IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Crl.O.P.No.28260 of 2015

and M.P.Nos.1 & 2 of 2015

Reserved on 18.12.2015

1. D.John
2. Shanthi John ... Petitioners/Accused

Vs

The Inspector of Police,
Central Crime Branch (TeamIII),
Vepery, Chennai-600 007. ... Respondent/Complainant

Criminal Original Petition filed under Section 482 Cr.P.C., praying to quash the charge sheet filed by the respondent in C.C.No.2845 of 2014 on the file of the XI Metropolitan Magistrate, Saidapet, Chennai.

For Petitioner : Mr.T.Sundar Rajan
For Respondents : Mr.C.Emalias,
Addl.Public Prosecutor for
Mr.K.M.Srirangan for
defacto complainant

O R D E R

The present criminal original petition has been filed praying to call for the records pertaining to C.C.No.2845 of 2014 on the file of the XI Metropolitan Magistrate, Saidapet and quash the same.

2. The petitioners, who are the husband and wife, arrayed as A1 and A2 in C.C.No.2845 of 2014 on the file of the XI Metropolitan Magistrate, Saidapet. The case of the prosecution is that the petitioners have entered into agreement of sale, dated 17.11.2012 with one V.R.Mukundhan, defacto complainant for purchase of the property situated at D.No.54/1,2,3 Ramakrishna

Mutt Road, Mandaveli, measuring 1008 sq.ft. which was under the mortgage with LIC Housing Finance Ltd., by suppressing the fact of earlier agreement entered by them with one Mr.Ajay Kumar in respect of the very same property. The total consideration of the sale was fixed at Rs.1.65 crores. Pursuant to the said agreement, the defacto complainant paid a sum of Rs.57,25,000/- including Rs.37,00,000/- paid on 9.1.2013 to the LIC Housing Finance Limited through Debt Recovery Tribunal-I, Chennai in order to save the property from being auctioned and later it was fully redeemed. Yet, the petitioners have not come forward to comply with the sale agreement and evading the registration. When the defacto complainant questioned the same, the petitioner/A1 issued three cheques, each for Rs.25 lakhs and when the said cheques were presented in the bank, the same were returned without being honoured. Hence, the defacto complainant lodged the complaint against the petitioners, which was registered as Crime No.348 of 2013 and subsequently on completion of the investigation, a charge sheet has been filed which was taken on file vide C.C.No.2845 of 2014 on the file of the XI Metropolitan Magistrate, Sadapet, Chennai. Now the petitioners have come forward with the present petition to quash the same.

3. The learned counsel appearing for the petitioners would submit that the transaction between the petitioners and the defacto complainant is only an agreement of sale, which is purely civil in nature and hence, the offence under Sections 406 or 420 IPC would not be attracted. He would further submit that the petitioners had given three cheques towards repayment of advance amount along with interest and the said cheques were received by the defacto complainant in acceptance and thereby he rescinded the agreement and therefore, the question of fastening the criminal liability does not arise in this case. Hence the learned counsel would submit that merely because the petitioners failed to comply with the sale agreement, it cannot be said that the petitioners have cheated the defacto complainant and no case for prosecution under Section 406 or 420 IPC was prima facie made out against the petitioners and therefore, the proceedings are liable to be quashed. In support of his contentions, the learned counsel relied upon a decision reported in "Nageshwar Prasad Singh @ Sinha versus Narayan Singh and another" reported in (1998) 5 SCC 694, wherein, the appellant/accused therein entered into an agreement of sale of land with the respondents and after receiving earnest money as part of sale consideration, the appellant was not willing to complete the bargain and the Hon'ble Supreme Court held that the liability, arising by the breach thereof, is civil in nature and not criminal. The learned counsel also relied upon the decision reported in "Dalip Kaur and others versus Jagnar Singh and another" reported in AIR 2009 SC 3191, wherein, it has been held by the Supreme Court that if the dispute between the parties was essentially a civil

dispute resulting from a breach of contract on the part of the appellants by non-refunding the amount of advance, the same would not constitute an offence of cheating.

4. Per contra, the learned counsel appearing for the defacto complainant, while drawing attention of this Court to the Agreement of sale entered into between the petitioners and the defacto complainant, submitted that as per Clause 15 of the agreement, the vendors, namely, petitioners assured that they have not entered into any similar agreement with any third party or parties in respect of the property and believing their words, the defacto complainant had parted with Rs.57,00,000/- and also redeemed the property which was mortgaged with the LIC Housing Finance Ltd., through DRT and after getting the property redeemed, the petitioners evaded the execution of sale deed in favour of the defacto complainant and therefore, there is clear intention of cheating. This would attract Section 406 and 420 IPC. Even the cheques given by the petitioners towards security, were subsequently got dishonoured on presentation. The learned counsel also invited the attention of this Court to the Clause 7 of the agreement, wherein, the parties agreed that till the sale execution, will not rent or lease the ground floor to any third party even though both the keys of the ground floor will remain with the purchasers, however, contrary to the same, the petitioners have rented the building and collected the amount. Therefore, there is clear intention of cheating on the part of the petitioners. The learned counsel also submitted that this Court granted bail to the first petitioner subject to the condition that he shall deposit 50% of the advance amount within a stipulated time, but he failed to deposit the same, resulting his arrest. Later, again the petitioner moved a petition for bail and expressed his willingness to deposit Rs.27,00,000/- and recording his statement, again bail was granted, but this time also, he has not paid the amount, but came forward with M.P.No.1 of 2014 seeking to modify the bail condition and while modifying the conditions, this Court permitted the petitioners to deposit initially Rs.5 lakhs and thereafter to deposit Rs.11 lakhs within one month. Thus, the learned counsel would submit that the intention of the petitioners right from the inception is only to cheat the defacto complainant and hence, he sought for dismissal of the petition.

5. The learned counsel for the petitioners, in reply, would submit that the factum the defacto complainant had received three cheques from the petitioners towards payment of advance amount along with interest, would show that he rescinded the agreement and thus, he reiterated his submission that it is a matter of civil in nature and not criminal.

6. Heard the learned counsel appearing for the petitioners and the defacto complainant and perused the entire materials available on record.

7. Though very many contentions have been raised on either side, this Court has to see whether the allegations made in the complaint against the petitioners would disclose the essential ingredients of offence of cheating? A reading of the entire case record, it would reveal that the defacto complainant alleged that the petitioners, having suppressed the earlier agreement of sale entered with one Ajay Kumar, again entered into agreement of sale with the defacto complainant, which is contrary to the Clause 15 of the agreement. Believing the words of the petitioners, the defacto complainant parted huge money and after receiving the money, the petitioners refused to come forward to execute the sale deed. However, on a perusal of the earlier agreement of sale said to have entered with one Mr.Ajay Kumar, I find that only the first petitioner is the signatory to the agreement and not the second petitioner, i.e. his wife. Therefore, even according to the defacto complainant, it is an admitted fact. Therefore, considering the same, I am of the view that the allegations made in the complaint as against the second petitioner are concerned, would not disclose essential ingredients of cheating and she is nothing to do with the suppression of earlier agreement. In such view of the matter, the second petitioner cannot be made liable to be prosecuted. Accordingly, the criminal proceedings in so far as the second petitioner concerned, are liable to be quashed.

8. As regards the first petitioner, it has been specifically alleged that he entered into agreement with the defacto complainant suppressing the earlier agreement entered with one Mr.Ajay Kumar, which in my opinion, would prima facie disclose the essential ingredients of offence of cheating. The contentions raised by the learned counsel for the petitioners to the effect that the transaction is in civil nature and failure to execute the sale deed in terms of the agreement, is a matter of civil dispute and not a criminal and that on receipt of the cheques issued by the petitioners, the agreement was rescinded by the defacto complainant and thereby there was no criminal liability on acceptance of the cheques by the defacto complainant, etc., can be accepted only when there was no earlier agreement. In this case, the first petitioner has entered into an agreement with the defacto complainant by suppressing the earlier agreement entered by him with one Mr.Ajay Kumar and it is not in dispute that the said earlier agreement was still subsisting at the time of entering the agreement with the defacto complainant. Hence, I am of the view that the proceedings as against the first petitioner cannot be quashed.

Accordingly, this Criminal Original Petition is allowed in part, quashing the proceedings in C.C.No.2845 of 2014 on the file of XI Metropolitan Magistrate, Saidapet, Chennai in so far as 2nd petitioner alone. As regards the first petitioner, this petition is dismissed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

Suk
To

1.The XI Metropolitan Magistrate,
Saidapet Chennai

2. -do- Thro The Chief Metropolitan Magistrate
Egmore, Chennai-8

3.The Inspector of Police,
Central Crime Branch (TeamIII),
Vepery, Chennai-600 007.

4.The Public Prosecutor
High Court Madras

+1 cc to Mr.K.M.Srirangan Advocate vide sr.2773
+1 cc to Mr.T.Sundar Rajan vide sr.2823

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