IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.07.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Crl.O.P No.10828 of 2012

1.M/s.Sri Krishna Tiles and Potteries
(Madras) Pvt. Ltd.,
Rep. by it's Director A.R.Santhanakrishnan,
Kumaravijayam, Flat A-1,
99, Royapettah High Road,
Chennai – 600 004.

2.A.R.Santhanakrishnan

3.Radhika

4.Chandirasekaran

5.S.Ramasamy

6.S.Natarajan ... Petitioners

vs.

The Inspector of Police,
Central Crime Branch, (Team-3),
Egmore, Chennai. ... Respondent

Prayer: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records in C.C.No.590 of 2012, on the file of the Chief Metropolitan Magistrate, Egmore, Chennai and quash the same.

For Petitioners :Mr.B.Natarajan

For Respondent : Mr.P.Govindarajan
Additional Public Prosecutor

JUDGMENT

The Criminal Original Petition is filed under Section 482 of Cr.P.C. seeking to quash the proceeding in C.C.No.590 of 2012, on the file of the Chief Metropolitan Magistrate Court, Chennai. The petitioners have been charged for the offences under Sections 409, 465, 468, 471 r/w 120(B) r/w 109 of I.P.C.

2.The petitioner and three others named in F.I.R. had earlier approached this Court successfully to quash the First Information Report in Cr.No.576 of 2005 in Crl.O.P.No.23254 of 2005. Later at the instance of the de-facto complainant the same has been reversed by the orders of the Hon'ble Apex Court in Special Leave Petition (Crl.) No.1707 of 2006 (Crl.Appeal No.1869 of 2008). On completion of investigation the present prosecution has emerged. Now, this present application has been moved challenging the Charge Sheet filed by the Respondent Police on the ground that it does not make out the offence alleged and the same is abuse of process of law.

3.The case of the prosecution is as follows:

(a) A case in Cr.No.576 of 2005 was registered by the respondent police on the orders of the learned Chief Metropolitan Magistrate, Egmore, Chennai in CMP.No.2047 of 2005 under Section 156(3) of Code of Criminal Procedure. The crime was registered for the offences under Sections 409, 379, 468, 471, 420 and 506(ii) IPC against the petitioner and three others.

(b) In the year 1980, the de-facto complainant Mr.M.Viswanathan, Deputy Tahsildar, Cuddalore, after voluntary retirement from his service, indulged in Real Estate Business.

(c) During the year 2001, the petitioner company decided to develop its portion of its immovable property measuring about 17.02 Acres out of 34.04 Acres situated at (Koyambeduu) Thirumangalam Village, Chennai, into housing plots and sell the same.

(d) On 02.07.2001, in order to fulfill its desire of developing its land, the petitioner company had entered into an agreement with newly formed company by name Sai Sri Krishna Properties and Facilitators (Pvt.) Ltd., with certain terms and conditions.

(e) The de-facto complainant was initially appointed as the Managing Director of the said Sai Sri Krishna Properties and Facilitators (Pvt.) Ltd., the other Director in the company was Mrs.Radhika Santhanakrishnan and Mr.Chandrasekar was its Manager.

(f) On 24.06.2002, the earlier proposal was modified and consequently, a fresh agreement by amending the earlier agreement was brought in. Instead of earlier plan, apartments in 60 grounds out of 308 grounds were planned on certain terms and conditions.

(g) The said Sai Sri Krishna Properties and Facilitators (Pvt.) Ltd., had invited the Bank Employees by offering them to own apartments. Accordingly 146 persons had shown interest and paid advance amount for owning apartments. The company Sai Sri Krishna Properties and Facilitators (Pvt.) Ltd., had received a total sum of Rs.2,54,67,091/- as advance. The de-facto complainant was taking care of the marketing division as per the agreement. The de-facto complainant claimed in the complaint including the above referred advance, the total stake of the complainant was Rs.3,00,00,000/-.

(h) As no approval could be obtained from the concerned authorities for proceeding with the project of constructing the apartments, the project could not take off. The de-facto complainant initially had returned Rs.21,00,000/- and later another Rs.3,00,000/- to each of the 47 out of 146 agreement holders. The remaining agreement holders 99 persons have been settled by Mr.A.R.Santhanakrishnan by repaying the sale agreement advance along with 6% interest, without getting consent from the de-facto complainant.

(i) Thereafter two persons by name Mr.Ramasamy and Mr.Natarajan were inducted as Directors of the Company M/s. Sai Sri Krishna Properties and Facilitators (Pvt.) Ltd., without the consent and concurrence of the de-facto complainant. Further, Mr.A.R.Santhanakrishnan (A2), his wife Mrs.Radhika Santhanakrishnan (A3), Manager Mr.Chandrasekaran (A4), Mr.Ramasamy (A5) and Mr.Natarajan (A6) have conspired together and tried to remove the de-facto complainant from the effective management of the Company. The de-facto complainant was further relieved off the position of Managing Director and was termed as a Director.

(j) The above acts have been done in conspiracy with each other by creating false documents with an intention to cheat the de-facto complainant for his legitimate share.

4.The case of the petitioner is as follows:

(a)The 1st petitioner is the absolute owner of immovable property admeasuring 34.04 acres at (Koyambedu) Thirumangalam village. Mr.A.R.Santhanakrishnan (A2) had a beneficial interest in respect of 17.02 Acres in the said property. The de-facto complainant is a stranger to the property and do not have any right, title or interest over the said property.

(b)During 2001, the de-facto complainant had approached them and gave various assurances like developing the land, marketing and procuring necessary investments to develop the said property. Accordingly a Memorandum of Understanding was executed on 02.07.2001.

(c)The said MOU was rescinded subsequently, since the de-facto complainant did not invest any money for the development of the project as per the terms of the MOU. Another MOU was entered with the de-facto complainant on 24.06.2002, to construct an apartment in 30 grounds alone. In order to facilitate the project a new company Sai Sri Krishna Properties and Facilitators (Pvt.) Ltd., was constituted, wherein the de-facto complainant was appointed as Managing Director without any contribution and purely based on his assurance, since he was a Tahsildar, having acquaintance with Government Revenue Department.

(d)But in that project also, for three years (from 2002 to 2005) the de-facto complainant, being Managing Director, had failed to get necessary approvals from various authorities of Government to construct an apartment. The proposed flat buyers/agreement holders had demanded to return their advance and willing to cancel the agreements. The de-facto complainant has also started to return the sale advance amount received from the proposed buyers from and out of the account of M/s.Sai Sri Krishna Properties and Facilitators (Pvt.) Ltd.

(e)Meantime the de-facto complainant had introduced one buyer from Hyderabad, who gave a Demand Draft as advance but the same was found to be a forged one. Further, the de-facto complainant had entered into an agreement for sale in respect of the petitioner's property with some third party, wherein the de-facto complainant had neither right, title nor power to do so.

(f)Due to this attitude of the de-facto complainant, the 1st petitioner released its own funds to repay the advances paid by the intended purchasers and cancelled all the agreements entered into by M/s. Sai Sri Krishna Properties and Facilitators (Pvt.) Ltd. Further, to protect the interest of 1st petitioner, the constitution of M/s. Sai Sri Krishna Properties and Facilitators (Pvt.) Ltd. Was altered, Mr.Ramasamy and Mr.Natarajan were newly inducted into the company and the de-facto complainant was placed as a Director.

(g)Aggrieved over the changes done inside the Company affairs, the de-facto complainant had initiated a Criminal Complaint before the CCB and demanded an exorbitant sum of money from the Company out of greed, besides approaching the CLB by filing CP.No.44 of 2005 under Sections 39, 398, 111 and 402 of the Companies Act, 1956, by making the same allegations.

(h)On 08.10.2005, at about 6.30 a.m., the police officials attached to the Central Crime Branch, Egmore (Team-IV) apprehended Mr.A.R.Santhanakrishnan and Mrs.Radhika Santhanakrishnan on the complaint of the de-facto complainant. The whole day both of them were illegally detained by the police officials and threatened to arrest, if they would not compromise the issues with the de-facto complainant. The said Mr.A.R.Santhanakrishnan and

Mrs.Radhika Santhanakrrishnan were forced and coerced to sign the compromise deed already prepared by the de-facto complainant. As per the compromise deed prepared by the de-facto complainant the differences would be resolved on payment of Rs.7,00,00,000/- (Rupees Seven Crores only) as compensation by the petitioners 2 and 3 to the de-facto complainant. The police officials extorted two cheques of Rs.3.5 Crores each in favour of de-facto complainant and released Mr.A.R.Santhanakrishnan and Mrs.Radhika Santhanakrishnan late in the night.

(i)After coming out from the illegal custody, the petitioners and the said Mr.A.R.Santhanakrishnan and Mrs.Radhika Santhanakrishnan had immediately approached the Director General of Police on the following day and brought to his knowledge the illegal events that had taken place. The petitioners 1 to 3 herein also filed a Civil Suit in C.S.No.914 of 2005 before this Court for declaration that the MOU entered in police custody is null and void and also sought for consequential injunction from making use of the cheques obtained under coercion. This Court on 07.11.2005 took judicial notice of the Katta Panchayat by the respondent police and passed an explicit order of interim injunction restraining the de-facto complainant from presenting cheques for encashment, since it has not been issued for due consideration. This Court later decreed the suit in favour of the petitioners 1 to 3 on 08.07.2010.

(j)The de-facto complainant had not invested any amount in M/s. Sai Sri Krishna Properties and Facilitators (Pvt.) Ltd.,

(k)The de-facto complainant did not fulfill his part of obligation as per the agreement dated 24.06.2002 and hence the said agreement was closed by repaying the advance amount received from the proposed 147 buyers from and out of the funds of the 1st petitioner.

(l)The respondent police have not taken into consideration while filing charge sheet before the trial Court on 15.02.2012, the fact of Civil Sit in C.S.No.914 of 2005 filed before this Court and the interim injunction passed by this Court on 07.11.2005 against the de-facto complainant and subsequent decree on 08.07.2010 nullifying the so called agreement and issuance of two cheques.

(m)In the entire length and breadth of the complaint statements given before the respondent police, the de-facto complainant never said that he had done any such work for the project or a specific value of money invested for the project. Much less in civil suit filed by the petitioner or in company petition in C.P.No.44 of 2005, the de-facto complainant never took such stand. That itself proves that the de-facto complainant is not entitled to claim anything from M/s. Sai Sri Krishna Properties and Facilitators (Pvt.) Ltd.

(n)The 1st petitioner company by its independent efforts, had a business with one M/s.Ozone Group companies, but the de-facto complainant, is now demanding 50% of profit derived from the business done with Ozone Groups, where he had nothing to do.

(o)Therefore, it is the case of the petitioners are that the entire complaint is an abuse of process of law and is liable to be quashed.

5.I heard Mr.B.Natarajan, learned counsel appearing for the petitioners and Mr.P.Govindarajan, learned Public Prosecutor appearing for the respondent and carefully gone through the charge sheet and connected records.

6.The allegations in the Charge sheet are as follows:-

(i)On failure to construct the Apartment, the said A.R.Santhanakrishnan had returned the advance amount to 99 agreement holders without the knowledge and consent of the de-facto complainant and re-designated the de-facto complainant from the post of Managing Director into Director of the said M/s. Sai Sri Krishna Properties and Facilitators (Pvt.) Ltd.

(ii)All the five accused had invited the de-facto complainant for compromise and agreed to give Rs.7,00,00,000/- for his investment. Accordingly two cheques drawn on the account of the petitioner's Company Sri Krishna Tiles and potteries, each for the value of Rs.3,50,00,000/- were given besides signing the compromise deed. But later the cheques were not honoured by instructing the banker with stop payment instruction and the compromise was also not acted upon. The said deed of compromise was presented before the CLB in a company law proceeding in C.P.No.44 of 2005.

(iii)All the accused have created a false letter dated 29.10.2004, bearing the forged signature of the de-facto complainant, addressed to the postal authorities, requesting that all the registered letters addressed in his name may be hand over to Mr.Ramasamy and Mr.Natarajan. The said letter has been filed before the CLB in a company law proceeding in C.P.No.44 of 2005.

(iv)Another false document, i.e., letter dated 05.12.2004 was created by the accused, containing the signature of the de-facto complainant, for inviting others to invest in the company Sai Sri Krishna Properties and Facilitators (Pvt.) Ltd. The said letter was produced before the Company law Board.

(v)On completion of investigation the respondent police had filed a charge sheet before the learned Chief Metropolitan Magistrate that all six accused had committed the offences under Sections 409, 465, 468, 471, 406, 420 r/w 120(B) r/w 109 of I.P.C.

7.The main thrust of the petitioner to the offences alleged in the charge sheet is as follows:

(a)Breach of trust under Sections 406 and 409 of I.P.C.

(i)There is no entrustment made by the de-facto complainant with the petitioners. Per contra, the petitioner had entrusted 60 grounds of land to the de-facto complainant in order to construct apartment. That too failed to fulfill by the de-facto complainant. The first and foremost ingredient of entrustment or dominion over the property is absent in this case.

(ii)The amount as allegedly spent by the de-facto complainant is of Rs.3,00,00,000/- (including the advance Rs.2,54,61,091/- received from the prospective buyers, that too repaid with interest by the petitioner) is only to fulfill the obligation arose on the agreement, even accepting the same as true, creates a civil liability and does not constitute any criminal offence much less Criminal breach of trust. The second ingredient of conversion to own use also not fulfilled by the prosecution.

(iii)As per the agreement, the de-facto complainant had failed to fulfill his obligation to obtain necessary approvals from the concerned authorities to complete the construction in time. Since the project did not even take off there is no question of any profit for any of the parties. The third ingredient of Brach of trust is actually committed by the de-facto complainant and not by petitioner.

(iv)Once the basic ingredients for criminal breach of trust are not fulfilled, the aggravated form of offence Section 409 also not attracted. Moreover, there is no relationships of banker, merchant, factor, broker, attorney or agent between the petitioner and the de-facto complainant.

(b)Cheating under Section 420 of I.P.C.:

(i)In this case an agreement for developing the property was entered by the parties on 02.07.2001, later on 24.06.2002 it was amended by consent of both the parties. Thereafter, three years later, due to the failure of the de-facto complainant to get necessary approvals from the statutory authorities the project was dropped.

(ii)The prosecution had alleged that under the guise of compromise, the de-facto complainant was called and obtained deed of compromise by issuing two cheques bearing Nos.838354 and 838355 worth about Rs.7,00,00,000/- (Rupees seven crores only) in total, later the stop payment was given to its banker by petitioner. But, the investigation officer did not investigate matter properly, since a civil suit has been filed by the petitioner before this Court in C.S.No.914 of 2005 for injunction against the de-facto complainant not representing those cheques.

(iii)At the inception of the said suit an interim injunction was granted on 07.11.2005 in O.A.No.1055 of 2005 after hearing both sides. Later the said suit was decreed by this Court on 08.07.2010. The reason for giving the stop payment was those cheques were obtained by the de-facto complainant by giving arrest threat and coercion to the petitioner's Managing Director Mr.A.R.Santhanakrishnan with the aid of police authorities and the cheques were collected at police station. The judgment and decree dated 08.07.2010 in C.S.No.914 of 2005 has attained finality and has not been challenged. Hence, the offence of cheating does not arise at any point of time.

(iv)Even according to the prosecution that no averment in respect of causing unlawful loss to the de-facto complainant nor unlawful gain attained by the petitioner.

(v)According to the prosecution the de-facto complainant was deceived from the portion of profit which was derived from other project, which is totally strange to the agreement dated 02.07.2001 as well as amended agreement dated 24.06.2002. The allegations set out in the charge sheet is not supported by facts and no offence is made out.

(vi)The allegations contained in the charge sheet has been extensively agitated before the Company Law Board by the de-facto complainant and the same was not accepted and the claim of the de-facto complainant was negated by the Company Law Board in C.P.No.44 of 2015 by order dated 09.12.2015.

(c) Charges under Sections 465, 468 and 471 r/w 120(B) r/w 109 of I.P.C.

(i)Even assuming that the hand writing expert given an opinion that the signatures in the questioned letters, purportedly issued by the de-facto complainant is not matched with the specimen signature of the de-facto complainant, the main ingredient to meet the offence of forgery, intention to cause damage or injury or intention to commit fraud, has not been alleged in the charge sheet.

(ii)The alleged two letters submitted before the postal authority and Company Law Board, has not caused injury or damage complainant.

(iii)Further, there is no averments to the effect that by using those letters, either the petitioner or any of the named accused in the charge sheet had attained any undue advantage or caused unlawful loss to the de-facto complainant.

8.The entire action of the de-facto complainant in collusion with the respondent police is sheer abuse of process of law in view of the judgment in the case of ***Chandran Ratnaswami v. K.C.Palanisamy and others*** reported in ***2013 (6) SCC 740***.

9.The de-facto complainant had initiated this frivolous prosecution with oblique motive to extort money from the 1st petitioner and other accused in the charge sheet. The de-facto complainant never invested any money in M/s.Sai Sri Krishna Properties and Facilitators (Pvt.) Ltd. The de-facto complainant has no title or right over the properties of Sri Krishna Tiles and Potteries (Madras) Pvt. Ltd. The de-facto complainant has no right or title in the properties of the 1st petitioner. Two Memorandum of Understanding have been entered and cancelled due to the inability to perform the obligation on the part of the de-facto complainant. The de-facto complainant was re-designated as Director by the company and still continues to be Director of the company. By virtue of decree dated 08.07.2010 of this Court, the de-facto complainant could not realize the cheques for Rs.7,00,00,000/-, which were obtained by coercive method in CCB, and hence initiated this prosecution by suppressing the fact of Civil litigation in respect to those cheques. The de-facto complainant initiated proceeding before the Company Law Board against Mr.A.R.Santhanakrishnan (A2) and Mrs.Radhika Santhanakrishnan (A3) in C.P.No.44 of 2005 and the same was dismissed after contest. The allegations made before the Company Law Board in C.P.No.44 of 2005 and the complaint before the CCB are one and the same.

10.Admittedly the entire transaction is civil in nature and while going through the documents, it is clear that unnecessary criminal colour is given in order to avoid civil liability and to convert a purely civil dispute into criminal case. The entering into the compromise deed and not honoring the cheque by issuing stop payment is shown as a Criminal Act. The investigating agency could not to have come to such a conclusion in view of the decree and judgment passed by this Court on 08.07.2010 which had attained finality. The investigating agency has conveniently ignored the binding nature of the judgment and reached a conclusion contrary to it. There is further allegation that there was a conspiracy hatched between the petitioners to remove the de-facto complainant from the post of Managing Director. The law does not recognize the removal of a person from the post of Managing Director as conspiracy. The company has a prerogative right to appoint and change its Directors. However the actions of the petitioners were agitated before the Company Law Board by the de-facto complainant in C.P.No.44 of 2005 and the same was not accepted and the Company Law Board upheld the action of the company in inducting new Directors and removal of Managing Director. The contention of the de-facto complainant is that some forged documents were used and filed before the Company Law Board but for which the police has no right to investigate the same in view of the express bar under Section 195 Cr.P.C. The further allegation of forging the signature is also not sustainable in view of the judgment of the Company Law Board dated 09.12.2015.

11.None of the allegations in the charge sheet in C.C.No.590 of 2012 makes out a criminal offence which warrants trial before the Criminal Court and if allowed, would result in miscarriage of justice and abuse of process of law.

12.In the result, the Criminal Proceedings in C.C.No.590 of 2012, on the file of the Chief Metropolitan Magistrate Court at Chennai, stand quashed and this Criminal Original Petition stands allowed.

27.07.2017

Speaking order
Index : Yes

vs

To

The Inspector of Police,
Central Crime Branch, (Team-3),
Egmore, Chennai.

M.V.MURALIDARAN,J.

vs

Pre-Delivery Judgment in
Crl.O.P No.10828 of 2012

27.07.2017