IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.04.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.No.6612 of 2015
and M.P.No.1 of 2015

1.L.Senthil Kumaran
2.C.Umasankar .. Petitioners

vs.

The Sub Inspector of Police
Central Crime Branch, Team - I
Vepery, Chennai 600 007. .. Respondent

Criminal Original Petition filed under Section 482 Cr.P.C. praying to set aside the order passed by the learned XI Metropolitan Magistrate, Saidapet, Chennai in Crl.M.P.No.4931 of 2014 in C.C.No.12387 of 2010, dated 27.01.2015 for producing the documents.

For Petitioner : Mr.V.G.Anbarasu

For Respondents : Mr.C.Emalias, APP

O R D E R

This petition has been filed challenging the order dated 27.01.2015 passed by the learned XI Metropolitan Magistrate, Saidapet, Chennai in C.C.No.12387 of 2010.

2. For the sake of convenience, the parties would be referred to as the de facto complainant, police and accused.

3. The de facto complainant lodged a complaint against the accused alleging that the accused had received Rs.53 lakhs from him for constructing and conveying an apartment in a gated community in the name "Sai Brindavan" and thereafter, the accused neither conveyed the apartment nor returned the money. On the complaint lodged by the de facto complainant, the police registered a case in Cr.No.362/2010 under Section 420 IPC and after completing the investigat6ion, the police filed a Final Report, which was taken on file as C.C.No.12387 of 2010 by the learned XI Metropolitan Magistrate, Saidapet.

3. After framing of charges, the prosecution examined six witnesses to prove their case and at that juncture, the accused filed a petition under Section 91 Cr.P.C. in Crl.M.P.No.4931 of 2014 in C.C.No.12387 of 2010 for a direction to the de facto

complainant to produce all the documents of the property in dispute and Income Tax Return of the de facto complainant. The trial Court heard the accused and the police, and by order dated 27.01.2015 in Crl.M.P.No.4931 of 2014 dismissed the same, aggrieved by which the accused has approached this Court to set aside the said order.

4. The learned counsel for the accused submitted that earlier the accused filed a similar petition in Crl.M.P.No.4645 of 2011 which was dismissed by the trial Court on 20.06.2013, on the reason that the de facto complainant had not admitted about the existence of the documents anywhere. Now the learned counsel for the accused submitted that the de facto complainant and his wife were examined as P.Ws.1 and 2 before the trial Court. They admitted in the cross examination that they have collected all the documents of the disputed property and they also obtained a legal opinion from their Advocate and only thereafter, they proceeded to purchase the said property for higher value. Therefore, the learned counsel for the accused submitted that those documents are essential in order to prove the innocence of the accused.

5. Now this Court has to see whether the documents that are called for by the accused are necessary for the just decision of the case. The allegations against the accused are that they had received Rs.53 lakhs from the de facto complainant on the promise that they will convey the apartment in the gated community and thus deceived the de facto complainant. The de facto complainant admitted that before giving Rs.53 lakhs, they perused the title deeds of the property in the office of the accused and they were made to believe that the accused are the owners of the property. It is seen that the apartment which was promised to be sold to the de facto complainant by the accused belong to one Shanmugam and in the application under Section 91 Cr.P.C., the accused are calling for those documents. This Court is not able to see as to how the documents of Shanmugam will be relevant for the accused to prove their innocence in this case. Similarly, the Income Tax Returns of the de facto complainant for the year 2009-2010 which the accused is seeking, will have no bearing on the case, on the defence taken by the accused in the teeth of the charges against the accused. The accused are charged for deceiving the de facto complainant by Rs.53 lakhs, on the promise that they will convey a property which does not belong to them. In fact, the de facto complainant who was examined as P.W.1, even fairly admitted in the cross examination that after the case was registered, the accused returned Rs.25 lakhs to the him.

6. In the light of this evidence, the prayer of the petitioner to call for documents that are not relevant to decide the case, is not sustainable. It is only a dilatory tactics that is being adopted by the accused for prolonging the trial and the Hon'ble Supreme Court in Dr.Rajesh Talwar and another vs. C.B.I. and another [(2013) 4 MLJ (Crl) 362 (SC)] has deprecated the practice of the accused invoking Section 91 Cr.P.C. for prolonging

the trial. In the State of Orissa vs. Debendra Nath Padi [2004 AIR SCW 6183], the Supreme Court has clearly held that Section 91 can be invoked only when the document that is called for is necessary and desirable in the context of the purpose for which it is required and that no roving or fishing enquiry can be permitted with the aid of Section 91 Cr.P.C. In Sidhartha Vashisht @ Manu Sharma vs. State (NCT of Delhi) [(2010) 2 MLJ (Crl) 1104 SC], the Hon'ble Supreme Court has stated that the Court should pass a reasoned order while disposing of an application under Section 91 Cr.P.C. In this case, the trial Court has gone deep into the nature and the claim of the accused and has rightly negatived the prayer of the accused. Thus, there is no serious illegality or infirmity in the order of the trial Court. Hence, this Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Deputy Registrar (Judicial)

/true copy/

Sub Asst. Registrar

gms

To

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

2.The Public Prosecutor
High Court, Madras.

1 cc to Mr.T. Vijayaraghavan, Advocate, Sr. 20742
1 cc to Mr.V.G. Anbarasu, Advocate, sr. 20791

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RJ (CO)
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