

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 10..01..2017

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Crl.R.C.No.588 of 2012

and

M.P.No.1 of 2012

1.Y.Prabhu [A2]

2.Y.Jayashankar [A3]

... Petitioners

-Versus-

1.State by
Inspector of Police,
Central Crime Branch,
Egmore, Chennai 600 008. [Complainant]

2.T.Paramasivam [De facto complainant]

... Respondents

Revision Case filed under Sections 397 r/w 401 of Cr.P.C. praying to set aside the order framing charges against the petitioners dated 29.03.2012 made in C.C.No.6264 of 2011 by the learned XI Metropolitan Magistrate, Saidapet, Chennai and discharge the by allowing the present Criminal Revision Petition.

For Petitioners : Mr.B.Kumarasamy

For Respondents : Mrs.M.F.Shabana,
Government Advocate
[Criminal Side] for R1

: Ms.M.Akila for R2

ORDER

The petitioners are Accused Nos.2 and 3 in C.C.No.6264 of 2011 on the file of the learned XI Metropolitan Magistrate, Saidapet, Chennai. Totally there are three accused. One Mrs.Jayalakshmi is Accused No.1 in the said case. The 2nd respondent is the de facto complainant. A1 and the petitioners herein are said to have committed offences punishable under Sections 406, 418 and 420 r/w 34 of IPC. The learned Metropolitan Magistrate on 29.03.2012 framed charges against A1 and the petitioners for above said offences. Challenging the same, the petitioners are before this court with this criminal revision.

2. I have heard the learned counsel for the petitioners and the learned counsel appearing for the 2nd respondent and also the learned Government Advocate (Criminal Side) appearing on behalf of the 1st respondent/State. I have also perused the records carefully.

3. The case of the prosecution in brief is as follows:- The 2nd respondent herein and his brothers Sri.T.Shanmuga Sundaram

and Sri.T.Sivalingam are the absolute owners of the landed property measuring to an extent 5 grounds and 1800 square feet in S.No.210/2A1A at Thiruvanmiyur Village bearing Plot No.21, III Seaward Street, Valmiki Nagar, Chennai. The above said land was originally owned by their father Thomas Nadar. He died intestate leaving his three sons, the 2nd respondent herein and Sri.T.Shanmuga Sundaram and Sri.T.Sivalingam as his legal heirs. So, the 2nd respondent and his brothers have become the absolute owners of the landed property in question by succession. While so, the 2nd respondent agreed to sell the property to A1 and entered into an agreement of sale on 20.02.1997 with her and the sale consideration was fixed at Rs.1,78,25,000/-. The 2nd respondent had received a part of sale consideration under the agreement of sale from A1. Yet, for the reasons best known to her, sale could not get completed. Therefore, both A1 and the 2nd respondent decided to enter into an agreement with the petitioners/A2 and A3 to develop the property. Accordingly, they entered into a tripartite agreement on 10.12.1998. On the same day, The 2nd respondent has also executed two different general power of attorney deed one in favour of the petitioners and the other in favour of A1 to deal with the property in question. The construction got completed as early as in the year

2000. According to the 2nd respondent, A1 and the petitioners/A2 and A3 failed to pay the balance sale consideration of Rs.70,00,000/- within the time stipulated under the tripartite agreement and have sold out few flats to different persons. It is alleged that in the above circumstance, the 2nd respondent canceled the deeds of general power of attorney executed in favour of A1 and the petitioners/A2 and A3 by way of cancellation deeds dated 11.05.2011. It is further alleged in the complaint by the 2nd respondent that despite cancellation of general power of attorney deeds and fact that the same was intimated to A1 to A3, still, they sold few more left out plots to Sri.B.Venkataraman and another and Sri.N.M.Sathish and others. When the 2nd respondent approached A1 to A3 for balance sale consideration, it is alleged that they threatened him with dire consequences. Hence, the complaint.

4. Based on the above said complaint, a case in Crime No. 40 of 2008 came to be registered by the 1st respondent police for offence under Sections 406, 418 and 420 r/w 34 of IPC. The respondent police after investigation, filed a final report under Section 406, 418 and 420 r/w 34 of IPC before the XI Metropolitan Magistrate, Saidapet, Chennai. The learned Magistrate, in turn, framed charges

against A1 and the petitioners/A2 and A3 for offence under Section 406, 418 and 420 r/w 34 of IPC and they were put on trial. Challenging the charges framed against them, the petitioners who are A2 and A3 in the case have come up with this revision.

5. The 2nd respondent filed his counter wherein while admitting the execution of sale agreement and power of attorney deeds *inter alia* he contended that the petitioners are also parties to the deeds and that they colluded with A1 and sold the left out plots despite knowing the fact that the deeds of power of attorney given in their favour were canceled as early as in the year 2001 and thereby he has been cheated for Rs.70,00,000/-

6. The learned counsel appearing for the petitioners submitted that the petitioners are only developers and they entered into a Tripartite agreement with the de facto complainant and A1 only for the purpose of putting up constructions on the land in question. Apart from that, the petitioners have no connection whatsoever with the money transaction between the de facto complainant and A1 much less payment of balance sale consideration.

7. The learned counsel for the 2nd respondent strongly opposed the revision. According to him, these petitioners colluding with A1 sold out the plots constructed on the land in question and cheated the petitioners by not paying the balance sale consideration and hence, they are also liable for offence under Sections 406, 418 and 420 r/w 34 of IPC.

8. The question which arises for consideration is as to whether the uncontroverted allegations in the charge sheet, if accepted as true, make out a case against the petitioners of their having committed the offences of which they are charged. In this context, it is necessary to take note of the relevant provisions.

9. Section 405 IPC deals with criminal breach of trust. A careful reading of the Section 405 IPC shows that a criminal breach of trust involves the following ingredients:

(a) a person should have been entrusted with property, or entrusted with dominion over property;

(b) that person should dishonestly misappropriate or convert to his own

use that property, or dishonestly use or dispose of that property or wilfully suffer any other person to do so;

(c) that such misappropriation, conversion, use or disposal should be in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract which the person has made, touching the discharge of such trust.

10. Section 406 IPC prescribes punishment for criminal breach of trust as defined in Section 405 IPC. For the offence punishable under Section 406 IPC, prosecution must prove:

- (i) that the accused was entrusted with property or with dominion over it and
- (ii) that he (a) misappropriated it, or (b) converted it to his own use, or (c) used it, or (d) disposed of it.

11. The offence of cheating is defined in Section 415 of IPC. According to Section 418 of IPC cheating with knowledge that is likely to cause wrongful loss to a person whose interest in the transaction to which the cheating relates, he was bound, either by law, or by a legal contract to protect is liable for punishment under Section 418 of IPC. This section punishes such cases of cheating where the offender knows that wrongful loss to such a person may ensue whose interest he is bound to protect. It states that whoever cheats with the knowledge that he is thereby likely to cause wrongful loss to such a person whose interest in the transaction to which the cheating relates, he was bound, either by law or by a legal contract, to protect, shall be punished with simple or rigorous imprisonment for a term extending up to three years, or with fine, or with both.

12. Section 420 IPC deals with cheating. Essential ingredients of Section 420 IPC are:-

- (i) cheating;
- (ii) dishonest inducement to deliver property or to make, alter or destroy any valuable security or anything which is sealed or signed or is capable of being converted

into a valuable security, and

(iii) mens rea of the accused at the time of making the inducement.

13. Now, turning to the facts of the present case, a perusal of the records would go to show that the 2nd respondent has entered into an agreement of sale only with A1. The petitioners were not at all party to that agreement of sale. Under the sale agreement, sale consideration was fixed at Rs.1,78,25,000/- and on the date of agreement itself, a part of sale consideration of Rs.1,08,25,000/- was paid to the 2nd respondent by A1. The balance of sale consideration payable is Rs.8,70,000/-. When the contract could not get concluded, on 10.12.1998, the de facto complainant and A1 and the petitioners entered into the tripartite agreement for the purpose of putting up construction in the land in question wherein the 2nd respondent has been shown as "Part of the First Part", M/s.Mega Construction, a registered Partnership Firm, represented by one of its partner namely Mrs.Vijayalakshmi (A1) has been shown as "Party of the Second Part" and that M/s.LCS Property Development Private Limited, a registered company, represented by its Director

Mr.Y.Jayashankar (A3) has been shown as "Party of the Third Part" and the parties have agreed upon as follows:

"Whereas the sale could not be completed within the time frame stipulated in the Agreement dated 20.02.1997 and due to personal reason could not put up the said complex of flats and therefore approached the party of the third party, who are builders, for putting up construction in order to complete the agreement of sale by the party of the second part with the party of the First part.

14. It is not in dispute that the petitioners were not parties to the earliest sale agreement. A perusal of the tripartite would go to show that A1 agreed to pay the balance sale consideration to the 2nd respondent. The extract from the tripartite agreement with regard to payment clause reads thus:

"(2) The Party of the Second Part shall pay the remain sale consideration i.e., Rs.1,10,25,000/- to the Party of the First Part as to the time schedule that follows:-

(i) on the date of execution of this agreement a sum of Rs.22,00,000/- (Rupees Twenty Two Lakhs only).

(ii) A sum of Rs.10,00,000/- (Rupees Ten Lakhs only) on or before one month from the date of this Agreement.

(iii) A sum of Rs.78,25,000/- (Rupees Seventy Eight Lakhs and Twenty Five Thousand only) within a period of 12 months from the date of this Agreement."

15. As a matter of fact, the petitioners who are developers under the tripartite agreement agreed to place security deposit of a sum of Rs.60,00,000/- by way of different banker's cheques. It has been further agreed under the tripartite agreement as follows:-

4. The party of the second part agreed to pay the above mentioned Rs.78,25,000/- (Rupees Seventy Eight Lakhs and Twenty Five Thousand only) as per Clause 2(iii) to Party of the First Part in stages whenever the sale deeds are being executed / registered in favour

of the nominees of the Party of the Second Part, however, the balance consideration of Rs.78,25,000/- is to be paid before 12 months period from the date of this Agreement.

16. With regard to entrustment of the property, it has been agreed under the tripartite agreement as follows:

"9. The Party of the First Part has handed over possession of the scheduled mentioned property to the Party of the Second Part on the date of this agreement and it shall be open to the Party of the Second Part to develop the property as to their choice or may enter into any agreement with third party for such development."

17. Admittedly, it is only A1 who entered into a sale agreement with the de facto complainant and paid a part sale consideration. Further it is the admitted case of the de facto complainant that out of total sale consideration of Rs.1,78,25,000/- so far a part sale consideration of Rs.1,08,25,000/- has been paid and the remaining consideration to be payable is only Rs.70,00,000/-. For the reasons best known to them, the contract could not get completed in time.

Therefore, both A1 and the de facto complainant have mutually agreed to develop the property and to entrust the construction work to a third party. Only thereafter, A1 and the de facto complainant and the petitioners entered into a tripartite agreement for the purpose of putting up construction in the vacant land in question. Even as per the Tripartite agreement only A1 has agreed to pay the remaining sale consideration and these petitioners agreed to pay security deposit of Rs.60,00,000/- in favour of A1 and absolutely there is no connection or agreement between the petitioners and A1 in the money transaction. In fact, the petitioners placed security to the tune of Rs.60,0,000/- by way of banker's cheques in favour of A1. After completion of construction, it was only A1 who sold some of the plots. The property was entrusted as per the tripartite agreement only to A1, who, in turn, as per the very same tripartite agreement, entrusted only the construction work to the petitioner.

18. From the above, it is crystal clear that the petitioners have only agreed to develop the property and entered into the agreement and that it is a dispute between the de facto complainant and A1. The petitioners are being developers, they have no way connected with any money transaction with the 2nd respondent. Neither there is

allegation against the petitioners that the property in question was entrusted to them and that they dishonestly misappropriated it for their own use. Further, though, the 2nd respondent termed the petitioners also as cheats, the two essential elements in the offence of cheating namely, deception or dishonest intention to do or omit to do something and inducement to do something are not made out against them. Further, the petitioners are not in any way legally bound to protect the interest of the 2nd respondent and it was only A1 who, as per the tripartite agreement, had legal obligation to protect the interest of the 2nd respondent since it was only A1 who agreed to pay balance of sale consideration to A1. Thus, in so far as the petitioners are concerned, there are no materials available even to prima facie hold that they have committed offence under Section 406, 418 and 420 r/w 34 of IPC to proceed with the trial. In the above circumstances, I am of the considered view that allowing the prosecution to go further as against the petitioners would amount to abuse of the process of court.

19. In the result, this criminal original petition is allowed and the case in C.C.No.6264 of 2011 pending on the file of the learned XI Metropolitan Magistrate, Saidapet, Chennai, is hereby quashed

insofar as it relates to A2 and A3, the petitioners herein. It is made clear that whatever the observations made hereinabove were only for the purpose of deciding the case against the petitioners/A2 and A3 and that the trial court shall not influence by such observations. The trial court shall proceed with further as against A1 in accordance with law. Since the matter has been pending for a long time, the learned Metropolitan Magistrate is directed to dispose of the same within a period of six months from the date of receipt of a copy of this order. Consequently, connected MP is closed.

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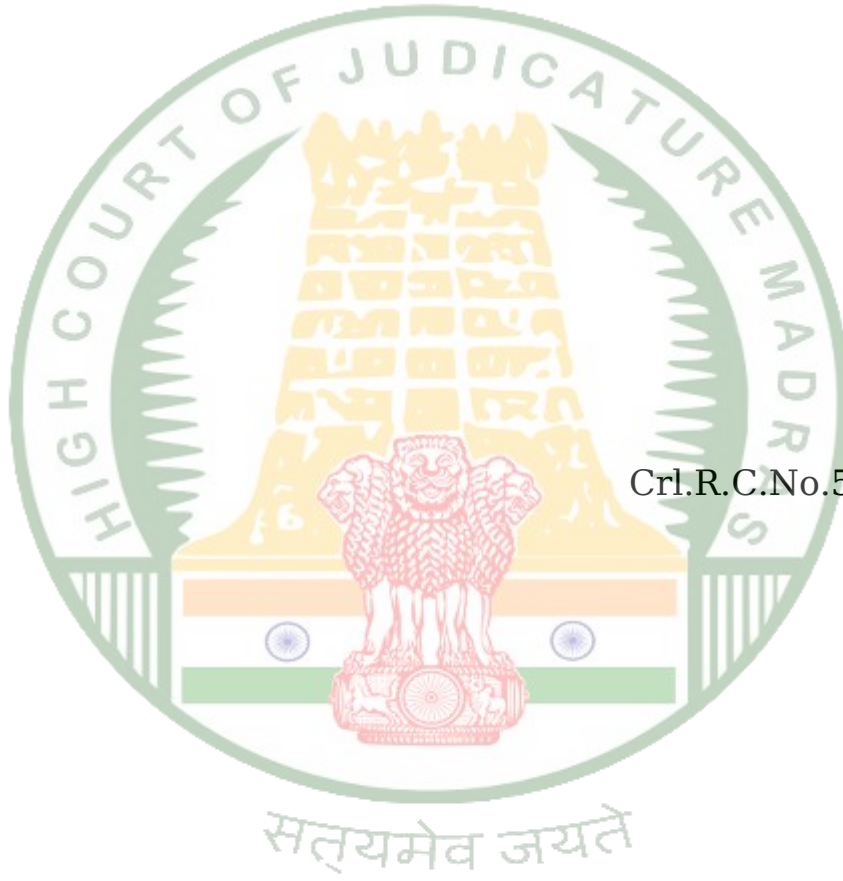
- 1.The XI Metropolitan Magistrate, Saidapet, Chennai.
- 2.The Inspector of Police,CCB,Egmore,Chennai 600008.
- 3.The Public Prosecutor, High Court, Madras.

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V.BHARATHIDASAN.J.,

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