

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.S.RAMESH

Crl.O.P.No.7933 of 2017

and

Crl.M.P.No.5738 of 2017

D.Kasiviswanathan

... Petitioner/Accused

Vs.

1. State Rep. By

The Inspector of Police,
Central Crime Branch, (Team-I),
Vepperi, Chennai.
(X Crime No.349 of 2014)

...1st Respondent/Complainant

2. Shaik Subhani

...2nd Respondent/Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for all the records and to quash all proceedings in Crime No.349 of 2014 pending on the file of the Inspector of Police, Central Crime Branch (Team-I), Vepperi, Chennai.

For Petitioner : Mr.J.C.Durai Raj

For Respondents : Mr.C.Iyyappa Raj

Additional Public Prosecutor for R1

No Appearance for R2

O R D E R

The petitioner has been charged for the offences under Sections 406 & 420 IPC in Crime No.349/2014 pending on the file of the first respondent police, which is under challenge in the present petition.

2. The grievance of the second respondent is that the petitioner herein had committed fraud and cheating by failing to perform the terms of the sale construction agreement entered into between the petitioner and the second respondent.

3. In connection with the transaction pertaining to certain immovable properties, the petitioner herein had earlier given complaints against the second respondent herein on 06.03.2013 and 24.08.2013, stating that the second respondent herein had been threatening and intimidating the petitioner. Pursuant to the complaint given by the petitioner, the second respondent

herein had given complaint against the petitioner on 05.10.2013, which came to be registered in Crime No.349 of 2014 by the first respondent herein, pursuant to the orders of this Court passed under Section 482 Cr.P.C. in Crl.O.P.No.16511 of 2014 dated 13.06.2014.

4. On a perusal of the complaint given by the second respondent, it is seen that the second respondent had given one complaint in his capacity as a Power Agent of Shaik Rahaya Praveen and another complaint has been made by K.Shaik Subhani. The averments in the complaint of the second respondent are purely civil in nature. The entire dispute arises out of a civil transaction, wherein the second respondent's grievance seems to be that though the petitioner had received the sale consideration and completed the construction, pursuant to sale and construction agreement, the petitioner herein had not registered the undivided shares in his favour and possession was not handed over and the parent documents of the subject property was also not handed over.

5. On a comparison of the second respondent's complaint along with the petitioner's complaint, it is seen that the entire dispute revolves around breach of the terms of sale and construction agreement entered into between these parties. This Court is unable to comprehend as to how the Police would be justified in ascertaining facts in these transactions arising out of contractual agreement. In view of the fact that the said complaint is civil in nature, it would not be appropriate to permit the first respondent to continue with the investigation and if at all the second respondent is aggrieved, it would always open to him to approach civil Court to seek his redressal. In my considered view, these disputed facts can be established only after due trial and on proper appreciation of the oral and documentary evidence.

In the result, I do not find any justification to permit the first respondent to continue with the investigation and thereby subject the petitioner to undergo the ordeal of criminal investigation. Accordingly, the Criminal Original Petition stands allowed. The proceedings in Crime No.349 of 2014 on the file of the Inspector of Police, Central Crime Branch, (Team-I), Vepperi, Chennai is quashed. Consequently, connected Miscellaneous Petition is closed.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

dh

To

1. The The Inspector of Police,
Central Crime Branch, (Team-I),
Vepperi, Chennai.

2. The Public Prosecutor,
High Court, Madras.

+1 CC to Mr.V.T. Balaji, Advocate sr 89767.

Crl.O.P.No.7933 of 2017

KJ(CO)
SP(25/01/2018)



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