

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.09.2016

PRONOUNCED ON: 17.10.2016

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

Crl.O.P. No.17945 and 20312 to 20314 of 2010 (4 OPs)

Crl.O.P. No.13652, 13653 and 15425 of 2010 (3 OPs)

M.P. Nos.1 of 2010 (6 nos.) & 2 of 2010 (2 nos.)

1.G.Ratan Kumar
2.S.Ramesh Kumar ... Petitioners/Accused in
Crl.OP.17945/2010
C.Sudhandhiraseelan ... Petitioners/Accused in
Crl.OP.13652/2010
D.Ashok Kumar ... Petitioners/Accused in
Crl.OP.13653/2010
1.D.Ashok Kumar
2.Ratan Kumar ... Petitioners/Accused in
Crl.OP.20312/2010
P.S.Sathiyaseelan ... Petitioners/Accused in
Crl.OP.20313/2010
S.C.Pandian ... Petitioners/Accused in
Crl.OP.20314/2010
C.Sudhandhiraseelan ... Petitioners/Accused in
Crl.OP.15425/2010

Vs.

1.The State represented by
the Inspector of Police
Central Crime Branch-Team 1
Egmore, Chennai
(Crime No.99 of 2010) ... R1 in all Crl.OPs
2.Sameera Associates
represented by its Proprietor
S. Baskaran
S/o K. Srinivasan
Office No.292 A Arcot Road
Kodambakkam
Chennai 600 024 ... R2 in Crl.OPs.17945, 20312
to 20314 & 15425 of 2010

Prayer in Crl.O.P.Nos.17945, 20312 to 20314 & 15425 of 2010 :

Criminal Original Petition filed under Section 482, Cr.P.C. seeking to call for the records in Crime No.99 of 2010 on the file of the first respondent dated 26.02.2010 and quash the same as illegal, arbitrary, excess of jurisdiction and against the law.

Prayer in Crl.O.P.Nos.13652 & 13653 of 2010 :

To issue a direction calling for the records of the impugned order dated 14.06.2010, made in C.M.P.No.636 of 2010 in Crime No.99 of 2010 passed by the learned XI Metropolitan Magistrate, Saidapet, Chennai 15 and quash the same.

For petitioners in : M/s. N. Baskaran
Crl. O.P. No.17945/2010

For petitioners in : Mr. N.R. Elango, Sr. Counsel
other Crl.O.Ps. for Mr. R. Vivekanandan

For State in : Mr. C. Emalias
all the Crl.O.Ps. Additional Public Prosecutor

For R2 in : Mr. A. Ramesh, Sr. Counsel
Crl.O.P. No.17945,20312 for Mr. P. Sivamani
20313,20314 & 15425/2010

COMMON ORDER

While Crl.O.P. No.17945 of 2010, 20312 to 20314 of 2010 and 15425 of 2010 have been filed seeking to call for the records in Crime No.99 of 2010 dated 26.02.2010 on the file of the first respondent police and quash the same, Crl.O.P. Nos.13652 and 13653 of 2010 have been filed seeking to call for the records of the order dated 14.06.2010 passed in C.M.P. No.636 of 2010 in X Crime No.99 of 2010 on the file of the XI Metropolitan Magistrate Court, Saidapet, Chennai - 600 015.

2. On the complaint lodged by one Baskaran (de facto complainant), the respondent police registered a case in X Crime No.99 of 2010 on 26.02.2010 under Section 420 read with Section 34 IPC against Pandian (A1), Ramesh Kumar (A2), Ratan Kumar (A3), Sathyaseelan (A4) and Ashok Kumar (A5), for quashing which, the accused have filed the present quash petitions.

3. Heard Mr. N. Baskaran, learned counsel for the petitioners in Crl.O.P. No.17945 of 2010, Mr. N.R. Elango, learned Senior Counsel for the petitioners/accused in other

Criminal Original Petitions, Mr. A. Ramesh, learned Senior Counsel appearing for the de facto complainant and Mr.C.Emalias, learned Additional Public Prosecutor appearing for the State

4. The de facto complainant entered into a Memorandum of Understanding (for brevity "MoU") with A1 to A4 on 20.09.2006. In the said MoU, it is clearly stated that both the de facto complainant and the accused are into real estate business. It is averred in the MoU that the accused have the authority to deal with 120 acres of land belonging to various individual owners and that they will ensure that the lands are conveyed to the de facto complainant. It may be relevant to extract verbatim the operative clause in the MoU:

"WHEREAS the vendor represents that he has entered into agreement, with various land owners and by way of sale deed(s) and also to act as General Power of Attorney and Agent, for the lands situated at Nenmeli Village, Melaripakkam Village and Alagusamudram Village, Thirukazhukundram Taluk, Kancheepuram District, comprised in various survey numbers land approximately measuring to an extent of 120 acres or thereabouts, and the lands covered under General Power of Attorney by The PARTIES OF THE FIRST PART, which is more fully and particularly described in the Item No.1, and the said lands purchased by them in the name of Mr. A. Jayaraman, son of Mr. Anantha Perumal and Mr. P.K. Chandran, son of Mr. Kanniappan, and the parties of the first part assures of undertake that the above said persons execute necessary sale deeds in favour of the party of the second part of the Schedule and the lands covered under Agreement of Sale is more fully described in the Item No.2, and the lands to be acquired is more fully described in the Item No.3, of the schedule hereunder, hereinafter referred to as "THE SCHEDULE PROPERTIES".

5. Pursuant to the MoU, a substantial portion of 120 acres of land was conveyed to the de facto complainant by 2006. In the year 2010, the de facto complainant lodged a complaint alleging that Ramesh Kumar (A2) had promised to convey 120 acres of land and also an additional extent of 30 acres of land, towards which a sum of Rs.24.25 crores was paid to the accused, but, it came to light that they (the accused) do not have the authority to negotiate the 40 acres of land and that they have right only to an extent of 110 acres of land. Therefore, it is alleged by the de facto complainant that he had paid an excess amount of Rs.4.45 crores to the accused and when he demanded return of the amount, they did not oblige. On this complaint, the respondent police registered an FIR in X Crime No.99 of 2010

on 26.02.2010 for an offence under Section 420 read with Section 34 IPC against (1) Pandian, (2) Ramesh Kumar, (3) Ratan Kumar, (4) Sathyaseelan and (5) Ashok Kumar.

6. On 27.02.2010, the de facto complainant gave a representation to the respondent police stating that the matter has been compromised and requested the Inspector of Police to drop further investigation in X Crime No.99 of 2010. Therefore, there was a lull in the investigation. Suddenly, on 10.06.2010, the police arrested one Sudhandhiraseelan (not named in the FIR) and Ashok Kumar (A5) and produced them before the XI Metropolitan Magistrate, Saidapet, Chennai.

7. C. Mathiyalagan, Inspector of Police filed an affidavit for police custody which makes an interesting reading.

"As per MoU Golden Developers run by the accused persons have in all received Rs.24,25,00,000/- for procuring only 120 acres of land to the complainant but they have produced only 110 acres of land not as per MoU at the backyard of Thirukazhkundram Main Road and not at the frontage. The value of the lands procured by the accused i.e., 110 acres is worth only Rs.19,80,000/-. Further, the accused persons failed to procure the balance amount of Rs.4,45,00,000/- worth landed property and cheated.

Hence the presence of the accused noted above is just and necessary in Police Custody for the following reasons:

To recover the cheated amount

To identify whether they have purchased any movable or immovable properties from and out of the cheated amount and to seize them.

For the purpose of thorough investigation.

In view of the foregoing reasons, I pray this Hon'ble Court that the accused noted above Ashok Kumar and Sudhandhira Seelan may please be handed over in police custody for a period of 7 days and thus render justice."

8. On behalf of the accused, police custody was strongly opposed contending that the transaction with the de facto complainant was of the year 2006 and there is no element of cheating, inasmuch as it was never represented to the de facto complainant that the accused were the owners of the property. It was also represented to the de facto complainant that the

accused are only power of attorney holders of the original owners and that they will help the de facto complainant in procuring the properties from the original owners.

9. Despite the said objection, the XI Metropolitan Magistrate, Saidapet, Chennai, granted police custody of Ashok Kumar and Sudhandhiraseelan on 14.06.2010. The police took them into custody and in the police custody, a bargain was struck, under which, the accused paid Rs.3.50 crores by 12 demand drafts to the de facto complainant. According to the de facto complainant, the accused should give Rs.4.45 crores, but, in the police custody, he managed to get only Rs.3.50 crores from the accused.

10. After the police custody period, the accused were surrendered before the XI Metropolitan Magistrate, Saidapet, on 17.06.2010 and on the same day, the XI Metropolitan Magistrate, Saidapet, granted bail to Sudhandhiraseelan in CrI.M.P. No.632 of 2010 in CCB X Crime No.99 of 2010. In the bail order, it is stated as follows:

"During police custody, a Panchayat was held at Central Crime Branch Office and a compromise was entered into between the de facto complainant and the petitioner and out of compromise, the petitioner had paid Rs.3,50,00,000/- through 12 demand drafts to the de facto complainant's company, for which the petitioner and the de facto complainant have filed xerox copy of the statement of compromise before this Court. No evidence or materials were submitted by the respondent police at the time of the taking custody accused since the matter is settled during the police custody. Further the defacto complainant have also stated no objection to release the accused on bail and made endorsement in the bail petition. Even though the respondent police had stated formal objection in their reply, the Investigating Officer has appeared before this Court and stated no objection to release the accused on bail since the matter is settled. Hence, by way of considering the representation of both parties, this Court is inclined to grant bail to the accused on the following conditions:

1. The petitioner/accused shall execute a bond for Rs.10,000/- with two sureties each for like sum to the satisfaction of the Court.

2. The petitioner/accused shall appear before the respondent police as and when required by the respondent police."

(Emphasis supplied)

Thereafter, the accused have now approached this Court for quashing of the FIR.

11. Mr. N.R. Elango, learned Senior Counsel for the accused took this Court through the MoU, FIR and the bail order and submitted that criminal colour has been given to a simple civil transaction and with the help of the police, the de facto complainant has illegally recovered Rs.3.50 crores while the accused were in police custody.

12. Per contra, Mr. A. Ramesh, learned Senior Counsel appearing for the de facto complainant placed strong reliance upon the judgment of the Supreme Court in Kamlesh Kumari and Others vs. State of Uttar Pradesh and another [(2015) 13 SCC 689] and submitted that when there are prima facie materials in the FIR, the same should not be quashed.

13. This Court gave its anxious consideration to the rival submissions and perused the materials available on record.

14. There is no quarrel with the proposition of law laid down in Kamlesh Kumari (supra), wherein, the Supreme Court has held that just because the accused had paid a sum of Rs.5 lakhs to the complainant as against Rs.42 lakhs, the prosecution should be quashed when there are sufficient materials in the charge sheet.

15. The facts obtaining in Kamlesh Kumari are different from the facts of the present case. In the case before the Supreme Court, investigation was completed and final report was filed and the Supreme Court refused to quash the charge sheet on the ground that the accused had paid Rs.5 lakhs out of Rs.42 lakhs.

16. In the case at hand, a reading of the MoU dated 20.09.2006 clearly shows that the accused never represented that they are the owners of the property. The relevant portion of the MoU has been extracted above. The de facto complainant and the accused are real estate agents and this is stated in the preamble portion of the MoU itself. The accused represented that they will procure 120 acres of land owned by various persons to the de facto complainant and that in bargain, both they and the de facto complainant could make profits. From 2006 to 2010, nothing had happened. In the year 2010, the de facto complainant suddenly claimed that the accused had offered to give an extra area of 30 acres for which they did not have title. After the registration of the FIR on 26.02.2010, the de facto complainant has given a letter dated 27.02.2010 to the

police to drop further action. This letter is available in the case diary. Since the deal which the de facto complainant wanted to strike with the accused did not fructify even after the registration of the FIR, he galvanised police into action resulting in the police arresting Sudhandhiraseelan and Ashok Kumar (A5). During police custody, a panchayat has been held in the police station under which the accused gave a sum of Rs.3.50 crores to the de facto complainant, which, in the considered opinion of this Court, is clearly an illegal act, for which, departmental action should be initiated against the concerned police officer.

17. In this context, it is worth pointing out that the Supreme Court has deprecated the practice of using police as recovery agents in civil transactions in *D. Venkatasubramaniam and others vs. M.K. Mohan Krishnamachari and another* [(2009) 10 SCC 488]. The following passage from the said judgment is apposite in this regard.

"15. The police have demanded to pay an amount of Rs.2,28,00,000/- and threatened that he would be arrested if he fails to comply with their demand. Accordingly, the appellants have paid Rs.10 lakhs in cash in the police station itself and issued a cheque for an amount of Rs.2.18 cores drawn on Tamil Nadu Mercantile Bank. However, the cheque was not encashed on account of the instructions to the bank to stop the payment in view of the interim order dated 4th May, 2007 of this Court. The police offered explanation stating that the matter was settled voluntarily between the parties and therefore, the accused were not arrested and remanded to custody. It is difficult to buy this idea that there was a settlement between the parties in the police station. It is not difficult to discern as to how and under what circumstances the appellants may have agreed to pay the amounts and also issued a cheque. It is not known as to how and under what authority the police could intervene and settle any disputes between the parties. It is needless to observe that the police have no such authority or duty of settling disputes."

18. In the considered opinion of this Court, the FIR in X Crime No.99 of 2010 is clearly an abuse of process of law. Hence, the entire FIR in X Crime No.99 of 2010 is quashed against all the accused. As a sequel, CrI.O.P.Nos.17945 and 20312 to 20314 of 2010 and 15425 of 2010 are allowed. Connected M.Ps. are closed.

As regards CrI.O.P. No.13652 and 13653 of 2010, they are dismissed as having become infructuous. Connected M.Ps. are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Inspector of Police
Central Crime Branch-Team 1
Egmore, Chennai
2. The Public Prosecutor
High Court of Madras
Chennai 600 104
3. The Deputy Commissioner of Police
Central Crime Branch
Vepery
Chennai.

+1cc to Mr.R.Vivekanandan, Advocate, S.R.No.58519
+4cc's to Mr.P.Sivamani, Advocate, S.R.Nos.58318 to 58321

CrI.O.P. Nos.17945,
20312 to 20314, 13652, 13653
and 15425 of 2010

CTK(CO)
CA(12/11/2016)

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