

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1521 OF 2013

M/s. Truly Creative Developers Pvt.Ltd. ... Petitioner

Vs.

The State of Maharashtra & Ors. ... Respondents

Mr. Rizwan Merchant i/b. Mr. S.K.Krishnan,,for the petitioner.

Mr. A.PMundargi, Senior Counsel i/b. Mr. Pramod N. Patil for respondent Nos. 2, 3 & 4.

Mr. Amit Date a/w Mr. Anjali Thakoor a/w Ms. Saudha Vedpathak i/b. Maneksha & Sethna for respondent No.5.

Mr. Harshad Ponda a/w Mr. Samsheer Garud a/w Mr. Vishwabhuwan Kamble i/b. Jayakar and Partners for respondent No.9

Mr. Arfan Sait,APP, for the State.

CORAM :SMT.SADHANA S. JADHAV,J

DATE :14th October, 2015.

P. C. :-

1. The petitioner herein questions the correctness and validity of the order dated 22.11.2012 passed by the learned Metropolitan Magistrate, 68th Court, Borivali, Mumbai, has filed the present Writ Petition.

2. The facts of the case are as follows :-

The petitioner herein is the original complainant in C.C. No.9/M of 2007 filed in the Court of the Metropolitan Magistrate, 68th Court, Borivali, Mumbai. The petitioner has filed a complaint alleging therein that the accused have committed offence under Sections 420, 465, 467, 468, 406, 409 read with Section 120-B of the Indian Penal Code. The petitioner had prayed for an action under Section 156(3) of Cr.P.C. Pursuant to the said direction, the police had recorded a statement of Rajendra Barde, on behalf of the complainant and had registered C.R. No.4 of 2007 against the accused for the offences punishable under Sections 420, 465, 467, 468, 406, 409 read with Section 120-B of Indian Penal Code. The police had carried out the investigation and had filed a report before the learned Metropolitan Magistrate on 24.4.2008. The police had

submitted that it has transpired in the investigation that the offence as alleged by the complainant has not been committed by the proposed accused. The police had thereafter contended that they have recorded statements of all requisite witnesses, more particularly the office-bearers of Samta Nagar Co-op. Housing Society Union Ltd. They had also recorded the statements of the members of the Housing Society. It had transpired that Shri Barde had delayed the project by 8 to 9 years and, therefore, the project was withdrawn from him and was handed over to another developer. The resolutions to that effect are on record. The witnesses had identified their signatures on the minute book. It was not proved that the signatures of the members are forged. The investigating agency had therefore specifically contended that dispute is of a civil nature.

3. On 12.8.2008, the complainant had filed a complaint to the Senior Inspector of Police, Kasturba Marg Police Station against the Police Inspector Ravindra Medsingh, who had conducted the investigation. He had demonstrated the lacunas in the investigation.

It was specifically contended that the I.O. has not seized the said MOU from the accused which would clearly show that the documents were forged. He had prayed for an enquiry. A similar representation was made to the Commissioner of Police. The complainant had then filed Revision Application No.75 of 2008 before the Sessions Court challenging the order passed by the learned Metropolitan Magistrate rejecting the application under Section 91 of Cr.P.C. The Sessions Court had remanded the matter and had directed the learned Magistrate to hear both parties afresh and decide the matter on merits.

4. Samta Nagar Co-op. Housing Society had filed Criminal Writ Petition No. 2376 of 2009 before the Hon'ble High Court. This Court (Coram: J.H.Bhatia, J.) by an order dated 6.4.2011 had disposed of the Petition as not pressed with the direction to the learned Magistrate to consider "C" Summary as well as original development agreement between the parties and pass appropriate order as early as possible and preferably within three months.

5. By an order dated 5.8.2011, the learned Metropolitan

Magistrate, 26th Court, Borivali, Mumbai, had issued summons to M/s. Law Charter, Advocate for accused No.1 and directed him to produce the documents before the Court on or before 22.8.2011. M/s. Law Charter had replied the said notice on 11.10.2011 that the said document was searched for and it was not found in the office records. It was also contended that they have no hesitation in submitting the said document.

6. The police had filed “C” Summary before the Metropolitan Magistrate. Notice was issued to the complainant. The complainant had submitted the protest petition. On 3.7.2011. The learned Magistrate had taken note of two orders passed by the Hon'ble High Court, wherein there was a direction to pass order of “C” Summary report. The learned Metropolitan Magistrate had observed that the complainant had filed application under Sections 91 and 93 of Cr.P.C. On 13.1.2012, an application was filed seeking issuance of search warrant against M/s.Law Charter under Section 93 of Cr.P.C. and on 3.3.2012, for issuance of summons under Section 91 of Cr.P.C. to produce original MOU. The said application

was withdrawn by submitting Pursis below Exhibit 3. That subsequently, one more application was filed under Section 93 of Cr.P. C. The learned Magistrate, after considering rival submissions and the orders passed earlier had observed that there are civil proceedings pending between the parties. That the complainant had preferred Chamber Summons No.342 of 2006 before the Hon'ble Court. The complainant had also filed Suit No.1065 of 2007 in City Civil Court for injunction although High Court had passed orders in Writ Petition No.2879 of 2006 on 12.3.2007. The complainant has also filed Writ Petition No.1005/2007. The learned Metropolitan Magistrate had rightly taken judicial note of the fact that the memorandum of understanding, which was referred by the complainant, and which was a subject matter of the application under Sections 91 and 93 of Cr.P. C. was already a dispute in Civil Court, which was initiated by the complainant and, therefore, there was no foundation for issuance of search warrant as prayed by the complainant. The learned Magistrate had also rightly observed that as far as the allegation regarding cheating is concerned mere breach of agreement or contract would not amount to cheating. It would

be a civil liability and that the complainant had already approached the competent courts. It is rightly observed that dispute is of a civil nature and therefore, there was no prima facie case for issuance of process as prayed for. The learned Magistrate had rightly accepted the “C” Summary report filed by the police by an order dated 22.11.2012. The learned Magistrate has recorded justifiable reasons for accepting “C” Summary report. It was specifically observed that the documents in question upon which the complainant was placing reliance for issuance of process were already subjudice before the Civil Court. Upon perusal of the records, this Court is also of the opinion that criminal proceedings were initiated only to exercise coercion upon the respondents. That there is no reason for interference with the order passed by the learned Metropolitan Magistrate dated 22.11.2012. That continuation of the proceedings would be an abuse of process of law.

7. Hence, the Petition being sans merits deserves to be rejected. Rule is accordingly discharged.

(SMT. SADHANA S. JADHAV, J)