IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2015

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Crl.O.P.No.26753 of 2015

and

M.P.No.1 of 2015

1.Mrs.Vijayarani

2.A.Marimuthu ... Petitioners

Vs

1.State rep.by
The Inspector of Police,
Central Crime Branch,
Team XVIII Vepery,
Chennai-600 007.
(Crime No.CCBX Cr.No.419/2014).

2.P.S.R.Sathyamurthy ... Respondents

Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records relating to Crime No.419/2014 on the file of the Central Crime Branch, XVIII Team, Vepery, Chennai and to quash the same.

For Petitiones : Mr.UM.Ravichandran

For respondents : Mr.C.Emalias, APP (For R1)
Mr.K.M.Vijayan, Senior counsel
for Mr.M.Selvam (For R2)

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O R D E R

The present criminal original petition has been filed by the petitioners praying to quash the complaint in Crime No.419 of 2014 pending on the file of the Central Crime Branch, XVIII Team, Vepery, Chennai.

2.The petitioners herein have been arrayed as accused 3 & 4 in this case. The complaint was lodged by the 2nd respondent herein against the accused persons for the alleged offences punishable under Sections 406, 420, 506(i) r/w 120(b) IPC, stating that the accused 1 & 2 viz., one Leelabai and her son Ajithkumar are the owners of the land and building measuring an extent of 2 grounds 665 sq.ft situated in T.S.No.5738 Part, New T.S.No.9012/1B, Block No.130, at Door No.9, South Usman Road, T.Nagar Village, Chennai. In order to sell the said property, the accused 1 & 2 approached the 2nd respondent/defacto-complainant and the 2nd respondent/defacto-complainant has also agreed to purchase the said property. The 2nd respondent/defacto-complainant and one Pathmachand @ Padmaraj Jain jointly entered into a sale agreement with the accused 1 & 2 for the purchase of the said property and the same was registered on 08.01.2008 vide Doc.No.22/2008 registered at Sub-Registrar Office at T.Nagar. The sale consideration was fixed as Rs.6 coroes. The said Pathmachand @ Padmaraj Jain joined the 2nd respondent/defacto-complainant in the execution of the sale deed only as a formal party, since he is a friend of the defacto-complainant; however, the said Pathmachand @ Padmaraj Jain did not make any contribution for the purchase of the said property. At the time of execution of the sale agreement i.e, on 12.12.2007, the defacto-complainant had paid a sum of Rs.5 lakhs by way of cash to the said Leelabai and Ajithkumr (A1 & A2) towards the advance sale consideration. The defacto-complainant had further agreed to pay the balance sale consideration of Rs.5,95,00,000/- within three months from the date of vacating the tenants and having the premises vacant. As such the final payment has to be paid by the defacto-complainant, after vacating the tenants by the vendors. After the execution of the said sale agreement dated 12.12.2007, the defacto-complainant had paid a sum of Rs.45 lakhs by way of cash on 27.12.2007 and another sum of Rs. 50 lakhs by way of cash on 29.01.2008, in all totalling a sum of Rs.1 crores has been paid by the defacto-complainant to the said Leelabai and Ajithkumar (A1 & A2) towards the advance sale consideration. After receiving the advance sale consideration of Rs.1 crore, the said Leelabi and Ajithkumar have not taken any steps to vacate the existing tenants from the building premises as per their commitment in the agreement dated 12.12.2007 and they have not come forward to execute and register the sale deed in favour of the defacto-complainant, by receiving the balance sale consideration. While so, during the 1st week of April, 2013, when the defacto-complainant visiting the accused 1 & 2 at their residence and requested to perform their part of the contract, to his shock and surprise, he came to know that the said Pathmachand @ Padmaraj Jain had colluded with the accused 1 & 2 and unilaterally cancelled the sale agreement dated 12.12.2007, without the consent of the defacto-complainant, wherein the said Pathmachand @ Padmaraj Jain had stated that he had received his

50% share of the advance amount, which the petitioner had paid at the time of entering into the sale agreement dated 12.12.2007. The said Pathmachand @ Padmaraj Jain had illegally and fraudulently cancelled the sale agreement dated 12.12.2007 and fraudulently received 50% of the advance amount, which the defacto-complainant had paid at the time of entering into the sale agreement. On the strength of cancelling the said sale agreement, the vendors viz., the said Leelabai and Ajithkumar (A1 & A2) had illegally and clandestinely alienated 50% of the aforesaid property in favour of one Mr.Marimuthu (2nd petitioner) and presented the sale deed for registration before the Sub-Registrar, T.Nagar, which is now pending before the Sub-Registrar Office, Saidapet, Chennai. In view of the sale agreement dated 12.12.2007 registered by the defacto-complainant, the Sub-Registrar had kept the document viz., the sale deed presented by the said Leelabai and Ajithkumar, as pending document. On coming to know about the defacto-complainant's objection in registering their sale deed, the accused persons started to threaten the defacto-complainant with dire consequence. Thereafter, the defacto-complainant obtained Encumbrance Certificate and found that a portion of the subject property was sold to one Marimuthu (2nd petitioner herein). Hence, the defacto-complainant lodged a complaint before the Central Crime Branch, Vepery and the same was registered on 11.02.2014 in Crime No.83 of 2014 under Sections 406, 420 & 120(b) IPC against the accused persons viz., 1) Leelabai, 2)Ajithkumar, 3)Pathmachand @ Pathmaraj Jain, 4) Marimuthu. On the next day, ie., on 12.02.2014, the accused 1 & 2 viz., Leelabai and Ajithkumar sold the remaining portion of the said land in favour of one Vijayarani (1st petitioner herein), wife of the said Marimuthu (2nd petitioner herein). On coming to know about the said execution of sale deed, the defacto-complainant approached the learned Special Metropolitan Magistrate for Land Grabbing Cases-I, Periamet, for direction to register a case. Pursuant to the direction given by the learned Magistrate, the present complaint was registered in Crime No.419 of 2014 under Sections 406, 420, 506(i) r/w 120(b) IPC, against the accused persons viz., 1)Leelabai, 2)Ajithkumar, 3)Vijayarani & 4)Marimuthu.

3.Now, the petitioners, who have been arrayed as A3 & A4, have filed the present petition before this Court seeking to quash the complaint in Crime No.419 of 2014.

4.The learned counsel for the petitioners submitted that on 11.02.2014 already the complaint was registered by the 1st respondent-Police in Crime No.83 of 2014 under Sections 406, 420 & 120(b) IPC against the accused persons viz., 1)Leelabai, 2)Ajithkumar, 3)Pathmachand @ Pathmaraj Jain, 4)Marimuthu. While so, again the second complaint was given on the same set of allegations only to harass the petitioners herein. The second complaint on the same set of allegations is not maintainable in the eye of law. The learned counsel for the petitioners has also relied upon the judgment reported in 2015(3) MWN (Cr.) 300 (K.R.Latha Vs. State, rep by Inspector of Police, 7th Team Central Crime Brnach, Vepery, Chennai) in support of his contention that the second complaint on the same set of allegations is not maintainable. Further, the learned counsel for the petitioners, by relying upon the judgment of the Hon'ble Supreme Court in W.P.(Criminal) No.149 of 2012, dated 08.04.2013, in the case of Amitbhai Anilchandra Shah Vs. The Central Bureau of Investigation & anr and contended that filing of second FIR and fresh charge-sheet is violative of fundamental right; and that even after filing of final report, if the investigating officer comes into possession of further information or material, there is no need to register a fresh FIR, he is empowered to make further investigation normally with the leave of the Court; but, there cannot be a second FIR and consequently there cannot be a fresh enquiry.

5.As second fold of submission, the learned counsel for the petitioners would further submit that the entire allegations in the complaint are civil in nature and it is only a civil dispute. Hence, the FIR is liable to be quashed. In this regard, the learned counsel for the petitioners has also relied upon the judgment of the Hon'ble Supreme Court in Crl.A.No.No.1868 of 2011, dated 27.09.2011, in the case of M/s.Thermax Ltd., Ors Vs. K.M.Johny & ors.

6.Per contra, the learned senior counsel appearing for the 2nd respondent/defacto-complainant submitted that in the instant case, the cause of action for filing the second FIR is totally different from the cause of action for filing the first FIR. Therefore, it cannot be said the second FIR has been filed on the same set of allegations. In this regard, the learned senior counsel appearing for the 2nd respondent would submit that the factual aspects of the present case would show that on 28.03.2013, the accused 1 & 2 viz., Leelabai and Ajithkumar had executed a sale deed in favour of one Marimuthu (2nd petitioner/A4). Hence, the complaint was registered as against the accused persons viz., 1)Leelabai, 2)Ajithkumar, 3) Pathmachand @ Pathmaraj Jain, 4)Marimuthu, in Crime No.83 of 2014 under Sections 406, 420 & 120(b) IPC. On coming to know about the registration of the said FIR, on the very next day, i.e, on 12.02.2014, another sale deed was executed by the accused 1 & 2 in respect of the remaining portion of the property in favour one Vijayarani, who is the wife of said Marimuthu. Therefore, offence was committed only after the registration of the earlier complaint. Under such circumstances, the FIR in Crime No.419 of 2014 registered on 10.10.2014, which was registered pursuant to the direction given by the learned Magistrate, cannot be construed as second FIR.

Thus, the learned senior counsel appearing for the 2nd respondent/defacto-complainant submitted that the judgments relied upon by the learned counsel for the petitioners cannot be made applicable to the facts of the present case.

7.With regard to the submission made by the learned counsel for the petitioners that the allegations made in the complaint are only civil in nature and the same would not constitute a congnizable offence, it is the reply of the learned senior counsel appearing for the 2nd respondent/defacto-complainant that a reading of the allegations made in the complaint would show that there is a clear intention on the part of the accused persons to cheat the defacto-complainant; therefore, it cannot be said that the allegations made in the complaint are only civil in nature. Thus, he sought for dismissal of the petition.

8.Keeping the submissions made on either side, I have carefully gone through the materials available on record.

9.From the perusal of the materials available on record, I find that on 12.12.2007, the 2nd respondent/defacto-complainant along with one Pathmachand @ Padmaraj Jain entered into a sale agreement with the accused 1 & 2 viz., Leelabai and Ajithkumar and the same was registered Doc.No.22/2008, dated 08.01.2008 and the total sale consideration was fixed as Rs.6 crores and he paid a sum of Rs.1 crores as advance towards sale consideration. An important condition in the said sale agreement is that the sale would take place within a period of three months from the date of vacating the tenants from the premises. But, according to the defacto-complainant, the accused 1 & 2 have not taken any step to vacate the tenants from the premises and subsequently, they colluded with the said Pathmachand @ Padmaraj Jain and cancelled the sale deed unilaterally without the knowledge of the defacto-complainant and executed another sale deed in favour of one Marimuthu (2nd petitioner herein) on 28.03.2013. Since the defacto-complainant raised objection, the sale deed dated 28.03.2013 executed in favour of the 2nd petitioner Marimuthu had been kept as pending document by the Sub-Registrar. Subsequently, the petitioner lodged a complaint and the same was registered in Crime No.83 of 2014 under Sections 406, 420 & 120(b) IPC against the accused persons viz., 1)Leelabai, 2)Ajithkumar, 3)Pathmachand @ Pathmaraj Jain, 4)Marimuthu, on 11.02.2014. On the very next day, ie., on 12.02.2014, on coming to know about the registration of the case, the accused 1 & 2 viz., Leelabai and Ajithkumar sold the remaining portion of the said land in favour of one Vijayaran (1st petitioner herein), wife of the said Marimuthu (2nd petitioner herein). Hence, the petitioner filed another complaint and the same was registered in Crime No.419 of 2014 under Sections 406, 420, 506(i) r/w 120(b) IPC, against the accused persons viz., 1)Leelabai, 2)Ajithkumar, 3)Vijayarani (1st petitioner) & 4)Marimuthu (2nd petitioner. It is the specific allegation of the defacto-complainant that the second sale was made at the instance of the 1st petitioner Vijayarani. A careful perusal of the complaint would show that on the date of registering the FIR in Crime No.83 of 2014 on 11.02.2014, the cause of action for lodging the complaint against the 1st petitioner Vijayarani was not in existence. The cause of action for filing the complaint against the 1st petitioner Vijayarani has arisen only on 12.02.2014 ie., on the next day of registering the FIR in Crime No.83 of 2014. Though in the FIR in Crime No.419 of 2014, earlier facts were referred to, the main allegation is only with regard to the instigation made by the 1st petitioner Vijayarani, in colluding with her husband on 12.02.2014, in purchasing the property. Therefore, I am of the considered opinion that at any stretch of imagination, the FIR in Crime No.419 of 2015 cannot be construed as a second FIR. It is relating to different offence. Hence, there is no embargo for registering the FIR in Crime No.419 of 2014.

10.It is another submission of the learned counsel for the petitioners that the allegations made in the complaint are civil in nature. But, from a perusal of the allegations made in the complaint, I find that as per the allegations, after coming to know about the registration of the FIR in Crime No.83 of 2014, second sale deed was executed by the accused 1 & 2 in favour of the 1st petitioner Vijayarani, only with an intention to cheat the defacto-complainant. Therefore, in my considered opinion, the allegation made in the complaint, *prima facie*, made out a cognizable offence. Since it is in FIR stage, the scope for quashing the FIR is very narrow. The present petition is very pre-mature in nature. As the investigation has not been completed, it is not a fit case to quash the FIR.

In fine, the criminal original petition fails and the same is dismissed. Consequently, connected Miscellaneous Petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

ssv

To,
1.The Inspector of Police,
Central Crime Branch,
Team XVIII Vepery,
Chennai-600 007.

2.The Public Prosecutor HighCourt,
Madras

+2 ccs to Mr.U.M.Ravichandran Advocate sr.69310
+2 ccs to Mr.M.Selvam, Advocate sr.69309

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and
M.P.No.1 of 2015

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