

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 21.08.2017

CORAM

**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN**

**CrI.OP.No.3554 of 2017**  
**and CrI.MP.No.2569 of 2017**

1.K.I.Manirathinem  
2.M.Usha  
3.M/s.Navasakthi Townships  
Developers Pvt.,Ltd.,  
Rep.by Sri K.I.Manirathinem

... Petitioners/Accused

Vs

The Additional Superintendent of Police,  
CBI/ACB/Chennai,  
Chennai.

... Respondent/Complainant

**Prayer:-** Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records in connection with Special Calendar Case No.1 of 2016 pending trial on the file of the Principal Sessions Judge and Special Judge for CBI Cases, Puducherry and quash the Final Report(Charge Sheet) under Section 173(2) of Cr.P.C dated 21.12.2016, filed by the respondent herein in the said Special Calendar Case No.1 of 2016.

|                 |   |                           |
|-----------------|---|---------------------------|
| For Petitioners | : | Mr.T.Ramesh               |
| For Respondent  | : | Mr.K.Srinivasan           |
|                 |   | Special Public Prosecutor |
|                 |   | for CBI Cases             |

**ORDER**

This petition is filed to quash the final report under Section 173(2) of Cr.P.C dated 21.12.2016 filed by the respondent/Central Bureau of Investigation herein in Special Calendar Case No.1 of 2016, on the ground that the petitioners are *bonafide* purchasers for the value and there is no criminal intention on their part to cheat either the Government or erstwhile land owner in entering upon the sale transaction between the years 2009-2010.

2. The sum and substance of the prosecution case is that M/s.Pondicherry Paper Mills Limited, which was floated in the year 1974, acquired 13.85 acres of land through Land Acquisition Act from the public. The mill went into crisis after 25 years of its launch. Thereafter, the mill management wanted to dispose of the assets including the land acquired under Land Acquisition Act. In the said process, since No Objection Certificate from the Government was not granted to alienate the property, the mill management has been repeatedly approaching the Government for No Objection Certificate. Pending decision by the Government, the representative of the mill one Mr.C.Subasingh has executed a power of attorney in favour of

Mr.K.I.Manirathinem and he has in turn sold the property to one M/s.Navasakthi Townships Developers Pvt., Ltd., in which K.I.Manirathinem and his wife M.Usha are the Directors. A criminal conspiracy was hatched by these people to discreetly sell the property, which was acquired under Land Acquisition Act for specific purpose, by forging encumbrance certificate thereby transferred the property and also developed housing units.

3. The Central Bureau of Investigation registered regular case on 19.6.2014, investigated and filed final report on 22.12.2016 for offences under Section 120 B r/w 420 IPC and 13(2) r/w 13(1) d of the Prevention of Corruption Act. The petitioners herein have come out with an application under Section 482 Cr.P.C., to quash the final report on the ground that the power of attorney executed on 12.01.2010 and the subsequent sale deeds are the out come of *bonafide* transaction, wherein, the petitioners had no role in the alleged forgery or suppression of facts. Hence, they cannot be mulcted with any criminality.

4. Further, it is also contended by the learned counsel appearing for the petitioners that regarding the very same property a writ

petition was filed challenging the proceedings of the Deputy Collector(Revenue) South Villianur, Pondicherry, dated 23.09.2014 to freeze the acquired land under Land Acquisition Act and the same was allowed in the W.P.No.27616 of 2017. The Single Judge order was confirmed by the Hon'ble Division Bench of this Court in W.A.No.302 of 2015, dated 30.10.2015. He also fairly conceded that the state has preferred Special Leave Petition before the Hon'ble Supreme Court of India and the same is pending. Since the Government on one hand has initiated proceedings for the resumption of land and on other hand proceeding with criminal prosecution it amounts to double jeopardy.

5. It is imminent for this Court to point that, as far as the present case is concerned, being a criminal prosecution, the proceedings pending before the Hon'ble Supreme Court of India in Special Leave Petition cannot be considered as a double – jeopardy, though the counsel for the petitioner wrongly pleads so. Records reveals the specific allegation against the petitioners is distinct from the proceedings of the Deputy Collector (Revenue) dated 23.09.2014.

6. It is contended by the learned counsel for the petitioners that M/s.Pondicherry Paper Mills Limited applied to the Government to sell

the land in question as early as in May 2006. The proposal of the Pondicherry Government to re-acquire the land in question for the purpose of setting a Pondicherry University was dropped later and duly mentioned in the proceedings of the Government. Therefore, in the year 2009, M/s.Pondicherry Paper Mills Limited, decided to sell the property and duly sold the property through power agent viz., the first petitioner herein Mr.K.I.Manirathinem. Being the power agent of M/s.Pondicherry Paper Mills Limited, Mr.K.I.Munirathinem has in turn sold away the property to M/s.Navasakthi Townships Developers Pvt., Ltd., and has proceeded with the housing project, after getting necessary certificates from the concerned authorities. It is contended by the learned counsel for the petitioners that there is no material evidence to show that the petitioners are benefited out of the alleged transaction. When the land was purchased for the market value, no criminal intent could be attributed to the petitioners.

7. Per contra, the learned Special Public Prosecutor, pointing out the relevant portion in the final report, submitted that the management of M/s.Pondicherry Paper Mills Limited in connivance with some of the Government officials and the petitioners herein have conspired to transfer the subject land without No Objection Certificate

from the Government and despite pendency of request from M/s.Pondicherry Paper Mills Limited for grant of No Objection Certificate and pending proposal of reacquiring the land back by the State Government, they have entered into a deal to transfer and got the property transferred using forged documents.

8. Learned Special Public Prosecutor submitted that, on 04.04.2009, Mr.C.Subasingh/A2, Director of M/s. Pondicherry Paper Mills Limited, entered into a sale agreement with Mr.K.I.Manirathinem the first petitioner herein, who is also the Managing Director of M/s.Navasakthi Townships Developers Pvt., Ltd., The property, which is classified as industrial land was purchased by the third petitioner viz., M/s.Navasakthi Townships Developers Pvt., Ltd., through the first and second petitioner by forging the documents appearing as if the properties are residential land they got it registered in connivance with officials in the registered office by producing forged encumbrance certificate. Thereby causing wrongful loss to the Government and wrongful gain to themselves.

9. This Court finds materials collected through investigation which *prima facie* show that the petitioners herein along with other

accused by making false documents converted the Government property into the private property, thereby causing wrongful loss to the Government to the tune of Rs.7,53,88,000/- (approximately) to the Government of Pondicherry and corresponding wrongful gain to the private persons.

10. In this case, the prosecution has made out a *prima facie* case against these petitioners to indicate their culpability of the crime alleged. The manner in which, the property has been alienated in favour of M/s.Navasakthi Townships Developers Pvt., Ltd., by executing the power of attorney deed in favour of the first petitioner, who himself, being the Director of M/s.Navasakthi Townships Developers Pvt., Ltd., along with his wife Ms.Usha the second petitioner herein, clearly indicates their role in alleged conspiracy.

11. The Hon'ble Supreme Court of India in the case of ***Kamaladevi Agarwal Vs. State of West Bengal and Others***, reported in 2002 1 SCC 555 held as under:

"11. In *Lalmuni Devi v. State of Bihar* this Court held: (SCC p.19, para 8)

"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."*

12. Again in *Vijay Singh M. Krishnan v. Vijay Singh & Anr.* (Criminal Appeal No. 1028 of 2001 decided on 11.10.2001) this court held that while exercising powers under [Section 482](#) of the Code, the High Court should be slow in interfering with the proceedings at the initial stage and that merely because the nature of the dispute is primarily of a civil nature, the criminal prosecution cannot be quashed because in cases of forgery and fraud there is always some element of civil nature. In a case where the accused alleged that the transaction between the parties are of a civil nature and the criminal court cannot proceed with the complaint because the factum of document being forged was pending in the civil court, the court observed: (SCC pp.647-48, para 5)

*"5. Accepting such a general proposition would be against the provision of law inasmuch as in all cases of cheating and fraud, in the whole transaction, there is generally some element of civil nature. However, in this case, the allegations were regarding the forging of the document and acquiring gains on the basis of such forged documents. The proceedings could not be quashed only because the respondents had filed a civil suit with respect to the aforesaid documents. In a criminal court the allegations made in the complaint have to be established independently, notwithstanding the adjudication by a civil court. Had the complainant failed to prove the allegations made by him in the complaint, the respondents were entitled to discharge or acquittal but not otherwise. If mere pendency of a suit is made a ground for quashing the criminal proceedings, the*

*unscrupulous litigants, apprehending criminal action against them, would be encouraged to frustrate the course of justice and law by filing suits with respect to the documents intended to be use against them after the initiation of criminal proceedings or in anticipation of such proceedings. Such a course cannot be the mandate of law. Civil proceedings, as distinguished from the criminal action, have to be adjudicated and concluded by adopting separate yardsticks. The onus of proving the allegations beyond reasonable doubt, in criminal case, is not applicable in the civil proceedings which can be decided merely on the basis of the probabilities with respect to the acts complained of."*

12. The circumstances under which charge sheet can be quashed as said in the above judgments of the Hon'ble Supreme Court, gives a quietus to the issue involved in the case in hand. Therefore, since there is *prima facie* material, which has been placed before the trial Court, along with charge sheet after investigation, the proof of those documents shall be the subject matter of the trial and no decision could be arrived prematurely by exercising the power under Section 482 Cr.P.C. extending the benefit of doubt without proper trial.

13. When on the face of the record there is material to show that the management of M/s.Pondicherry Paper Mills Limited, which was not able to get the No Objection Certificate from the Government to alienate the property to third parties, has devised the scheme to sell

the property by suppressing facts and forging documents, and the role of the petitioners in the act of conspiracy is set out in the final report based on approver statement and documents recovered during the course of investigation, the contention of the learned counsel for the petitioners that the petitioners are innocent and *bonafide* purchasers cannot be countenanced. In the light of the fact that the first petitioner is not only the purchaser, he is the Power of Attorney of vendor also. By playing dual role as power of attorney of the vendor as well as the Managing Director of purchaser, he cannot be exonerated holding him innocent of the alleged crime committed. The second petitioner, being the wife of the first petitioner and proximity between the first petitioner and the second petitioner not only as the Managing Directors of the third petitioner, but also the fiduciary relationship between them does not rule out the culpable mental state of the second petitioner in the alleged crime.

14. For the above said reasons, this Court is not inclined to entertain this petition. Hence, this petition is dismissed. Consequently, connected miscellaneous petition is closed.

**21.08.2017**

*ms/jer*  
*Index: Yes/No*

To

1. The Principal Sessions Judge and  
Special Judge for CBI Cases,  
Puducherry.
2. The Additional Superintendent of Police,  
CBI/ACB/Chennai,  
Chennai.
3. The Public Prosecutor,  
High Court, Madras.



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**G.JAYACHANDRAN.J.,**

ms/jer



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