs.16,00,000/- and hence defrauded the Complainant. However, a mere perusal of Clause 8 of the Joint Venture Agreement will clearly demonstrate that the fact of mortgage/outstanding loan was never suppressed. Thus, even going by the admitted documents, the case of willful suppression of Mortgage/Loan which is the basis for cheating/fraud will never arise. In such circumstances, offence under Sections 420 and 417 of IPC are not made out.

2.3. The subject property agreed to be developed is in Ambattur at Chennai. The Joint Venture Agreement was signed at Chennai and the Petitioner is residing at Chennai. No part of cause of action arose at Trichy, for the Complaint to be maintainable before the first Respondent. That the *De facto Complainant* originally gave a Complaint dated 20.02.2021 before the Inspector of Police, Kolathur Police Station, Chennai and the same was registered as CSR.No.62 of 2021. On investigation of the matter, the Kolathur Police found that no offence was made out and the matter was



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closed as civil dispute and directed the parties to approach the appropriate Civil Court. After closure of this Complaint at Chennai, the *De facto Complainant* suppressed all these facts and presented a fresh second Complaint dated 18.10.2021 before the first Respondent. During the enquiry before the first Respondent, the Petitioner had explained the above facts orally and also submitted a written representation. However, succumbing to the political pressures and other influences exerted by the *De facto Complainant*, the first Respondent is harassing the Petitioner and threatening him with dire consequences. The second Respondent herein has lodged a false Complaint against the Petitioner. Even going by the allegations in the Complaint and documents relied by the Complainant, the offence under Sections 417, 420 and 506(i) is not made out. That apart, the impugned Complaint is a second Complaint filed by suppressing the closure of the first Complaint. In any event, the second Complaint for the same set of facts is not maintainable.

3. The learned Counsel for the Petitioner submitted that the Petitioner is arrayed as an Accused in Cr.No.21 of 2022. The Petitioner is the owner of the property in MTH Road, Venkatapuram, Ambattur, Chennai and he had obtained loan from M/s.Cholamandalam Finance Limited under mortgage of



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the said property. Since he was unable to meet out the expenses, he decided to sell the property, so that, he will not face any difficulty for the repayment of the amount. At that stage, the second Respondent/M/s.Thamizh Constructions through its Managing Director had approached the Petitioner saying that they will enter into Joint Venture Agreement and he will pay a sum of Rs.1,50,00,000/- to the Petitioner herein. After paying Rs.16,00,000/- the second Respondent/Builder did not co-operate with the Petitioner herein for developing the flats. Till date, the subject land remains vacant. While so, the *De facto Complainant* had given a Complaint to the Kolathur Police Station, Chennai. After perusing the Complaint, the Police Officials, Kolathur Police Station had refused to register the criminal Complaint against the Petitioner.

4. It is the further contention of the learned Counsel for the Petitioner that the Petitioner had caused legal notice dated 17.04.2021 sent to the second Respondent/*De facto Complainant* much prior to the impugned complaint seeking compensation for breach of terms of the Joint Venture agreement. Further the Petitioner herein as owner had filed a Suit before the learned District Judge, Tiruvallur in O.S.SR.No.39 of 2022. The attempt of the second Respondent to file a subsequent complaint on the same set of facts



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as the earlier Complaint, before the Inspector of Police, District Crime Branch, Trichy is found to be not maintainable and no cause of action arose within the local limits of Trichy.

5. It is the further contention of the learned Counsel for the Petitioner that the second Complaint on the same set of facts as the first complaint will not be maintainable. He invited the attention of this Court that breach of contract cannot be a criminal Complaint. It is nothing but a Civil dispute. Only in the place where the cause of action arise, the Police has jurisdiction. Here, the cause of action arose at Ambattur. Instead of filing Complaint in Ambattur or Kolathur, the *De facto Complainant* had approached Trichy Police. Hence, the same is not maintainable. Therefore, he seeks to quash the Complaint.

6. He invited the attention of this Court to the Joint Venture Agreement. It is found that the Petitioner herein as the owner of the property had not suppressed the outstanding dues. He had wanted to sell the property, instead of developing the property. On the assurance of the Builder that he will pay Rs.1,00,00,000/- directly to the outstanding loan account, the Petitioner agreed to develop the property. On the other hand, the Builder after handing over the funds of Rs.16,50,000/- to the Petitioner had not



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proceeded with further development in the site nor made any payment to the outstanding loan account, committing breach of contract. It is a civil dispute converted into a criminal dispute only for getting early relief. Therefore, the allegations made in the FIR, the offences under Sections 420 and 417 of IPC are not attracted. It is the second Complaint and the earlier Complaint was closed. Therefore, it has to be quashed.

7. The learned Counsel for the Petitioner invited the attention of this Court to the contents of the FIR, the relevant portion reads as follows:

“என் உடல்நலத்தினை தாங்கள் கருத்தில்கொண்டு உரிய சட்டநடவடிக்கை எடுத்து என் பணம் ரூ.18,00,000 ஐ லட்சத்தை வாங்கி தருமாறு கேட்டுக் கொள்கிறோம். மேலும் இந்த ரூ.18,00,000க்கு மாத மாதம் ரூ.32,000 வீதம் 24 மாதங்களாக ரூ.7,68,000 ஐ வட்டியாக வாங்கியில் செலுத்தி உள்ளதையும் சேர்த்து மொத்தம் ரூ.25,68,000ம் வாங்கி தருமாறு கேட்டுக்கொள்கிறோம். எனக்கு கொடுக்க வேண்டிய பணத்தை அவரிடம் கேட்டதற்கு அடிக்கடி என்னை பணம் கேட்டு தொந்தரவு செய்தால் கொலை செய்து விடுவேன் என்று மிரட்டினார். மேலும் எனது பணத்தை திருப்பி கொடுக்காமல் கூட்டுத்தொழில் செய்யலாம் என ஆசை வார்த்தை கூறி எனது பணத்தை மோசடி செய்தும் திருப்பி தராமல் ஏமாற்றியும் அவர் கூட்டு ஒப்பந்தம் செய்வதற்கு முன் சென்னை சோலமண்டலம் இன்வெஸ்ட்மென்ட் பைனான்ஸ் கம்பெனியில் அச்சொத்தினை அடமானம் வைத்து இருப்பதை மறைத்து ஒப்பந்தம் செய்தும் பண மோசடி செய்தும் என்னை ஏமாற்றியதற்காகவும் மேலும் சுரேஸ்பால் என்பவரால் ஏற்படும் எனது உயிரிழப்பினை தடுத்தும் சுரேஸ்பால் என்பவர் மீது உரிய சட்டப்படியான நடவடிக்கை எடுக்கும்படி பணிவன்புடன் கேட்டுக்கொள்கிறோம்.”

8. He invited the attention of this Court to the closure report, the relevant portion reads as follows:



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“புகார் சம்மந்தமாக இருதரப்பினரையும் அழைத்து விசாரணை மேற்கொள்ளப்பட்டதில் இருதரப்பினருக்கும் ஒத்துவராத காரணத்தினால் இருதரப்பினரையும் நீதிமன்றத்தை நாடி பிரச்சனையை தீர்த்துக்கொள்ளுமாறு அறிவுறுத்தப்பட்டது இதனை அவர்களும் ஏற்றுக்கொண்டதினால் இம்மனு மீது மேல்நடவடிக்கை கைவிடப்பட்டு கோர்வை செய்யகோரப்படுகிறது,”

9. He invited the attention of this Court to the Clause 8 (iii) of Joint Venture Agreement which reads as follows:

“8 (iii) Balance amount of Rs.1,00,00,000/- (Rupees One Crore Only) or the outstanding loan amount in the name of the Land Owner whichever is lower shall be transferred directly to the loan account at the time of registration of Power of Attorney”

10. After eight months of closure of the FIR at Kolathur Police Station, the second Respondent had approached Trichy Police for the same set of facts. On the said ground itself the second Complaint is not maintainable. Therefore, he seeks to quash the FIR.

11. The learned Counsel for the Petitioner relied on the following rulings:

(i) **2021 AIR SCC 5298** in the case of **Mitesh Kumar J.Sha Vs. State of Karnataka**, the relevant portion reads as follows:

“26. Having perused the relevant facts and contentions made by the Appellants and Respondents herein in our considered opinion, the following three key issues require determination in the instant case:



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- *Whether the necessary ingredients of offences punishable under Sections 406, 419 and 420 are prima facie made out?*
- *Whether sale of excess flats, even if made, amounts to a mere breach of contract or constitutes an offence of cheating?*
- *Whether the dispute is one of entirely civil nature and therefore liable to be quashed?*

35. Upon a careful assessment of such facts, by no stretch can it be concluded that the Appellants herein have deceptively or intentionally tried to sell excess flats if any, as contended by Respondent No. 2. Here, it must also be borne in mind that subsequent to the revocation of GPA, it was the Appellants herein who had first resorted to arbitration proceedings on 02.03.16 for redressal of dispute between the parties, to which Respondent No 2 had accordingly filed his statement of objections dated 09.03.16. It was only on 29.03.16 that Respondent No. 2 had filed the FIR in question bearing Crime No. 185/2016 against the Appellants. Moreover, it was Respondent No. 2 who had withdrawn his prayer with respect to selling of four excess flats by the Appellants, only to pursue the same in civil proceedings."

(ii) 2018 (1) MLJ (Criminal) 215 in the case of **Rakesh P.Sheth & Ors Vs. State Rep. By the Inspector of Police, CCB, Vepery, Chennai.** The relevant portion is extracted hereunder:

"12. It is not the case of the second respondent that the petitioners had made a false or misleading representation for the purpose of entering into a construction agreement. When the decision to engage the services of the petitioners was taken by the second respondent, she had voluntarily entered into the construction agreement by way of contract and as per the terms of the contract, she had also paid the advance amount of Rs.1.50 Crores. Till this stage, there were neither deception nor dishonest inducement on the part of the petitioners' to make the second respondent part with her money. Therefore, it cannot be said that the petitioners had cheated the second respondent either to enter into a contract or to part with the advance amount of Rs.1.50 Crores. In the absence of such dishonest inducement, there cannot be any act of deception. Since the second respondent had



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voluntarily engaged the services of the petitioners herein, the ingredients to constitute the offence of cheating has not been made out.

22. The other ingredients to constitute an offence of criminal breach of trust is again dishonest intention and misappropriation. I have elaborately discussed that the complaint does not make out the ingredients of dishonest intention, misappropriation or entrustment and therefore, none of the provisions would constitute the criminal offence of misappropriation, criminal breach of trust or cheating. Hence, it can only be concluded that the second respondent's complaint manifestly discloses the entire transaction to be purely civil in nature and the first respondent police may not be justified in investigating into a civil transaction."

12. The learned Additional Public Prosecutor submitted that the FIR is at initial stage and **the earlier complaint is yet to be proceeded** and as per the ruling of the Hon'ble Supreme Court reported in *1992 Supp (1) SCC 335:1992 SCC (cri) 426* in the case of *State of Haryana Vs. Bhajanlal*, while exercising extraordinary powers by this Court under Section 482 of Cr.P.C., to be used sparingly and not leniently. The Petitioner had suppressed the facts that he had mortgaged the property to M/s.Cholamandalam Finance Limited. Therefore, it cannot be quashed. This Petition lacks merits and is to be dismissed.

13. The learned Counsel for the *De facto Complainant*/second Respondent submitted that the Petitioner herein had suppressed the fact that he had mortgaged the property to M/s.Cholamandalam Finance Limited.



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Only when the *De facto Complainant* obtained encumbrance certificate in respect of the subject property the second Respondent/*De facto Complainant* came to know about the mortgage. Without discharging the mortgage, the Petitioner had entered into Joint Venture Agreement with the second Respondent and thereby caused loss to the second Respondent/*De facto Complainant*. Therefore, he had filed the Complaint before the Trichy City Police, Central Crime Branch against the Petitioner. The Petitioner was summoned and he appeared and gave undertaking that he will settle the dues within 30 days, instead, he had filed this Petition to quash the FIR. The conduct of the Petitioner is to be considered by this Court. After giving undertaking that he will settle the dues, he approached this Court. Therefore, this Petition lacks merits and is to be dismissed.

14. Point for Consideration

Whether the FIR in Cr.No.21 of 2021 on the file of the first Respondent is to be quashed?

15. On consideration of the rival submission and on perusal of the typed set furnished by the learned Counsel for the Petitioner in which the



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Joint Venture Agreement, copy of the FIR, Closure Report of the earlier case in CSR.No.62/2021 on the file of the Kolathur Police Station, legal notice issued by the Petitioner dated 17.04.2021, the reply notice issued by the second Respondent dated 23.04.2021 and rejoinder notice issued by the Petitioner dated 06.05.2021 and the Complaint in unnumbered Suit on the file of the learned Principal District Judge, Tiruvallur, the submission of the learned Counsel for the Petitioner is found to be acceptable in the light of the Clause 8 (iii) of Joint Venture Agreement and exchange of notice also. The fact that the Petitioner had already mortgaged the property to M/s. Cholamandalam Finance Ltd., was disclosed to the second Respondent is apparent from the said clause, wherein the second Respondent agreed to pay a sum of One Crore directly to the loan account. The Petitioner was willing to part with the site/property to the Builder after clearing the mortgage to enable the Builder to recover the same from the sale of the said flats in the ratio of 60:40. 60% to the Builder and 40% to the Petitioner herein. But after parting with Rs. 16,50,000/-, the second Respondent/Complainant did not pay the balance amount to enable the Petitioner to clear the mortgage. That much of facts are available in the exchange of notice mentioned above. As far as earlier Complaint is concerned, it was registered as CSR on the file of the Kolathur Police Station, Chennai City under whose jurisdiction the property is situate.



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The said CSR was closed as the parties agreed to agitate their matter in the appropriate Civil Court. Under those circumstances, filing of the Complaint before the Trichy Police, who had no jurisdiction, when the property is in Chennai and the transactions took place in Chennai is unacceptable. The FIR had been registered outside the territorial jurisdiction of the place of occurrence. Also on perusal of the ruling cited by the learned Counsel for the Petitioner, it is found that the breach of contract is a case of civil in nature. The exchange of notice clearly shows that there is breach of contract. Therefore, a Civil case had been converted into a Criminal case for early recovery or early relief, which is nothing but abuse of process of Court as well as abuse of process of Criminal Law as rightly pointed out by the learned Counsel for the Petitioner. In the light of the above, this Court arrived at a conclusion that in the light of the reported ruling, this is a clear case of abuse of process of Criminal Law by the second Respondent.

16. Point for consideration is answered in favour of the Petitioner and against the second Respondent.



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In the result, this ***Criminal Original Petition is allowed.*** The FIR filed against the Petitioner in Crime No.21 of 2021 on the file of the Inspector of Police, CCB, Tiruchirappalli is quashed. Consequently, connected Miscellaneous Petition is closed.

13.06.2023

Index: Yes/No
Internet: Yes/No
Speaking Order/Non-speaking Order

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To

1. The Inspector of Police,
Central Crime Branch – Trichy (CCB),
New Raja Colony,
Bhima Nagar, Sangillyandapuram,
Tiruchirappalli.
2. The Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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SATHI KUMAR SUKUMARA KURUP, J.

dh

Order made in

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