IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 26.09.2016

PRONOUNCED ON: 04.10.2016

CORAM:

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

Crl.O.P. Nos.18180, 16222 and 18266 of 2010
&
M.P. Nos.1,1 and 1 of 2010 and M.P. No.1 of 2011

B. Hemakumar Petitioner in Crl.O.P. No.18180 of 2010 / Accused 2

1 Satish Kumar
2 A. Kavitha Ashok
3 V. Dhanasekaran
4 M.R. Venugopal Petitioners in Crl.O.P. No.16222 of 2010 / Accused

Rathina Asohan Petitioner in Crl.O.P. No.18266 of 2010 /Accused 1

vs.

1 The State of Tamil Nadu
represented by the Inspector of Police
District Crime Branch
Thiruvallore
Crime No.23 of 2010

2 C. Vijaya Singh Respondents in all Crl.O.Ps./Complainant

Criminal Original Petitions filed under Section 482, Cr.P.C. seeking to call for the records relating to Crime No.23 of 2010 on the file of the District Crime Branch, Thiruvallur and quash the same.

For petitioners in all the Crl.O.Ps.	Mr. Rupert J. Barnabas For Mr.J.Selvarajan
For R1 in all the Crl.O.Ps.	Mr. C. Emalias Addl. Public Prosecutor
For 2nd respondent in all the Crl.O.Ps.	Mr. Sreenivasan, Sr. Counsel for M/s. T.D.K. Govindarajan

COMMON ORDER

These Criminal Original Petitions are filed seeking to call for the records relating to Crime No.23 of 2010 on the file of the District Crime Branch, Thiruvallur and quash the same.

2 On the complaint lodged by one Vijaya Singh, the second respondent herein, first respondent police registered a case in Crime No.23 of 2010 on 10.04.2010 under Section 420, 408 and 477-A IPC read with Section 34 IPC against Rathina Asohan (A1/petitioner in Crl.O.P. No.18266 of 2010), Hemakumar (A2/petitioner in Crl.O.P. No.18180 of 2010), Satish Kumar (A3/1st petitioner in Crl.O.P. No.16222 of 2010), Kavitha Ashok (A4/2nd petitioner in Crl.O.P. No.16222 of 2010), Dhanasekaran (A5/3rd petitioner in Crl.O.P. No.16222 of 2010) and Venugopal (A6/4th petitioner in Crl.O.P. No.16222 of 2010), challenging which, the accused are before this Court by way of these three Criminal Original Petitions.

3 Rathina Asohan (A1) is an advocate by profession and Kavitha Ashok (A4), Dhanasekaran (A5) are his juniors. It is the case of Vijaya Singh (de facto complainant) that Rathina Asohan (A1) and he were friends for over four decades and that Rathina Asohan (A1) was doing real estate business with Hemakumar (A2) and Satish Kumar (A3). It is the specific case of the de facto complainant that on 16.03.2007, Rathina Asohan (A1), Hemakumar (A2) and Satish Kumar (A3) showed a layout of plots and represented that 2 acre and 85 cents of land is available for sale and that if money is invested in the venture, the de facto complainant can reap rich returns. They further represented that the land owners have given a power of attorney to one Nagabushanam and if some amount towards development charges is paid, the de facto complainant can purchase the land and make profits. Since the de facto complainant trusted Rathina Asohan (A1), he implicitly accepted the proposal and at the instance of Rathina Asohan (A1), handed over Rs.61,46,000/- to Nagabushanam, the power of attorney holder. Apart from that, he also paid Rs.17,90,190/- by demand drafts to Nagabushanam. Thereafter, at the instance of Rathina Asohan (A1), he had paid Rs.37 lakhs by demand drafts to 5 persons whom Rathina Asohan (A1) introduced as the promoters of the land. Thus, the de facto complainant has totally invested Rs.1,16,36,190/-. Since the de facto complainant hails from Palayamkottai Village in Tirunelveli District and was not in a position to go in person to Arani in Vellore District for the purpose of registration of the land, he trusted Rathina Asohan (A1) and gave him power of attorney to act on his behalf for purchase of the property from Nagabushanam. On the strength of the power of attorney, by a registered sale deed dated 19.04.2007, the property was purchased for a total sale consideration of Rs.17,90,190/-. A reading of the sale deed shows that Nagabushanam had acted as

power of attorney holder for the vendors and Rathina Asohan (A1) had acted as power of attorney holder of the de facto complainant (purchaser).

4 It is alleged by the de facto complainant that after the registration of the sale, Rathina Asohan (A1) did not hand over the original sale deed to him immediately and had kept him in dark. 1 ½ years later, when the de facto complainant made a visit to the property, he was shocked to learn that it was not a lay out as projected by Rathina Asohan (A1) and that it was a bushy area without any demarcation. The de facto complainant learnt that Rathina Asohan (A1) had produced the layout of a different property in order to cheat him and lure him into purchase of the property in question, which is not an approved layout. Apart from that, the price of the land has been deliberately exaggerated by Rathina Asohan (A1) and with the money given by the de facto complainant, Rathina Asohan (A1) has purchased properties in the name of his wife in and around that area. The de facto complainant has further alleged that the 5 persons to whom he had paid Rs.37 lakhs by demand drafts at the instance of Rathina Asohan (A1) for development purpose, were found to be fictitious individuals, who had nothing to do with the development work.

5 In the sale deed dated 19.04.2007, Hemakumar (A2) and Sindha Satish Kumar (A3) have signed as witnesses and it was drafted by Rathina Asohan's (A1) junior Kavitha Ashok (A4). Dhanasekaran (A5), another junior of Rathina Asohan (A1) had actively assisted Rathina Asohan (A1) in the venture. As regards Venugopal (A6), he is said to be the stamp vendor. It may be relevant to state here that Venugopal (A6) has died and therefore, the charge against him abate.

6 Mr. Rupert Barnabas, learned counsel for the petitioners/accused submitted that the entire transaction is a civil dispute and that the de facto complainant, with his influence with the police department, has engineered the FIR. He further submitted that the complaint has been given to the Superintendent of Police and not to the Station House Officer as required under Section 154(1) Cr.P.C. and the Superintendent of Police has forwarded the complaint to the Inspector of Police, District Crime Branch and the Inspector of Police, District Crime Branch has obtained legal opinion from the Additional Public Prosecutor attached to Alandur Court and not from the Additional Public Prosecutor attached to the Tiruvallur Court. Placing reliance upon the judgment of the Supreme Court in State of Haryana vs. Bhajan Lal [1992 Supp (1) SCC 335], he submitted that the entire prosecution is an abuse of process of law inasmuch as Rathina Asohan (A1) had acted as the de facto complainant's Legal Advisor, for which, he cannot be prosecuted.

He further contended that Sections 420, 408 and 477-A IPC will not stand attracted as Rathina Asohan (A1) was not in the position of the de facto complainant's servant, but, was his Legal Advisor.

7 Per contra, Mr. Emalias, learned Additional Public Prosecutor submitted that the investigation conducted by the police so far, discloses a well thought out design by Rathina Asohan (A1) to cheat the de facto complainant.

8 Mr. Sreenivasan, learned Senior Counsel for the de facto complainant refuted the allegations levelled against the de facto complainant and submitted that the accused had taken the de facto complainant for a ride by conveying to him worthless property after having received Rs.1,16,36,190/- from him.

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

10 The FIR in this case was registered on 10.04.2010 and interim stay of investigation was granted on 16.07.2010 and thereafter, on 28.09.2012, interim stay was not extended by this Court.

11 The Investigating Officer has filed a counter setting down the materials against the accused. In paragraph nos.10 to 13 of the counter, it has been stated as follows:

> "10. It is humbly submitted that Devaraj, the President of the Azhinijivakkam Panchayat had stated before the investigating agency that one K. Dhayalan Naidu, the land broker had allegedly approached his office, having deliberately provided incorrect particulars and false document and obtained his signature in the above forged layout plan. Tr. Kothandaraman, the Village Administrative Officer has stated that the said land is a manavari punjai field and not a house layout site. He has further stated a small bit of encroachment in the Government poramboke land.
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> 11. It is humbly submitted that the investigation is on to establish if accused - 1 purportedly covered up the actual purchase price, utilized the said deed of power of attorney and the said fabricated layout plan to deceive the de facto complainant and collected a huge sum of Rs.1.16 crores and odd for 1 acre 37 cents instead of 2 acre 85 cents.
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> 12. It is humbly submitted that the

investigation reveals that, after settling 1.37 acres from the 2.85 acres to the de facto complainant, out of the remaining 1.48 acres, accused 1, 2 and accused -3 (in the name of his wife) collectively purchased the 1 acre 11 cents in the same survey numbers, in the same period of April 2007, from the same power of attorney of the vendors K. Nagabushanam and made the de facto complainant to believe that the remaining 37 cents were allotted for public roads and development charges. It appears that accused 1 to 6 have prior linkage with Nagabushanam. The investigating officer need to confront all the purchasers involved in the said land registrations with the available documents and records to establish the legitimacy of the source of huge money and quantum of money, paid towards land price and development charges respectively. These are very vital to proceed further in the investigation to ascertain the true price of the land and development charges ought to have been paid to the land owners and land promoters respectively.

13. It is humbly submitted that the investigation further reveals that the beneficiaries of the demand drafts of Rs.37 lakhs collected towards development charges of public roads entrusted by de facto complainant to accused - 1, found fraudulently encashed in various bank accounts in irrelevant places and withdrawn in suspicious period. Strangely, one of the recipients or beneficiaries of the demand drafts is identified to be the wife of power of attorney holder Nagabushanam died on 18.5.2007 and the rest are yet to be identified and called for interrogation. It appears that accused 1 to 6 have prior linkage with the above beneficiaries evidenced in documents available with the investigating officer. The respective bank managers are yet to be inquired to identify the above beneficiary persons and to complete the investigation."

12 According to the de facto complainant, he was away at Palayamkottai in Tirunelveli and hence, he had given a power of attorney to Rathina Asohan (A1) to act on his behalf and purchase the land. According to Mr. Rupert Barnabas, Rathina Asohan (A1) acted only as the de facto complainant's Legal Advisor and therefore, he cannot be mulcted with criminal liability. Had Rathina Asohan (A1) merely acted as the de facto complainant's Legal Advisor and had given legal opinion, the contention of Mr.Rupert Barnabas may be correct. Unfortunately, Rathina Asohan (A1) had acted as power of attorney holder of the

de facto complainant and got personally involved in the transaction of purchase of property on behalf of the de facto complainant. The sale deed dated 19.04.2007 shows as if the property purchased comprises 24 vacant housesites covered by a duly approved sanctioned plan, whereas, the Village Administrative Officer has stated that the land is a manavari punjai land and is not a house layout site. Further, the Village Administrative Officer has stated that there is encroachment into Government poramboke lands as well. That apart, the value of the land has been shown as Rs.17,90,190/-, whereas, a sum of Rs.1,16,36,190/- has been given by the de facto complainant through Rathina Asohan (A1) to Nagabushanam and 5 others. Contemporaneously, Rathina Asohan (A1), Hemakumar (A2) and Satish Kumar (A3) have purchased lands in the name of their wives in the same survey number from Nagabushanam. It is the de facto complainant's specific allegation that taking advantage of his absence and the trust he reposed, Rathina Asohan (A1), with Hemakumar (A2) and Satish Kumar (A3), has purchased unapproved layout in the de facto complainant's name and with his money, they have purchased properties in the name of their better halves.

13 In the light of such serious allegations against Rathina Asohan (A1), Hemakumar (A2) and Satish Kumar (A3), it cannot be stated that they are as innocent as lamb and that Rathina Asohan (A1) had merely acted as the de facto complainant's Legal Advisor. That apart, at the instance of Rathina Asohan (A1), the de facto complainant has paid a sum of Rs.37 lakhs to 5 persons towards development charges of public roads, etc., which have been fraudulently encashed by them in various bank accounts at irrelevant places. In the teeth of such overwhelming materials, the facts of the case do not pass the muster the law laid down by the Supreme Court in Bhajan Lal (supra).

14 As regards the applicability of the penal sections, after the investigation is over, it is for the Court to frame appropriate charges against the accused.

15 In respect of the contention of Mr. Rupert Barnabas that the complaint has been given directly to the Superintendent of police, it is the practice that in cases of land grabbing, complaint should be given to the Superintendent of Police who will forward it to the District Crime Branch for enquiry and investigation. Unlike the jurisdictional police, the District Crime Branch is a special wing and is not authorised to receive land grabbing complaints directly. In any event, that cannot, in any way, be an illegality or irregularity that will shake the very foundation of the FIR, especially, when the complaint discloses sufficient materials for a thorough police

investigation.

16 In Lalmuni Devi vs. State of Bihar and others [2001 AIR SCW 2504] and Rajesh Bajaj vs. State NCT of Delhi and others [(1999) 3 SCC 259], the Supreme Court has held that many a cheating are committed in the course of commercial and money transactions and therefore, complaints should not be quashed easily. The relevant passages from the said judgments are as under:

- Lalmuni Devi vs. State of Bihar and others:

  "8. There could be no dispute to the proposition that if the complaint does not make out an offence it can be quashed. However, it is also settled law that facts may give rise to a civil claim and also amount to an offence. Merely because a civil claim is maintainable does not mean that the criminal complaint cannot be maintained. In this case, on the facts, it cannot be stated, at this prima facie stage, that this is a frivolous complaint. The High Court does not state that on facts no offence is made out. If that be so, then merely on the ground that it was a civil wrong the criminal prosecution could not have been quashed."

- Rajesh Bajaj vs. State NCT of Delhi and others:

  "10. It may be that the facts narrated in the present complaint would as well reveal a commercial transaction or money transaction. But that is hardly a reason for holding that the offence of cheating would elude from such a transaction. In fact, many a cheating were committed in the course of commercial and also money transactions. One of the illustrations set out under Section 415 of the Indian Penal Code [Illustration f] is worthy of notice now:

  > "(f) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and thereby dishonestly induces Z to lend him money, A not intending to repay it. A cheats."

17 The learned Additional Public Prosecutor submitted that the police consulted the learned Additional Public Prosecutor, Alandur Court, because, he was in charge of three districts at the relevant point of time and therefore, the police had to perforce consult him and take his legal opinion.

18 In the considered opinion of this Court, the police need not have even taken any opinion from the learned Additional Public Prosecutor at all before registering the FIR, when the FIR contained sufficient materials showing the commission of a cognizable offence.

19 Coming to the case of Kavitha Ashok (A4) and Dhanasekaran (A5) who are juniors of Rathina Asohan (A1), there are no serious allegations as against them as they were only juniors of Rathina Asohan (A1) and must have implicitly obeyed his directions.

In the result, Crl.O.P. No.18266 of 2010 filed by Rathina Asohan (A1), Crl.O.P. No.18180 of 2010 filed by Hemakumar (A2) and Crl.O.P. No.16222 of 2010 in respect of Satish Kumar (A3) are dismissed and Crl.O.P. No.16222 of 2010 is allowed in respect of Kavitha Ashok (A4) and Dhanasekaran (A5) and in respect of Venugopal (A6), Crl.O.P. No.16222 of 2010 stands abated and the FIR in respect of Kavitha Ashok (A4) and Dhanasekaran (A5) alone is quashed. Connected Miscellaneous Petitions are closed.

Sd/
Assistant Registrar

/True copy/

Sub Assistant Registrar

To
1 The Inspector of Police
District Crime Branch,
Thiruvallore.

2 The Public Prosecutor
Madras High Court,
Chennai 600 104.

+3cc to M/s.R.V.LAKSHMIPATHY, Advocate SR.No.57279

Crl.O.P. Nos.18180, 16222 and 18266 of 2010

SDR 22.10.2016
krd 10/11