IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.10.2014
DELIVERED ON : 18.03.2015

CORAM:

THE HONOURABLE MR. JUSTICE C.T. SELVAM

Crl.O.P.Nos.23940 of 2013, 8291, 14071, 14072 and 14195 of 2014
and
M.P.No.1 of 2014 (in all petitions) &
M.P.No.2 of 2014 in Crl.O.P.No.8291 of 2014

Crl.O.P.No.23940 of 2013:

Tamil Nadu Teachers Housing &
Welfare Trust, represented by its Trustees,
1.M.Viswanathan
S/o.Muthunarayana

2.V.Sudhakar
S/o.M.Viswanathan

3.R.Balakumar
S/o.Ramanujam ... Petitioners/Accused

vs.

1. The State represented by
The Inspector of Police,
Land Grabbing Cell,
Kancheepuram District,
Kancheepuram - 631 501.

2. The State represented by
The Inspector of Police,
B5 Walajabad Police Station,
Kancheepuram District. ... Respondents 1 & 2

3. M/s.Inno Estates Private Ltd.
represented by Manager
Venkatesan
No.5, Giri Road,
T.Nagar, Chennai - 600 017. ... 3rd Respondent/De facto complainant

Criminal Original Petition filed u/s.482 of the Criminal Procedure Code to call for the entire records with regard to Crime

No.10 of 2013 on the file of the first respondent and quash the same.

Crl.O.P.No.8291 of 2014:

Inno Estates Private Limited
represented by its General Manager,
S.Venkatesan ... Petitioner/Respondent 1

vs.

Tamil Nadu Teachers Housing &
Welfare Trust represented by
1. M.Viswanathan
S/o.Muthunarayanan

2. V.Sudhakar
S/o.M.Viswanathan

3. R.Balakumar
S/o.Ramanujam

4. The Superintendent of Police,
Kancheepuram District,
Kancheepuram.

5. The Inspector of Police,
Land Grabbing Cell,
Kancheepuram. ... Respondents 4 & 5/
Respondents 2 & 3

Criminal Original Petition filed u/s.482 of the Criminal Procedure Code to call for the records in Crl.R.P.No.1 of 2014 on the file of learned Sessions Judge II, Kancheepuram and set aside the order dated 14.03.2014 and consequently confirm the order passed by learned Magistrate II, Kancheepuram, dated 19.12.2013 in Crl.M.P.No.3518 of 2013.

Crl.O.P.No.14071 of 2014:

C.V.Lakshmanan ... Petitioner/Accused 4

vs.

1.State represented by its
The Inspector of Police,
District Crime Branch,
Kancheepuram District,
Kancheepuram.
Crime No.13 of 2014 ... 1st Respondent/Complainant

2.S.Lakshminarayanan
S/o.Late D.Srinivasan ... 2nd Respondent/De facto Complainant

Criminal Original Petition filed u/s.482 of the Criminal Procedure Code to call for the records in Crime No.13 of 2014 on the file of first respondent and quash the same.

Crl.O.P.No.14072 of 2014:

Kalyan Jeyaprakash ... Petitioner/Accused 3

vs.

1.State represented by its
The Inspector of Police,
District Crime Branch,
Kancheepuram District,
Kancheepuram.
Crime No.13 of 2014 ... 1st Respondent/Complainant

2.S.Lakshminarayanan
S/o.Late D.Srinivasan ... 2nd Respondent/De facto Complainant

Criminal Original Petition filed u/s.482 of the Criminal Procedure Code to call for the records in Crime No.13 of 2014 on the file of first respondent and quash the same.

Crl.O.P.No.14195 of 2014:

Rajamannar Ramasamy
S/o.Late Shri.T.M.Ramaswamy ... Petitioner/Accused 2

vs.

1.State represented by its
The Inspector of Police,
District Crime Branch,
Kancheepuram District,
Kancheepuram.
Crime No.13 of 2014 ... 1st Respondent/Complainant

2.S.Lakshminarayanan
S/o.Late D.Srinivasan ... 2nd Respondent/De facto Complainant

Criminal Original Petition filed u/s.482 of the Criminal Procedure Code to call for the records in Crime No.13 of 2014 on the file of first respondent and quash the same.

Appearance:

For Petitioners:

Crl.O.P.No.23940 of 2013 : Mr.N.R.Elango, senior counsel, for
Mr.P.Rajamanickam

Crl.O.P.No.8291 of 2014 : Mr.A.Ramesh, senior counsel, for
Mr.V.S.Senthil Kumar

Crl.O.P.No.14071 of 2014 : Mr.Abudukumar Rajarathinam, for
Mr.G.Krishnakumar

Crl.O.P.No.14072 of 2014 : Mr.A.Ramesh, senior counsel, for
Mr.S.Ashok Kumar

Crl.O.P.No.14195 of 2014 : Mr.V.T.Gopalan, senior counsel,for
Mr.R.Bhagwat Singh

For Respondents:

Crl.O.P.No.23940 of 2013 : Mr.S.Shanmuga Velayutham
Public Prosecutor for R1 & 2.
Mr.A.Ramesh, senior counsel for
Mr.S.Ashok Kumar[R3]

Crl.O.P.No.8291 of 2014 : Mr.N.R.Elango, senior counsel, for
Mr.P.Rajamanickam
and S.Murugavel [R1 to R3]
Mr.S.Shanmuga Velayutham
Public Prosecutor for R4 & 5.

Crl.O.P.No.14071 of 2014 : Mr.S.Shanmuga Velayutham
Public Prosecutor for R1
Mr.N.R.Elango, senior counsel, for
Mr.P.Rajamanickam & S.Murugavel [R2]

Crl.O.P.No.14072 of 2014 : Mr.S.Shanmuga Velayutham
Public Prosecutor for R1
Mr.Venkatraman, senior counsel for
Mr.H.Manivannan [R2]

Crl.O.P.No.14195 of 2014 : Mr.S.Shanmuga Velayutham
Public Prosecutor for R1
Mr.N.R.Elango, senior counsel, for
Mr.P.Rajamanickam & S.Murugavel [R2]

C O M M O N   O R D E R

Courts are not to be treated as rich men's play grounds.

2. Petitioner in Crl.O.P.No.8291 of 2014 is the de facto complainant in case registered in Crime No.10 of 2013 for offences u/s.420, 465, 467, 468, 469 and 471 IPC on the file of Walajabad Police Station against the 'Tamil Nadu Teachers Housing and Welfare Trust' represented by three accused persons. Petitioners in Crl.O.P.No.23940 of 2013 are accused in such case and have sought quash thereof.

3. The case in Crime No.13 of 2014 stands registered for offences u/s.468, 471, 420 and 34 IPC r/w Section 82 of the Registration Act, at the instance of Tamil Nadu Teachers Housing and Welfare Trust against four persons. The accusation is against the complainant company in Crime No.10 of 2013, its associate companies/concern, its Directors and other persons connected. Of the four accused, three have moved Crl.O.P.Nos.14071, 14072 and 14195 of 2014 seeking quash of proceedings therein.

4. Hereinafter, Inno Estates Private Limited is referred to as 'Company' and Tamil Nadu Teachers Housing & Welfare Trust is referred to as 'Trust'.

5. Investigation in case in Crime No.10 of 2013 was transferred to the file of Inspector of Police, Land Grabbing Cell, Kancheepuram District, who filed a final report informing the case to be a 'mistake of fact'. The Company, had moved a direction petition in Crl.O.P.No.23171 of 2013 seeking transfer of investigation to the Deputy Superintendent of Police, CBCID, Kancheepuram and during the pendency of the said petition, the final report had been filed on 11.09.2013. The Company preferred a protest petition in Crl.M.P.No.3518 of 2013 before learned Judicial Magistrate II, Kancheepuram. Such Court under orders dated 19.12.2013, has directed further investigation in the case. The accused/representatives of Trust preferred Crl.R.P.No.1 of 2014 challenging such order before learned Sessions Judge II, Kancheepuram. The same was allowed and hence, Company has moved Crl.O.P.No.8291 of 2014 challenging such finding. That in allowing Crl.R.P.No.1 of 2014, under orders dated 14.03.2014, learned Sessions Judge II, Kancheepuram, fell into error inter alia in placing reliance on the judgment of the Apex Court in Reeta Nag v. State of West Bengal & Ors. [2010 Crl.L.J. 2245], to hold that Magistrate has no power to order further investigation under section 173(8) Cr.P.C. need not hold us long. This Court may proceed to inform why both complaints are found to be abuses of process of law. For such purpose, it would be useful to extract both complaints.

6. The complaint in Crime No.10 of 2013 on the file of Walajabad Police Station (translated) reads thus:

> "Sir, I am working as Assistant Manager in M/s.Inno Estate Private Limited. I have been given authorization to file this complaint before the police. Our company is engaged in the business of purchasing vast extent of lands, preparing lay out and selling the same. Our company (M/s.Inno Estates Pvt. Ltd) and our sister concern (M/s.Inno Development Management com. Ltd.) own property measuring 52 acres and 13 cents at Kattavakkam, Kancheepuram District. Informing that Tamil Nadu Teachers Housing and Welfare Trust would purchase the lands after development and promotion by paying the entire cost and that on obtaining Power of Attorney that they would sell the same to its members, one Viswananthan, trustee of Tamil Nadu Teachers Housing and Welfare Trust and other trustees viz., Sudhakar and Balakumar approached our company and visited our property and it was agreed to pay a sum of Rs.15,00,000/- to the accused Trust through our sister concern M/s.Inno Development Management Com. Ltd., towards development and promotion. Upon the representation of the Trust that it would achieve the development and promotion process within the stipulated time and that it has sufficient funds to purchase the property, a Memorandum of Understanding was entered into between our company and the Trust on 09.12.2010. As agreed, the accused Trust should have completed the development and promotion and paid the entire amount to our Company by 30.10.2011. Instead of doing so, the accused Trust sought extension of time and a further supplemental agreement, was entered into on 19.04.2012. Our company, through our sister concern M/s.Inno Development Management Com. Ltd., has paid a sum of Rs.7,00,00,000/- (Rupees Seven Crores) to the accused Trust towards development and promotion. As per the agreement, the accused Trust has to inform us of the development and promotion Company by filing a detailed report. However, the accused Trust neither filed a report nor completed the development and promotion but misappropriated our monies. Further, as per the supplemental agreement, the accused Trust has to pay Rs.34,15,92,825/- on or before 31.07.2012. However, the accused Trust, without effecting payment, delayed the process for reasons unacceptable. We caused enquiries and came to know that the accused intention to cheat us,

without effecting payment and without obtaining Power of Attorney or right over the property, created some forged sale agreements to gain wrongful profit stating that it was the owner of the property and thereby, spoiled our reputation. In Collusion, the accused, misrepresenting that they were the owners of the property, cheated many persons and misappropriated amounts to the tune of Rs.80,00,000/-. We came to know through one V.Arumugam that on 31.07.2012, the accused entered into a sale cum construction agreement with him by affixing signatures as if they were the real owners of the property. Likewise, without any authority, by showing our lands, the accused had entered into sale agreements with many persons and misappropriated monies. Persons, numbering 43, who had been cheated like Arumugam, has caused notice to our company. Thus, the accused has spoiled our reputation and business. The accused, without any authority or right over the property and with an intention to cheat our company and some innocent persons, misrepresented themselves as the real owners and misappropriated huge sums. Further, we do not know how many persons have been cheated like this by the accused. Our Real Estate Business is affected owing to notice caused upon persons with whom we entered into sale agreements. Hence, I request action against the above accused Viswanathan, Sudhakar, Balakumar and others who have colluded with them in committing the offence."

7. The complaint in Crime No.13 of 2014 reads thus:

"Respected Sir, Sub: To take appropriate action against M/s.Rajamannar Ramasamy, C.V.Lakshmanan & Kalyan Jeyaprakash for committing offences of cheating, fabrication of records etc., regarding. I am working as Manager in M/s.Tamil Nadu Teachers Housing & Welfare Trust having its registered office at No.36/1, North Usman Road, T.Nagar, Chennai - 600 017. The Board of Trust has given me its authorisation to file this complaint against the above said persons. The above named Trust has been formed with the sole object of facilitating purchase of house sites and to construct independent houses and apartments to teachers working in various schools and colleges and other educational Institutions and also to their family members and their nominees. Our Trust has completed more than 40 projects in Tamil Nadu and Karnataka. In the year 2010 through one Shri. Ravi Govarthan, a real estate consultant M/s.Rajamannar Ramasamy, Kalyan Jeyaprakash and C.V.Lakshmanan approached our Trust. Mr.Rajamannar Ramasamy introduced himself as a landlord and told that he is a resident of No.488 Main Road, Erode District, Kunnathur - 638 103, Tamil Nadu, Kalyan Jeyaprakash and C.V.Lakshmanan introduced themselves as partners of Mr.Rajamannar Ramasamy and told that they are residents of Chennai. M/s. Rajamannar Ramasamy, C.V.Lakshmanan and Kalyan Jeyaprakash told that they own around 350 acres of agricultural lands at the villages namely Kattavakkam, Puzhuthivakkam, Kanthur and Vilagam situated at Kancheepuram District, Tamil Nadu and they wanted our Trust to develop their agricultural lands by getting necessary approvals from the government. After our trust accepted the proposal of M/s.Rajamannar Ramasamy, C.V.Lakshmanan and Kalyan Jeyaprakash they revealed that the above said lands were purchased in the names of the following companies, in which Mr.Rajamannar Ramasamy is a Director and major Shareholders, and M/s.C/V.Lakshmanan and Kalyan Jeyaprakash are the other Directors i) M/s. Inno Estate Private Limited, ii) M/s. Inno Real Private Limited, iii) M/s.Dharshini Industries, iv) M/s.Inno Infra Private Limited, which is now changed as Oragadam City Developers Private Limited and v) M/s. Broad Field Developers Private Limited. Thereafter our trust entered into memorandum of understanding with the above said 5 companies. Subsequently, agreements and supplemental agreements were also entered between our trust and Rajamannar Ramasamy's companies. After entering into the above said agreements, our trust has done all the works stipulated in the agreements and later when purchasers complained that the name of the Taluk was wrongly mentioned in the schedule of property portion of the document given by the companies owned by Mr.Rajamannar Ramasamy, our trust requested to rectify the same. But instead of rectifying the above serious issue, Mr.Rajamannar Ramasamy in order to gain more profit and to enter into an agreement with some other third party, want only failed to rectify the said serious issue and as a result of which the financial institutions stopped granting loans to the prospective purchasers and this in turn resulted in non-payment of a part of the balance payment agreed in the agreements. By showing this, Mr.Rajamannar Ramasamy's above said 5 companies filed original applications before the Hon'ble High Court in O.A.Nos.681/2010, 682/2010, 676/2012, 810/2012 and 862 of 2012 and obtained interim orders against our trust. Against this our trust moved appeals before the Hon'ble High Court in O.S.A.Nos.395/2012, 171/2013, 172/2013, 207/2013 and 208/2013 and the division bench of the Hon'ble High Court in the appeals has directed to approach the arbitration tribunal. While so, in the month of September 2013, one Shri.K.Murali who has intended to purchase plot No.10 in "Teachers Oragadam West City", Kattavakkam Village, Kancheepuram District (a layout which was formed as a result of the agreements entered between the trust and Rajamannar Ramasamy's companies) and who has also entered into a sale agreement with our trust on 05.08.2013 came to our office and told that he came to know from the official website of M/s.Inno Group holding that the owner of the original agricultural lands, (i.e.,) Mr.Rajamannar Ramasamy is a "Belgium National of Indian Origin" living in Belgium since 1991 and he is not a Indian National and he also further said that as such, he is prohibited in purchasing agricultural lands in India. After coming to know this, our trust verified the official website of M/s. Inno and came to know that Mr.Rajamannar Ramasamy is a Belgium national. According to the official website of M/s. Inno, Rajamannar Ramasamy along with another Belgium national one Sajid Sathak had founded M/s.Inno Group in close co-operation with one Laurens Nariana (a Dutch National of Indian Origin). On further verification, our trust came to know that Mr.Rajamannar Ramasamy by making false declaration and placing false documents has obtained PAN Card on 06.02.2008, from the income tax department. Further, in his declaration made in the application for allotment of "Director Identification Number (DIN)", he made false declaration that he is an Indian National and he has also falsely declared that he is permanently residing at No.488, Main Road, Erode, District Kunnathbur, Tamil Nadu 638 103, India. Mr.Rajamannar Ramasamy has made this absolute false statement before the MCA DIN Cell, Ministry of Corporate Affairs Department. Believing and false declaration of Mr.Rajamannar Ramasamy, the Government on 14.10.2008, approved his application for "Director Identification Number" (DIN) and allotted him the DIN Number in "DIN 02364920". After obtaining the said false DIN Number on

14.10.2008 by falsely stating that he is an Indian National on 24.12.2008 Mr.Rajamanar Ramasamy showing himself as Director formed a private limited company namely M/s.Inno Infra Private Limited. On 24.12.2008 he filed the memorandum of association before the registrar of companies by falsely declaring that he is an Indian national. Based on this false declaration made by Rajamannar Ramasamy on 06.01.2009, the registrar of companies issued the “Certificate of Incorporation” to M/s.Inno Infra Private Limited. He is repeated his fraudulent acts in Form-32 also, which he has filed before the Registrar of companies. Here he has given false residential address viz., No.488 Main Road, Erode District, Kunnathur, Tamil Nadu 638 103, India and suppressed his status of Belgium nationality before the Registrar of Companies. Mr.Rajamannar Ramasamy has floated the above said company namely M/s.Inno Infra Private Limited by concealing that he is a Belgium National only for the purpose of purchasing agricultural lands and to do real estate business in India which is prohibited under law. It is only for this purpose Mr.Rajamannar Ramasamy and his associates have fabricated records by placing false facts. Subsequently through this M/s.Inno Infra Pvt. Ltd., which was formed with the help of fabricated documents, Mr.Rajamannar Ramasamy has purchased more than 100 acres of agricultural lands in Kancheepuram District, Tamil Nadu and started doing real estate business. Rajamannar Ramasamy declared that he is an Indian National residing at 488, Main Road, Erode District, Kunnathur, Tamil Nadu, India 638 103 before the Income Tax Department on 06.02.2008, before the Ministry of Corporate Affairs (MCA DIN Cell) on 14.10.2008 and before the Registrar of Companies on 24.12.2008. Thereafter Rajamannar Ramasamy has given his true nationality before the Tamil Nadu Registration Department on 28.05.2009, wherein he claimed that he is a Belgium National. On 28.05.2009 in Document No.2348 of 2009, Rajamannar Ramasamy in the name of his Company M/s.Inno Infra Private Limited purchased 3 acres and 55 cents of agricultural lands comprised in Survey No.7 in Vilagam Village, Walajabad Taluk, Kancheepuram District and registered it before SRO, Walajabad. In the said sale deed he represented the company as its Director and at the time of this land registration, for his personal identification purpose, he produced his Belgium Passport (Passport No.EH509671). Thus, it is clear Rajamannar Ramasamy is a Belgium National. From this it is clear that Rajamannar Ramasamy has made false declaration and fabricated documents before Income Tax Department, Ministry of Company Affairs etc., Subsequently on 03.11.2009, Mr.Rajamannar Ramasamy has filed his Form – 32 for his another company namely M/s.Inno Estates Pvt. Ltd., before the Registrar of Companies. In that Form – 32 also he has given his false residential address viz. "488, Main Road, Erode District, Kunnathur, Tamil Nadu, India 638 102". In the same Form – 32 he also falsely stated that he is an "Indian National". Again on 13.11.2009 when he filed his Form 32 before the Registrar of Companies for his other company namely M/s.Inno Real Private Limited, he falsely declared that he is an Indian National. In the same way on 24.11.2009 when he filed his another Form 32 before the Registrar of Companies for his yet another company namely M/s.Broad Field Developers Private Limited, again he falsely declared that he is an Indian National. After this, on 15.09.2010, in Doc.No.4780/2010 he has purchased 1 acre and 60 cents of agricultural lands in S.No.456/3 and 51/1 part at Nathanallur and Katavakkam Village, Kancheepuram District in the name of his above said company Ïnno Estate Private Limited" and the same was registered before S.R.O, Walajabad. In this sale deed, Mr.Rajamannar Ramasamy represented the said company as its authorized signatory and here he has given his residential address as follows "Mr.Rajamannar Ramasamy, aged about 55 years, S/o. Late Sri. T.M.Ramasamy, residing at Quinten Matsijslei 4, B 2018 Antwerp, Belgium". In the same sale deed, he has also showed a false PAN Number (PAN No.AACC11542A) as his personal identification proof. Thus it has become very clear that by making all the above fabrications and providing false particulars, Mr.Rajamannar Ramasamy and his company have committed offences of cheating and fabrication of records. In the same way on 15.09.2010, Mr.Rajamannar Ramasamy has purchased agricultural land in Kancheepuram District in the name of his company M/s.Inno Estate Private Ltd., in Sale Deed Nos.4777/2010, 4778/2010, 4779/2010, 4781/2010, 4782/2010, 4783/2010, 4784/2010, 4785/2010, 4786/2010, 4787/2010, 4788/2010, 4789/2010, 4790/2010, 4791/2010, 4792/2010, 4793/2010, 4794/2010, 4795/2010, 4796/2010, 4797/2010, 4798/2010, 4799/2010, 4800/2010, 4801/2010, 4802/2010, 4803/2010, 4804/2010, 4805/2010, 4806/2010, 4807/2010, 4808/2010, 4809/2010, 5429/2010, 5635/2010 and 6575/2010. All these Sale Deeds were registered before S.R.O., Walajabad. In the above Sale Deeds he clearly stated that he is residing at "Quinten Matsijslei 4, B 2018 Antwerp, Belgium. Further, in the same sale deeds for the purpose of his personal identification proof instead of giving his PAN Card, he has given some other PAN Card. Apart from these Sale Deeds, they have also registered more than 100 Sale Deeds in Kancheepuram District, Tamil Nadu in the same way by giving false and untrue facts. As pointed out earlier, our trust came to know that in the application for allotment of DIN, Mr.Rajamannar Ramasamy has given his PAN Number as AMUPR6293E and in the sale deeds registered before S.R.O, Walajabad, he has given PAN No.AACC11542A as his personal identification document. Thus it has become clear that he has given false particulars before the government authorities. Because Mr.Rajamannar Ramasamy is a Belgium National of Indian Origin and as he cannot purchase agricultural lands in India as the same is prohibited by law, Mr.Rajamannar Ramasamy conspired with C.V.Lakshmanan and Kalyan Jayaprakash, formed the Companies by giving false particulars and creating false documents and through these bogus companies he purchased agricultural lands in India. It is only for this, in the companies which he has started, Mr.Rajamannar Ramasamy is holding 99.99% shares and the remaining negligible 0.01% share is given to the other "name-sale Indian Directors". The above facts show that Mr.Rajamannar Ramasamy is habitually involved in the commission of serious offences. He has committed the offences repeatedly more than 100 times. Rajamannar Ramasamy made these false documents only to claim shares in Indian companies and with the intention to commit fraud i.e., to purchase agricultural lands against law to do real estate business, and to enter into agreements with the trust, because Rajamannar Ramasamy is well aware that with Trust's good reputation in the market, he can easily convert the agricultural lands into residential plots and sell the same to general public and earn profits. Thus he lured the trust and used its good reputation to attain his target. After the trust did everything, when strong demand arose for the plots and when general public opted to buy the plots, because of trust's good reputation, Rajamannar Ramasamy by refusing to rectify the error in the documents, cleverly thrown away the trust from the business and completely taken away all the fruits of the transaction. Without knowing his criminal background, our trust honestly believing that he is an Indian National, entered into agreements with

Mr.Rajamannar Ramasamy's companies and sustained a huge loss of more than Rupees 8.34 crores and because of his further fraudulent acts, the income of the trust was also lost. If Mr.Rajamannar Ramasamy and his associates would have revealed the true nationality of Mr.Rajamannar Ramasamy, our trust definitely would not have entered into the above said agreements and sustained this huge loss of money and reputation. Apart from this, because of these fraudulent acts of Mr.Rajamannar Ramasamy, the agricultural lands purchased by his bogus companies will become legally invalid and there is every possibility of confiscation of these agricultural lands. Then ultimately the purchasers who purchased the lands may also lose their lands and as a result, it is likely to cause serious damage to our trust's hard earned reputation. When our trust officers met C.V.Lakshmanan and enquired about these illegalities, it is C.V.Lakshmanan who has clearly told that Rajamannar Ramasamy with the help of his associates obtained fabricated PAN Card, false DIN Number Certificate etc., and also told that the trust can do nothing against Rajamannar Ramasamy of their company. Because of C.V.Lakshmanan's this kind of impudence and arrogance the illegal acts committed by Rajamannar Ramasamy and his associates got confirmed. I very respectfully state that as our trust has now only confirmed the serious offences committed by Mr.Rajamannar Ramasamy and his associates, our trust was not in a position to place these startling facts in the earlier proceeding in O.As and O.S.As before the Hon'ble High Court. This is our first complaint about the commission of offences like cheating and fabrication of records committed by Mr.Rajamannar Ramasamy and his associates. M/s. C.V.Lakshmanan and Kalyan Jayaprakash who are the other name sake directors in Mr.Rajamannar Ramasamy's companies, even though well aware that Mr.Rajamannar Ramasamy is a Belgium National want only concealed the true nationality of Mr.Rajamannar Ramasamy. After conspiring, they gave false facts before MCA DIN Cell, Registrar of Companies, Sub-Registrar of Walajabad and other Government departments. Thus, M/s. Rajamannar Ramasamy, C.V.Lakshmanan and Kalyan Jayaprakash have jointly committed offences under Sections 420, 468 and 471 IPC and Section 82 of the Registration Act. Hence, I therefore request your good office to take appropriate action against M/s.Rajamannar Ramasamy, C.V.Lakshmanan and Kalyan Jayaprakash and their other associates in accordance with law and render justice."

8. Heard learned Senior Counsel Shri.V.T.Gopalan, Shri.Venkatraman, Shri.N.R.Elango, Shri.A.Ramesh, learned counsel Shri.Abudukumar Rajarathinam and Shri.S. Shanmugavelayutham, learned Public Prosecutor. Perused the records.

9. Shri.A.Ramesh, learned senior counsel, contended that when the Company's protest petition had been allowed, the order of further investigation having been made by a Court having jurisdiction could not have been interfered with. Learned Sessions Judge II, Kancheepuram, had fallen into error in relying on the decision of the Apex Court in Reeta Nag v. State of West Bengal & Ors. [2010 Crl.L.J. 2245] which no longer was good law given the decision in Vinay Tyagi vs. Irshad Ali alias Deepak and others [2013 (5) SCC 762].

10. Shri.V.T.Gopalan, learned senior counsel, submitted that investigation in the case in Crime No.10 of 2013 had erroneously been closed on the basis that arbitration proceedings between parties were pending. Learned senior counsel submitted that Company's complaint had been thrown out, whereas on that of the other side, a person belonging to the Company had been arrested. Clauses 4.8 and 4.9 of the Agreement dated 09.12.2010, entered into between parties read thus:

"4.8 - TRUST shall from time to time furnish to INNO and IDMC progress and status report of its achievement in the discharge of its obligations, including, without limitation on its status in securing approvals, Development and Completion of the Project and also furnish copies of all the applications made by it to all relevant and applicable statutory authorities and local bodies.

4.9 - TRUST shall not do or suffer or cause to be done any act, deed or thing which will derogate from the responsibilities conferred on it by these presents, nor shall it at any point of time create any charge, or lien, clog, encumbrance, hypothecation, mortgage, sale, pre-emptive rights, licence, lease or exchange or agreement for sale or otherwise raise any loans or securtise the Schedule Land or this Agreement with any lenders, banks or third parties nor shall suffer or incur any attachment or the appointment of any receiver or custodian in respect of the Schedule Land by way of its acts of commission or omission de hors this Agreement."

11. Clauses 4.8 and 4.9 of the said Agreement precluded the Trust from in any manner creating any charge or third party interest over the property and immediately upon having knowledge of agreements for sale cum construction entered into by the opposite party in violation thereof, the Company had cancelled the agreement. Learned senior counsel would draw our attention to the order of this Court passed in O.A.No.676 of 2012 and A.No.3762 of 2012 dated 11.09.2012, applications for interim injunction sought by the Company and vacation of the interim order therein by the Trust, wherein it had been observed as follows:

> "21. ... Further, when the agreement is only for sale of the land, the conduct of the respondent trust in entering into sale cum construction agreement involving third party/builder for putting up construction in the land is totally without any right to do so, and totally in violation of the assurance and undertaking given under the contract and an act adverse to and affecting the right of the owner/company. Further, the failure to make payment is also contrary to the assurance that the trust is possessed of sufficient funds to carry out the project in question within the time schedule."

12. Mr.Abudu Kumar Rajarathinam, learned counsel, submitted that both parties would be bound by the written contract. The Company was a Foreign Direct Investor while the accused was a regular Trust. Upon the Trust approaching the Company, the Company agreed to pay Rs.15 lakhs per acre towards development work, approval etc. Company was particular that there be no charge upon their property. Upon receipt of payment, Company had issued Powers of Attorney in favour of the Trust. Misusing the same, the Trust had entered into agreement of sale with 43 persons claiming to be the vendor. On coming to know thereof, the Company had cancelled the agreement and taken recourse to arbitration. The initial agreement between parties dated 09.12.2010 informed that the Trust was possessed of sufficient funds for achieving the development of the property within an agreed time frame and solely relying on the representation of the Trust, the Company had entered upon the agreement. Therefore, the Company had entered upon the agreement in the genuine belief that the representation of the Trust being

possessed of funds was true. In abuse, the Trust had entered into sale agreements.

13. Shri.Venkatraman, learned senior counsel for second respondent in Crl.O.P.No.14072 of 2014, submitted that the basic dispute was one between land owner and developer. Against the order relied upon by Shri.V.T.Gopalan, learned senior counsel, O.S.A.No.395 of 2012 had been preferred and therein under orders dated 18.10.2012, the matter had been left to the decision of the arbitrators observing thus:

> "4. The appellant, aggrieved by the order of the learned single Judge, has filed the present appeal on the ground that the learned Judge even though has found that there is a prima facie case, which justifies the termination of agreement and therefore, the first respondent is entitled for injunction, there is a finding given to the effect that the termination of agreement is justified. Whether the termination is justified or not is a matter to be decided by the Arbitrators. It is also admitted that arbitrators have been appointed by both the parties and the Arbitrators among themselves have chosen an umpire and the matter is under process.
>
> 5. It is the contention of the learned senior counsel for the appellant that as an agent, the appellant has already incurred expenses to an extent of Rs.4.00 crores apart from the additional amount of Rs.2.00 crores after adjusting the amount payable to both the parties.
>
> 6. In such view of the matter, we are of the view that the Arbitrators are directed to be proceeded further independently without being influenced by any of the observation made by the learned judge however, to the condition that the first respondent shall provide a Bank guarantee for an amount of Rs.6.00 crores in favour of the appellant within a period of four weeks from the date of receipt of a copy of this order and initially, the said Bank guarantee shall be kept alive for a period of one year or till the disposal of the arbitration proceedings, whichever is earlier."

14. Learned senior counsel submitted that the principle of arbitration proceedings not being a bar to criminal proceedings is not of universal application. In preferring the complaint, the Company had suppressed the pendency of arbitration proceedings. Upon ascertaining the factual position, the case against the Trust

rightly had been closed as 'mistake of fact'. In allowing the protest petition, the Magistrate had fallen into error in stating that apart from the consideration of the pendency of arbitration proceedings, no specific reason had been stated by the investigating officer to support his finding of the complaint being 'mistake of fact'. Other reasons also had been informed in the final report.

15. Shri.N.R.Elango, learned senior counsel for petitioner in Crl.O.P.No.23940 of 2013 and respondents 1 to 3 in Crl.O.P.No.8291 of 2014, submitted that the parties had first entered into an agreement dated 09.12.2010 and thereafter, a further First Amendment cum Supplemental Agreement on 19.04.2012. The complaint against the Trust is that of it having entered into agreements for sale in violation of such agreement. Referring to one of the Agreements for Sale cum Construction dated 21.07.2012, learned senior counsel submitted that even therein there has been no representation of the Trust being the owner of the property. In such agreement, it specifically had been informed that the Trust/vendor was the Agreement Holder/Power Agent of M/s.Inno Estates Private Limited and other companies for development and sale of properties. The agreement specifically informed that the three principal companies absolutely were entitled to the properties/land. The very claim of the Trust was that it was empowered as an agent to develop the property and to obtain DTCP approval. No false claim had been made by the Trust. Upon the Company informing termination of the agreement under notice dated 13.08.2012, the Trust had cancelled all the agreements entered into with prospective purchasers and required such agreement holders either to await the settlement of dispute with the owner/Company or to have return of their advance monies. Referring to cash payment vouchers, learned senior counsel submitted that the persons, who had entered into the agreement for sale cum construction, had all opted to have return of their advance and the same had been complied with by the Trust. The Company approached this Court under section 9 of the Arbitration and Conciliation Act. The order of this Court passed in O.A.No.676 of 2012 dated 11.09.2012 had been set aside under orders in O.S.A.No.395 of 2012 dated 18.10.2012. Thereafter, the Company had preferred a complaint on 11.01.2013. The preference thereof was an abuse of process. In the light of the order of this Court in O.S.A.No.395 of 2012, it was not open to the investigating officer to go beyond the order of this Court to say that an offence of cheating stood committed.

16. Clause 3.5 of the Agreement dated 09.12.2010 informs that the Trust shall cause the sale of the plots in the sanctioned/approved layout to/among its members or its nominees for consideration to be paid to INNO as provided therein. Learned senior counsel also referred to Clause 4.3 of the Agreement which recorded the undertaking of the Trust to promote/cause sale of the

housing plots as aforestated and to remit the full consideration to Company and render all accounts, etc. The action of the Trust was in clear violation of the terms of agreement requiring it not to cause any third party interest over the Company's property. Upon cancellation of agreement by the Company, the Trust had caused notice to 43 persons and now informs of having repaid them. The question of whether more persons and more sums were involved are matters for investigation. After cancellation of the agreement with the Trust, the Company had executed sale deeds in favour of third parties. Owing to the wrongful act of the Trust in entering upon agreements for sale, the persons who had entered into such agreements with the Trust had caused notices to the Trust, the Company as also the purchaser informing themselves to be prior agreement holders and challenging the sale effected by the Company. The Company had thus been put to difficulties owing to the acts of the Trust. The Company had caused reply notices and in answer, one of the 43 persons, by name Senthilkumar informed thus:

> "1. I have not sent any notices to you either on 11.12.2012 or on 17.12.2012.
>
> 2. I do not know any advocate named Mr.K.S.Natarajan.
> 3. I have booked a plot bearing No.21 in the above said layout with the Tamilnadu Teachers Housing & Welfare Trust during September 2011 at the time of pre-launch period. The Trust issued receipts for the amounts paid by me. The Trust took no steps to register the above plot in my favour even after lapse of two months on receiving the entire sale consideration. The Trust delayed the registration process in spite of my several requests. Hence, I decided and requested for the refund of the amount paid by me due to their failures for registration of the plot in my favour. The Trust immediately refunded the entire amount after collecting back the receipts thereon."

17. Such was also a matter for investigation. Mr.Abudu Kumar Rajarathinam, learned counsel, submitted that under orders in Crl.O.P.No.23171 of 2013 dated 19.09.2013, this Court had indicated that as against closure of case as 'mistake of fact' the remedy for the Company lay by way of filing protest petition. The Company had taken such recourse and learned Judicial Magistrate II, Kancheepuram, under orders dated 19.12.2013, had thought it appropriate to order further investigation. Ignoring the order of learned Judicial Magistrate II, Kancheepuram and failing to see that the accused had no right to prefer a revision against the order on the protest petition directing further investigation, learned Sessions Judge II, Kancheepuram, had proceeded to allow the

revision preferred by the Trust. The Company had lost faith in the present investigating agency and hence, this Court while permitting further investigation, would direct transfer of investigation.

18. In response to query of this Court, learned counsel informed that no notices other than 43 referred to had been received by the Company.

19. Shri.V.T.Gopalan, learned senior counsel, submitted that receipts produced by the Trust seem to be of contemporaneous preparation and claim to have effected return of several lakhs of rupees. There was likelihood that they were forged. In any event the Trust would have to answer the Income-tax Department. Learned senior counsel would seek to explain that the Division Bench of this Court directed the Company to provide a bank guarantee in a sum of Rs.6 crores since the Trust had informed of having incurred expenses to the tune of Rs.4 crores as also that a further sum of Rs.2 crores was payable to it upon adjustment of amounts payable by one to the other. The said Bank Guarantee had lapsed and had not been renewed.

20. Learned Public Prosecutor submitted that learned Judicial Magistrate II, Kancheepuram, had directed further investigation for good reasons and learned Sessions Judge II, Kancheepuram, fell into error in entertaining a revision against such order at the instance of the accused. Submitting that respondents would abide by any directions of this Court, learned Public Prosecutor would inform that their presently woud be no need for transferring the investigation since the earlier investigating officer stood transferred. If necessary, the investigation may be monitored by a senior official.

21. All learned senior counsel placed reliance on several judgments. Being of the view that both parties have indulged in abuse of process in preferring complaints, this Court does not consider it necessary to consider the same.

22. The complaint registered in Crime No.10 of 2013 is seen to be malafide for the following reasons:

(i) The dispute essentially is of civil nature.

(ii) From the fact that in Agreements for Construction and Sale informing the Trust to be the vendor, a tale is sought to be spun of offences having been committed under Section 420 IPC - cheating and dishonestly inducing delivery of property, 465 IPC - Forgery, 467 IPC - Forgery of valuable security, will, etc., 468 IPC - Forgery for purpose of cheating, 469 IPC - Forgery for purpose of harming reputation and 471 IPC - using as genuine a forged document or electronic record. The very reading of the agreements for construction and sale clearly informs the fact of the Company being the owner of the property and of the Trust being an agent and holder of Power of Attorney.

(iii) Agreement dated 09.12.2010 between the Company and the Trust, does inform that the Trust shall cause sale of the plots in the sanctioned/approved lay out to/among its members or its nominees for the consideration to be paid to INNO 'as provied in this Agreement'.

(iv) Clause 4.3 informs:

> "Trust undertakes, accepts and covenants with INNO that, it shall promote/cause the sale of the housing plots in the approved layout on the Schedule Land among its members or its nominees in accordance with the scope of the Project and Complete the Project, among other things, by remitting the full sale consideration to INNO and render all accounts including reconciliation thereof to the entire satisfaction of INNO in respect of the approval, Development and sale of the Schedule Lands, strictly within the time frame envisaged in this Agreement i.e. on or before 30.11.2011."

Clause 8 of the First Amendment cum Supplemental Agreement dated 19.04.2012 also states so.

(v) the parties are engaged in arbitration proceedings before three Honourable former Judges of this Court.

(vi) Admittedly, no notice had been received from persons other than 43 persons who the Trust admits to having entered into agreements with. Whether in the face of initial Agreement and First Amendment cum Supplemental Agreement, the Trust was entitled to enter into sale agreements and what are the consequences of it so doing are matters best left to the Arbitrators to be decided along with the other disputes between parties. That the Trust claims to have refunded monies to the agreement holders and the company disputes such position really is of no consequence.

23. In case registered in Crime No.13 of 2014, the contention of learned counsel for the Trust is that in purchasing properties, the accused have violated Foreign Direct Investment norms which prohibited purchase of agricultural land by foreign nationals. It is alleged that Rajamannar Ramasamy, being a foreign national, had indulged in such wrong doing and other accused had aided him in doing so. It is also alleged that in effecting registration of various documents, such individual had furnished false Permanent Account Numbers and Director Identification Numbers and had falsely held himself to be an Indian national.

24. It has been submitted by learned senior counsel for the Trust that the company in whose name the documents stand registered is Inno Estates Private Limited. To screen his wrongful holding of property, Rajamannar Ramaswamy had floated the Company, holding 99.9% share therein.

24. It is the contention of learned counsel for the Trust that FEMA 21/2000-RB dated 03.05.2000 while permitting holding of immovable properties in keeping therewith, prohibited holding of agricultural land and that at the time of purchase by the Company, the properties were agricultural lands.

25. It is the contention of learned counsel for the Company that the press notice issued by Ministry of Commerce & Industry, Department of Industrial Policy & Promotion, permitted 100% Foreign Direct Investment under the automatic route in townships, housing, built-up infrastructure and construction-development projects (which include, but not be restricted to, housing, commercial premises, hotels, resorts, hospitals, educational institutions, recreational facilities, city and regional level infrastructure. The purpose of Company is development of Townships and towards such end, agreement had been entered into with the Trust.

26. It is contented by learned counsel for Company that upon realisation of the mistake regards the Director Identification Number committed by the staff of Rajamannar Ramaswamy, rectification had been effected under Form DIR 12. Similarly there have been some mistakes in producing proof of identity before registering authorities. No property had been purchased in the name of any individual. The property had been purchased only in the names of companies. The Trust, fully being aware of the persons they were dealing with, has resorted to the ruse of preferring complaint towards bringing the Company to terms in the arbitration proceedings.

27. The allegations in Crime No.13 of 2014 are of violations of:

(i) The Foreign Exchange Management Act.

(ii) The Companies Act.

(iii) The Indian Registration Act and

(iv) The Income Tax Act.

28. The Foreign Exchange Management Act, 1999 (FEMA) provides a separate mechanism to deal with contraventions thereof. Section 13 of FEMA provides for penalties. Provision is made for appointment of Adjudicating Authorities under Section 16, as also appeal against such authorities' finding to Special Director (Appeals) under Section 17. There also is provision for appeals to

the Appellate Tribunal against the finding of the Special Director (Appeals) as also against that of the Adjudicating Authority under Section 18 and when such authorities findings are not amenable to appeal before the Special Director (Appeals). There is further provision for appeals to the High Court under Section 38. Jurisidction of civil Court is barred under Section 34. Section 36 provides for Directorate of Enforcement as also appointment of Officers of enforcement.

29. Sections 37 and 38 read thus:

> '37. Power of search, seizure, etc. - (1) The Director of Enforcement other officers of Enforcement, not below the rank of an Assistant Director, shall take up for investigation the contravention referred to in section 13.
>
> (2) Without prejudice to the provisions of sub-section (1), the Central Government may also, by notification, authorise any officer or class of officers in the Central Government, State Government or the Reserve Bank not below the rank of an Under Secretary to Government of India to investigate any contravention referred to in section 13.
>
> (3) The officers referred to in sub-section (1) shall exercise the like powers which are conferred on income-tax authorities under the Income-tax Act, 1961 (43) of 1961) and shall exercise such powers, subject to such limitations laid down under that Act.
>
> 38. Empowering other officers. - (1) The Central Government may, by order and subject to such conditions and limitations as it thinks fit to impose, authorise any officer of customs or any central excise officer or any police officer or any other officer of the Central Government or a State Government to exercise such of the powers and discharge such of the duites of the Director of Enforcement or any other officer of Enforcement under this Act as may by stated in the order.
>
> (2) The officers referred to in sub-section (1) shall exercise the like powers which are conferred on the income-tax authorities under the Income-tax Act, 1961 (43 of 1961), subject to such conditions and limitations as the Central Government may impose.'

30. Contraventions by Companies are dealt with under Section 42 which reads thus:

> '42. Contravention by companies. - (1) Where a person committing a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:
>
> Provided that nothing contained in this sub-section shall render any such person liable to punishment if he proves that the contravention took place without his knowledge or tht he exercised all due diligence to prevent such contravention.
>
> (2) Notwithstanding anything contained in sub-section (1), where a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.
>
> Explanation. - For the purposes of this section -
>
> (i) "company" means any body corporate and includes a firm or other association of individuals; and (ii) "director", in relation to a firm, means a partner in the firm.'

31. It therefore is apparent that FEMA provides a self-contained code for dealing with the contraventions thereof. Also is it apparent that what FEMA envisages is penalties for contravention as distinct from prosecution for offences. Even enforcement of orders is to be effected through detention in civil prison. The Trust cannot complain of violation of FEMA and seek action under Chapter XII Cr.P.C. Responsibility of enforcement is entrusted to a higher hierary of officials.

32. All offences alleged against the primary member of the company, Mr.Rajamannar Ramasamy are under the Companies Act, 1956. Section 624 of the Companies Act, 1956 informed that every offence against such Act was deemed to be non-congnizable within the meaning of Code of Criminal Procedure.

33. At the worst, offences alleged against Rajamannar Ramasamy under the Income Tax Act can fall under Section 277, dealing with false statement on verification etc. Section 279-A of Income Tax Act informs such offences to be non-cognizable.

34. Furnishing of false information under the Registration Act is to be dealt with under Section 82 of such Act, which deals with penalty for making false statements, deliverying false copies or translations, false personation, and abetment. Section 83 of such Act informs that prosecution for offences under the Act may be commenced by the Registering Authority or with the permission of Inspector General of Police, the Registrar or the Sub-Registrar, in whose territories, district or sub-district, as the case may be, the offence has been committed. At best, Section 83 might not rule out the preference of a complaint by any other person but private complaint procedure would have to be adopted.

35. This Court is left with the allegation of the Trust that but for the misrepresentation of the Company and accused persons and suppression of facts thereby, it would not have entered into transactions which have exposed it to grave loss of money and reputation. Such allegations are to be taken with a pinch of salt and they, in the circumstances of the case, are found to be tainted with malafides.

36. The Apex Court in Dalip Singh v. State of Uttar Pradesh and others [2010 (2) SCC 114], has informed of a new creed of litigants who resort to falsehood and unethical means for achieving their goals.

37. In the result,

(i) Crl.O.P.No.23940 of 2013 shall stand allowed. The proceedings in Crime No.10 of 2013 on the file of The Inspector of Police, Land Grabbing Cell, Kancheepuram District, Kancheepuram - 631 501, shall stand quashed. Consequently, connected miscellaneous petition is closed.

(ii) In view of the order passed in Crl.O.P.No.23940 of 2013, Crl.O.P.No.8291 of 2014 shall stand closed. Consequently, connected miscellaneous petitions are closed.

(iii) Crl.O.P.Nos.14071, 14072 and 14195 of 2014 shall stand allowed. The proceedings in Crime No.13 of 2014 on the file of The Inspector of Police, District Crime Branch, Kancheepuram

District, Kancheepuram, shall stand quashed. Consequently, connected miscellaneous petitions are closed.

(iv) Both parties, viz., the Company and the Trust, are directed to pay a sum of Rs.1,00,000/- (Rupees One Lakh only) each in costs to the Tamil Nadu State Legal Services Authority (TNSLA), within a period of two weeks of the receipt of this order.

The Registry is directed to forward a copy of this order to the Member Secretary, TNSLA.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gm

To

1. The Inspector of Police,
Land Grabbing Cell,
Kancheepuram District,
Kancheepuram - 631 501.

2. The Inspector of Police,
B5 Walajabad Police Station,
Kancheepuram District.

3. The Superintendent of Police,
Kancheepuram District,
Kancheepuram.

4. The Inspector of Police,
District Crime Branch,
Kancheepuram District,
Kancheepuram.

5. The Public Prosecutor,
High Court,
Madras.

6. The Section Officer,
Criminal Section, High Court,
Madras.

7.The Member Secretary,
Tamil Nadu State Legal Services Authority,
Chennai.

+5cc's to Mr.V.Manoharan, Advocate, S.R.No.15482 to 15486
+1cc to Mr.G.Krishna Kumar, Advocate, S.R.No.15771
+1cc to Mr.S.Ashok Kumar, Advocate, S.R.No.15772
+1cc to Mr.V.S.Senthil Kumar, Advocate, S.R.No.15773
+1cc to Mr.R.Bhagawat Krishna, Advocate, S.R.No.15770
+1cc to the Public Prosecutor, S.R.No.15741

Crl.O.P.Nos.23940 of 2013, 8291, 14071, 14072 and 14195 of 2014

KJI(CO)
CA(07/04/2015)