

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.12.2015

CORAM:

THE HON'BLE MR.JUSTICE R.SUBBIAH

Cr1.O.P.No.28608 of 2015  
and  
M.P.No.1 of 2015

1.Mahaveer  
2.Nihal Chand  
3.R.Mukesh Kothari  
4.M.Vijaya Kavar  
5.Priyadharshna ... Petitioners/A1,A2,A4,A5 & A6

Vs.

1.The Inspector of Police,  
Central Crime Branch, Team IX-A,  
Egmore, Chennai-600 008.  
2.P.Ramesh Babu  
3.P.Padmaja ... Respondents

Prayer: Petition filed under Section 482 of Cr.P.C.,  
praying to call for the final report / records in C.C.No.1780  
of 2015, dated 17.03.2015 on the file of the learned Chief  
Metropolitan Magistrate, Egmore, Chennai and to quash the same  
as illegal, arbitrary, time barred and against the law.

For Petitioners : Mr.A.Thiyagarajan, Senior Counsel  
for Mr.S.Ramesh Kumar  
For Respondents : Mr.C.Emalias, APP (For R1)  
Mr.Subba Reddy (For R2 & R3)

ORDER

This petition has been filed by the petitioners  
praying to quash the criminal proceedings in C.C.No.1780 of  
2015 pending on the file of the learned Chief Metropolitan  
Magistrate, Egmore, Chennai. The petitioners herein have been  
arrayed as Accused 1, 2, 4, 5 & 6 respectively in the said  
case.

2.The brief facts, as stated in the affidavit filed by  
this petitioner, inter alia, are as follows:-

2-1.The 2<sup>nd</sup> respondent has filed a complaint against  
the petitioners herein. As per the statement of the 2<sup>nd</sup>

respondent, he is a class-I civil contractor and the 1<sup>st</sup> petitioner/A1 is a financier. The 2<sup>nd</sup> respondent informed the 1<sup>st</sup> petitioner/A1 that he was allotted with a contract for carrying out construction work of Groybe at Enayam East under the Superintending Engineer-Anti Sea Erosion Division, Nagercoil and he requested the 1<sup>st</sup> petitioner/A1 for financial assistance and to undertake to furnish security. The 1<sup>st</sup> petitioner has also agreed for the same and though initially the interest rate was agreed at the rate of 36%, latter is was mutually agreed at the rate of 12% only and the same was calculated for all purpose.

2-2. On 17.05.2004, the 2<sup>nd</sup> respondent executed a power of attorney in favour of the 1<sup>st</sup> petitioner/A1 and registered the same as Doc.No.974 of 2004 on the file of the Sub-Registrar Office, North Chennai, relating to the properties specifically mentioned in the power of attorney and the said power of attorney was attested by the accused 3 & 4 (A3 died). On 27.04.2004, the 2<sup>nd</sup> respondent executed another power of attorney, which has been registered as Document No.256/2004 on the file of the Sub-Registrar Office, Kanyakumari District. On 21.11.2004, the 2<sup>nd</sup> respondent executed a promissory note by filling up the blank columus in his own handwriting for a sum of Rs.35,50,000/- and agreed to pay interest at the rate of 18%, which was subsequently reduced and fixed at the rate of 12%.

2-3. Based on the said power of attorneys executed by the 2<sup>nd</sup> respondent, the 1<sup>st</sup> petitioner/A1 has entered into the Sale Agreement with one Roop Chand Kothari (A3) relating to the property at Flat No.T5 3<sup>rd</sup> Floor Block No.H 76, T.Survey No.222/Part, Thiruvanmiyur, Chennai; but, the same was not materialized and the said sale agreement was cancelled and the advance amount was refunded to Roop Chand Kothari on 25.03.2008. Similarly, for the other property at Tirukalugundran, the 1<sup>st</sup> petitioner/A1 has entered into an agreement of sale with one Mukesh R.Kothari (A4 - 3<sup>rd</sup> petitioner herein); but, the same was also cancelled as transaction was not materialized and the advance amount was returned which was confirmed by the 2<sup>nd</sup> respondent.

2-4. Since the 2<sup>nd</sup> respondent did not come forward to make the payment, the 1<sup>st</sup> petitioner/A1 met the 2<sup>nd</sup> respondent during 3<sup>rd</sup> week of March, 2008 and asked to repay the amount of Rs.67,45,320/-, which was calculated with the interest and other dues. On 25.03.2008, the 2<sup>nd</sup> respondent has given a letter to the 1<sup>st</sup> petitioner assuring that the Power of Attorney executed by him in Doc.No.974/2004 is in force.

2-5. According to the 1<sup>st</sup> petitioner/A1, the 2<sup>nd</sup> respondent borrowed huge amount as loan from the 1<sup>st</sup> petitioner/A1 to complete the construction work given under

the contract of Groyne at Enayam East. The 2<sup>nd</sup> respondent admitted the execution of the registered power of attorney deeds. Based on the power of attorney the 1<sup>st</sup> petitioner/A1 entered into agreement of sale of the 2<sup>nd</sup> respondent's property with one Roop Chand Kothari (A3-died) and Mukesh Kothari (A4-3<sup>rd</sup> petitioner herein), which were subsequently cancelled by him. The interest rate was mutually agreed at the rate of 36% and latter on, it has been reduced to 12% and as on 31.03.2005, a sum of Rs.48,81,418/- was due calculated with interest at the rate of 12%. Thereafter, at the rate of 12% has been added upto 25.03.2008 and the 2<sup>nd</sup> respondent admitted to pay a sum of Rs.67,45,320/- and expressed his inability to settle the amount as on 25.03.2008. Therefore, he agreed and authorized the 1<sup>st</sup> petitioner to sell the properties based on the power of Attorney Doc.No.974/2004, dated 27.12.2005.

2-6.However, suddenly on 19.12.2008, the 2<sup>nd</sup> respondent herein issued a legal notice to the 1<sup>st</sup> petitioner. On 29.12.2008, the said legal notice was converted into criminal complaint. In fact, the Central Crime Branch Team No.16 enquired the matter and closed the complaint. Thereafter, the 2<sup>nd</sup> respondent along with the 3<sup>rd</sup> respondent filed a civil suit in C.S.No.289 of 2009 praying for a decree and judgment directing the defendants to redeem the mortgage and to return all the original title deeds, cheques and for consequential relief.

2-7.When the said suit is pending, again the 2<sup>nd</sup> respondent filed second complaint on 07.09.2009 before the 1<sup>st</sup> respondent-Police and the said complaint was registered as Crime No.519 of 2009 on 23.10.2009. The 1<sup>st</sup> respondent-Police has taken up the case and arrested the 1<sup>st</sup> petitioner on 21.08.2010. After completion of investigation, chargesheet was filed by the 1<sup>st</sup> respondent-Police and the same has been taken on file as C.C.No.1780 of 2015 on the file of the learned Chief Metropolitan Magistrate, Egmore, Chennai.

2-8.Now, the petitioners have come forward with the present petition seeking to quash the criminal proceedings.

3.Today, when the matter is taken up for consideration, the petitioners/accused and the 2<sup>nd</sup> respondent/defacto-complainant appeared before this Court, along with their respective counsel, and submitted that they have compromised the matter amicably and they have filed a compromise memo in the suits in C.S.Nos.289 of 2009 & 568 of 2011 pending between the parties. The parties have also produced a copy of the memo of compromise filed by them in the said Civil Suits. The 2<sup>nd</sup> respondent/defacto-complainant has no objection for quashing the impugned proceedings.

4.Heard both sides and and perused the materials available on record.

5.Considering the facts and circumstances of the case and in view of the compromise arrived at between the parties, I am of the opinion that the criminal proceedings in C.C.No.1780 of 2015 pending on the file of the learned Chief Metropolitan Magistrate, Egmore, Chennai, is liable to be quashed and accordingly, the same is quashed.

In fine, the criminal original petition is allowed. Consequently, connected Miscellaneous Petition is closed.

sd/-

Assistant Registrar(CO)

/TRUE COPY/

Sub-Assistant Registrar

ssv

To,

1.The Chief Metropolitan Magistrate,  
Egmore, Chennai.

2.The Inspector of Police,  
Central Crime Branch, Team IX-A,  
Egmore, Chennai-600 008

3.The Public Prosecutor,  
Madras High Court, Madras.

+1 CC to MR.S.Ramesh Kumar Advocate. SR.NO.66377

+1 CC to MR.P.SubbaReddy Advocate. SR.NO.66557

सत्यमेव जयते

Cr1.O.P.No.28608 of 2015  
and

M.P.No.1 of 2015

CO-GR

JD 29/01/2016

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