IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.07.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.OP No.414 of 2015
and
M.P.Nos.1 and 2 of 2015

1.A.L.Ramachandra
2.Jayanthi Ramachandra ...Petitioners

Vs

1.State by Inspector of Police
District Crime Branch
Coimbatore District
Crime No.48/2014.

2.Natarajan ...Respondents

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records relating to Cr.No.48 of 2014 on the file of the first respondent police, Coimbatore and quash the same as far as the petitioners are concerned.

For Petitioners : Mr.N.R.Elango,
Senior Counsel
for Mr.I.Abrar Md Abdullah

For R1 : Mr.C.Emalias,
Addl.Public Prosecutor

For R2 : Mr.I.Subramaniam,
Senior Counsel
for Mr.A.Suresh Sakthi Murugan

ORDER

This petition has been filed to call for the records relating to Cr.No.48 of 2014 on the file of the first respondent police, Coimbatore and quash the same as far as the petitioners are concerned.

2. It is seen that on a complaint lodged by Natarajan, the respondent police registered a case in Cr.No.48/2014 on 08.09.2014 for an offence under Section 420, IPC against the petitioners herein. The crux of the allegation in the complaint is as follows:

3. The petitioners/accused are the owners of M/s VTX Industries Limited, holding a majority shares with them. The said company decided to sell five acres of land to the defacto complainant and they entered into an agreement dated 01.08.2012, whereby, the total sale consideration was fixed at Rs.6.25 crores to be paid by the defacto complainant in a phased manner. The petitioners/accused informed the defacto complainant that the property is under mortgage with Indian Overseas Bank and that, they would get a No Objection Certificate from the Indian Overseas Bank for selling the property and on the basis of this representation, the defacto complainant has been paying some amounts regularly and a total sum of Rs.3.75 crores has been paid by the defacto complainant to the petitioners/accused. The petitioners/accused have been representing to the defacto complainant that they have not received the No Objection Certificate, but, later it is alleged by the defacto complainant that they came to know that Indian Overseas Bank and other financial establishments had issued No Objection Certificate to the petitioners/accused sometime in March 2013, but, of course, with a condition that the petitioners/accused should deposit Rs.5.75 crores in the Escrow account. The defacto complainant realised that though the petitioners/accused had received about Rs.3.75 crores from him, they had not created Escrow account nor deposited the amount in the Escrow account.

4. It is the allegation of the defacto complainant that, the petitioners/accused have been representing that they have not received the No Objection Certificate and on that representation, the petitioners/accused have been receiving money from the defacto complainant on the promise that the No Objection Certificate will be obtained. Thus, the contention of the defacto complainant that the petitioners/accused, after receiving a huge sum of Rs.3.75 crores, did not deposit the amount in the Escrow account nor came forward to return the amount, requires a thorough investigation.

5. Whether there has been deception at inception is a question of fact, which cannot be decided while dealing with an application for quashing an FIR. The parameters for quashing an FIR has been laid by the Supreme Court in State of Haryana vs. Bhajan Lal [AIR 1992 SC 604] and the facts of this case does not pass muster the law laid down therein.

6. The respondent police have also filed counter, wherein it is stated as follows in paragraphs 6 and 7:

> "6. Further, the petitioners/accused (A1 & A2) informed that the said property appears to

have been mortgaged by Indian Overseas Bank and other banks and also informed that they will get no objection from Indian Overseas Bank as lead Bank to release the property from mortgage. Believing the words of the petitioners/accused (A1 & A2), being the petitioners/accused (A1 & A2)'s company a listed company, the complainant entered into an agreement and later the said agreement was extended for three times till 15.04.2013 after obtaining NOC dated 11.03.2013 from the Indian Overseas Bank and by suppressing the said NOC the petitioners/accused (A1 & A2) further received a sum of Rs.2.75 crores on two occasions such as 12.10.12 and 08.04.2013 with an intention to cheat the complainant and failed to open a Escrow account to deposit the money received from the complainant with an dishonest intention for which the subject property was under SARFAESI by the bank officials.

7. The above act of the petitioners/accused is clearly reveals that the petitioners/accused (A1 & A2) induced the complainant to pay the advance from time to time and also suppressing the earlier receipt of the NOC from the lead bank and received a sum of Rs.3.75 crores in order to get personal gain and it is a criminal offence and not a civil nature."

In view of the above, this is not a fit case for quashing the proceedings and accordingly, this petition is dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(LA)

//True Copy//

Sub Assistant Registrar

gms

To

1.State by Inspector of Police
District Crime Branch
Coimbatore District

2.The Public Prosecutor
High Court,Madras.

2 CCs to Mr.A.Suresh Sakthi Murugan, Advocate SR.No. 33598

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TS (CO)
PSI (08.07.2015)