

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2017

CORAM

THE HON'BLE MR.JUSTICE M.S.RAMESH

CrI.O.P No.12964 of 2012
and M.P.No.1 of 2012

R.Devadass

... Petitioner

Vs

1. The State rep by
The Inspector of Police,
Central Crime Branch, Team – I,
Egmore, Chennai.
(Cr.No.33 of 2012)

2. B.Jayaraman

... Respondents

Prayer: Petition filed Under Section 482 of Cr.P.C to call for the records of the respondent in Cr.No.33 of 2012 on the file of the respondent police and quash the same.

For Petitioner : Mr.P.Kumaresan

For Respondents
For R1 : Mr.C.Iyyapparaj
Additional Public Prosecutor

For R2 : Mr.N.Vidyasagar

ORDER

This petition has been filed to quash the proceedings in Cr.No.33 of 2012 on the file of the respondent police.

2. It is the case of the petitioner that he had entered into a sale agreement on 24.06.2006 with the first and second accused for the purchase of property in survey No.207/14A of Koyambedu Village, Chennai measuring 1.49 acres. The total sale consideration was fixed as Rs.2 crores and the petitioner had paid a sum of Rs.51,00,000/- (Rupees fifty one lakhs only) as advance. Incidentally, there was acquisition proceedings pending against the subject land and the petitioner herein had volunteered to clear the acquisition proceedings by himself. However, since he could not do so, the first and second accused herein had entered into another agreement with the defacto complainant for the purpose of selling the subject land, on the understanding that the advance amount of Rs.51,00,000/-, paid by the petitioner herein, would be refunded to him. Accordingly, the agreed amount of Rs.51,00,000/- came to be refunded to the petitioner herein. However, the defacto complainant had revealed his grievance stating that since the land was under the acquisition proceedings, the petitioner and all the accused had cheated him and accordingly his complaint came to be registered.

3. The learned counsel for the petitioner submitted that he has no role to play in the complaint since he was one among the prospective purchasers and after realising that he could not recover the land under acquisition proceedings, he sought for the refund of the advance amount of Rs.51,00,000/-

and therefore the first and second accused had entered into an agreement with the defacto complainant, whereby the amount which was advanced by him came to be refunded. Since this transaction may not attract the offence of cheating, he seeks for quashing the investigation.

4. The learned Additional Public Prosecutor, on the other hand submitted that the investigation is still pending and though the High Court can exercise its power under Section 482 of CrI.P.C. it may not be proper to quash the investigation at this stage, as the issue as to whether there was any criminal offence of cheating involved or not, can be decided only after investigation and therefore sought for dismissal of the present quash petition.

5. I have given careful consideration to the submissions by the respective counsel. Though the petitioner claims that he had paid a sum of Rs.51,00,000/- under the sale agreement dated 24.06.2016, the recitals in the agreement does not evidence the payment of Rs.51,00,000/- and on the other hand the amount of Rs.20,00,000/- shown as advance of total sale consideration.

6. On perusal of the complaint, it is seen that the defacto complainant had paid a sale advance of Rs.3.20 crores, out of which, a sum of Rs.2.29 crores was paid to the first accused and a sum of Rs.51,00,000/- was paid

to the petitioner herein. The complaint also suggests that all the accused including the petitioner have joined together, and cheated the defacto complainant. In the absence of any material to show that the petitioner had paid a sum of Rs.51,00,000/- to the first and second accused at the time of executing the sale agreement and also taking note of the fact that there is a possibility that the petitioner could have demanded further amount to come out of the sale agreement, it would not be appropriate to quash the proceedings on this ground. This issue requires a thorough investigation.

7. The learned counsel for the petitioner submitted that the petitioner has only paid a sum of Rs.51,00,000/- to the first and second accused and therefore, when the subsequent agreement came to be entered with the defacto complainant, his advance amount of Rs.51,00,000/- was refunded to him. When the defacto complainant has given a complaint on 15.09.2011 and on 27.01.2012, the defacto complainant along with police had coerced the petitioner herein and got back the amount of Rs.51,00,000/- through D.D. in favour of the defacto complainant. It is needless to point out that if at all this advance amount has been wrongly taken back, it is always open to him to initiate proper legal proceedings for recovery of money or lodge a criminal complaint. At this juncture, the learned counsel for the petitioner submits that the petitioner has also filed a complaint in this regard for coercively taking away the amount of Rs.51,00,000/-

from him and the same is still pending investigation.

8. Since the averments in the complaint require investigation to determine the criminal nature of the complaint, I do not intend to interfere into the same. However, since the complaint is pending from the year 2011 onwards, it would be appropriate to direct the respondent police to complete the investigation within a period of six weeks from the date of the receipt of a copy of this Order.

9. With the above observations, the criminal original petition stands closed. Consequently connected miscellaneous petition is closed.

29.11.2017

Index:Yes/No
Internet : Yes/No
kv/rts

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M.S.RAMESH, J.

rts

To

1. The Inspector of Police,
Central Crime Brach, Team – I,
Egmore, Chennai.
2. The Public Prosecutor
High Court, Madras.



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