

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 30.10.2018

PRONOUNCED ON : 23.11.2018

CORAM

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

Crl.O.P.Nos.17044 and 24013 of 2013
and
M.P.Nos.1 and 1 of 2013

Crl.O.P.No.17044 of 2013

1.M/s.Lancor Holdings Ltd.

Rep. by its Managing Director,
Tr.R.V.Shekar, VTN Square,
No.58, G.N.Chetty Road,
T.Nagar, Chennai - 600 017.

2.R.V.Shekar,

Managing Director,
M/s.Lancor Holdings Ltd,
Arihant VTN Square,
No.58, G.N.Chetty Road,
T.Nagar, Chennai -600 017.

... Petitioners

Vs.

1.State, represented by

Inspector of Police,
Central Crime Branch, Team-XV
Anti Land Grabbing Special Cell,
Egmore, Chennai - 600 220.

2.Kishore Kumar Menon

3.BNP Paribas Global Securities

Market Operations (P) Ltd,
Rep. by its Director, Patrick Venderbeck,
No.25/26, College Road,
Chennai - 600 006.

4.Patrick Venderbeck,

Director, M/s.BNP Paribas Global Securities
Market Operations (P) Ltd,
No.25/26, College Road,
Chennai 600 006.

... Respondents

Crl.O.P.No.24013 of 2013

1.BNP Paribas Global Securities
Market Operations P Ltd,
(Now, BNP Paribass Sundaram Global
Securities Operations P Ltd),
By its Director Patrick Venderbeck,
No.165, St Marys Road, Alwarpet,
Chennai - 18.

2.Patrick Venderbeck
Director,
BNP Paribas Global Securites
Market Operations P Ltd.,
(Now, BNP Paribas Sundaram Global Securities
Operations P Ltd)
No.165, St.Marys Road, Alwarpet,
Chennai -18.

...Petitioners

Vs.

1.State by Inspector of Police,
Central Crime Branch Team-XV
Anti Land Grabbing Special Cell,
Egmore, Chennai -20.

2.Kishore Kumar Menon

...Respondents

COMMON PRAYER: Criminal Original Petitions have been filed under
Section 482 of Cr.P.C., to call for the records of C.C.No.2496
of 2013 pending on the file of the 11th Metropolitan Magistrate,
Saidapet, Chennai and quash the same.

For Petitioners : Mr.P.R.Raman, Senior Counsel for
M/s.C.Seethapathy
in Crl.O.P.No.17044 of 2013

: Mr.R.Rajarathinam
in Crl.O.P.No.24013 of 2013

For Respondents : Mr.T.Shanmugarajeswaran
Government Advocate (Crl.side)
for R1 in both O.Ps.
Mr.ARL.Sundaresan
Senior Counsel for Mr.S.Suresh
for R2

O R D E R

Crl.O.P.No.17044 of 2013 has been filed by the accused
Nos.1 and 2 and Crl.O.P.No.24013 of 2013 has been filed by the
accused Nos.3 and 4 to quash the proceedings against them in

C.C.No.2496 of 2013 on the file of the 11th Metropolitan Magistrate, Saidapet, Chennai.

2. The second respondent herein and his brothers entered into a Joint Development Agreement on 13.12.2004, 17.12.2004 and supplemental agreement on 29.03.2006 with the petitioner Nos.1 and 2 for the development of the property situated at New No.165, Old No.110, St.Mary's Road, Alwarpet, Chennai - 600 018, measuring about 20 grounds and 600 sq.ft, which is belonging to the second respondent herein and his brothers. According to the agreement, the accused Nos.1 and 2 should construct the building with their own cost and on completion of construction, the second respondent and the accused Nos.1 and 2 shall avail 50% each on the super built-up area. The superstructure to be apportioned as 1 to 5 stories to the accused Nos.1 and 2 and 6 to 10 stories to the second respondent. On 20.10.2008, the second respondent has received a letter from the accused Nos.1 and 2, that the construction of the superstructure was over and requested to take over their portion. As the super structure was not completed as agreed and no completion certificate was received from C.M.D.A., the second respondent / de-facto complainant has not taken over the possession. However, the accused Nos.1 and 2 executed the sale deed on 19.12.2008 on their own and transferred the super structure and land 50% of their part. Prior to that, the accused Nos.1 and 2 have executed a lease deed in favour of the accused Nos.3 and 4 in respect of the subject matter of the property on 10.11.2018 itself, stating that they have seized and possessed the said land and the said Industrial Park Building. When the second respondent's brother Prem Kumar Menon questioned about it, the accused Nos.3 and 4 by a letter dated 18.02.2009, have stated that the lease deed was executed based on the documents of title duly registered with the Registrar of Assurances, which are public documents. As the lease deed was executed well in advance of registration of sale deed with fixation of price per square feet, the accused persons caused wrongful loss to the de-facto complainant and hence, the de-facto complainant has filed a private complaint before the 11th Metropolitan Magistrate, Saidapet, Chennai on 02.10.2010.

3. The learned 11th Metropolitan Magistrate, Saidapet, Chennai has forwarded the said complaint to the first respondent herein under Section 156(3) Cr.P.C., for registration of FIR, enquiry and report. Based on the same, the first respondent has registered a case in Crime No.441 of 2010 under Sections 409, 420 and 120-B IPC, and took the matter for investigation. After investigation, the first respondent has filed a charge sheet against the petitioners herein under Sections 409, 420 and 120-B IPC. Based on the said charge sheet, the learned 11th Metropolitan Magistrate, Saidapet, Chennai, has taken the case on file in C.C.No.2496 of 2013. The petitioners herein have

filed the present petitions under Section 482 Cr.P.C., to quash the proceedings against them in C.C.No.2496 of 2013 on the file of the 11th Metropolitan Magistrate, Saidapet, Chennai.

4. The learned Senior Counsel for the accused Nos.1 and 2 has submitted that the first accused is a Public Limited Company engaged in the business of property development and the second accused is the Managing Director of the first accused Company. He further submitted that the accused Nos.1 and 2 entered into a Joint Development Agreement [JDA] with the defacto complainant and his brothers on 17.12.2004, for construction of a building in the property belonged to the de-facto complainant and his brothers. As per the said JDA, the accused Nos.1 and 2 are entitled to 50% of the super built up area and 50% is entitled by the de-facto complainant and his brothers. He further submitted that as per the said JDA, the first accused had deposited a sum of Rs.6.82 Crores and also provided an alternative accommodation for the owners. As per clause 33 of the JDA, the parties are entitled to enter into agreements to lease out the property even while the building was under construction. He further submitted that the owners had also executed two powers of attorney in favour of the first petitioner with respect to the aforesaid property. The first power of attorney dated 29.03.2006 was a registered document, which empowered the first accused to carry out developmental activities and to lease out its share. The second power of attorney was an unregistered one which empowered the first accused to take conveyance of undivided share in the land. The second power of attorney was handed over to an escrow agent and was to be handedover to the first accused upon performance of certain obligations as set out in the agreement.

5. The learned senior counsel for the accused Nos.1 and 2 further submitted that the first accused completed the construction and also made an application for completion certificate vide letter dated 29.07.2008 and thereafter, by the letter dated 20.10.2008, the first accused informed the owner that the building was completed as per the specification and that the first accused was ready to handover the owners' share of the premises. He further submitted that the owners did not agree with the first accused that the building was completed and made certain frivolous complaints and claims and on such basis, refused to refund the security deposit of Rs.6.82 Crores. He further submitted that there are various communications going back and forth between the parties and the escrow agent had also refused to handover the original power of attorney deed to the first accused. He further submitted that on 10.11.2008, the first accused entered into a lease agreement with the accused Nos.3 and 4 in respect of the second and third floors and the same was registered on 12.02.2009. He further submitted that as per clause 3 of the lease deed, the lease was to take effect on

10.11.2008 or upon the first accused obtaining completion certificate and electricity connection, whichever is latter. He further submitted that the completion certificate was issued by the C.M.D.A., on 14.11.2008 and the power supply was obtained on 19.12.2008. He further submitted that since the owners did not come forward to execute and register a sale deed in favour of the accused No.1, exercising the power granted to it by the owners, the first accused conveyed to itself 50% undivided share in the said property under five sale deeds, dated 19.12.2008.

6.The learned senior counsel for the accused Nos.1 and 2 has further submitted that since a dispute had arisen, arbitration was initiated by the first accused in January, 2009. The owners filed applications for interim relief under Section 9 of the Arbitration & Conciliation Act, 1996, seeking injunction in respect of joint possession, the said application was dismissed by this Court. As against the same, the owners filed appeals and the same were also dismissed by a Division Bench of this Court. He further submitted that the owners, in March, 2009, have filed a suit in C.S.No.279 of 2009, (then converted into O.S.No.8448 of 2010) seeking action against the accused No.1 for getting documents executed in its favour through misrepresentation. In the said suit, the lease in favour of the accused No.3 also has been discussed. By a common order dated 21.04.2009, all interim reliefs sought for in the suit were dismissed. The suit is pending disposal. He further submitted that in so far as the arbitration of the main dispute, orders have been reserved.

7. The learned senior counsel for the accused Nos.1 and 2 further submitted that the de-facto complainant has lodged a complaint before the Commissioner of Police on 16.02.2009 and after investigation, the police has dropped further action. Thereafter, a private complaint was filed in C.C.No.9652 of 2009 on the file of the 11th Metropolitan Magistrate, Saidapet, Chennai. Alleging that the accused Nos.1 and 2 and others have committed an offence punishable under Sections 405, 409, 415, 418, 420 and 423 IPC. In the said complaint, it is stated that the accused persons have deceived the owners and taken conveyance in their favour, while failing to perform their obligations set out in the JDA. He further submitted that the accused persons 1 and 2 and others have filed a petition in CrI.O.P.No.12771 of 2009 before this Court to quash the proceedings against them and this Court by the order dated 25.07.2012, has quashed the said complaint. He further submitted that in the said order, this Court has categorically held that the dispute is clearly civil in nature, which cannot be gone into by the criminal Court. He further submitted that as against the said order, the de-facto complainant has filed SLP (CRL)No.8825 of 2012 before the Hon'ble Supreme Court and the Hon'ble Supreme Court has dismissed the said SLP stating that,

it does not see any reason to interfere with the order passed by this Court. Further the de-facto complainant has filed a Review Petition (CRL) No.31 of 2013 and the same was also dismissed on 21.02.2013. He further submitted that, stating the same allegations, the de-facto complainant has filed a second private complaint before the Magistrate. He further submitted that in the said complaint in addition to the fact that the accused Nos.1 and 2 have conveyed their title in their favour, also stated that before handing over the possession of their share, the accused Nos.1 and 2 have leased out their share in favour of the accused Nos.3 and 4. He further submitted that the learned Magistrate has forwarded the said complaint to the first respondent under Section 156(3) Cr.P.C for registration and report. Accordingly, the first respondent has registered a case and after investigation, he filed charge sheet. He further submitted that since already this Court has clearly held that the dispute is civil in nature, the second complaint is not maintainable. Therefore, he prayed to quash the proceedings against the accused Nos.1 and 2.

8. The learned counsel for the accused Nos.3 and 4 has adopted the arguments advanced by the learned Senior Counsel for the accused Nos.1 and 2. In addition to that, he has submitted that the accused Nos.3 and 4 are in no way connected with the dispute which is in existence between the accused Nos.1 and 2 and the de-facto complainant. He further submitted that the accused Nos.3 and 4, after verifying powers of attorney which were executed by the de-facto complainant and his brothers in favour of the accused Nos.1 and 2, entered into a lease agreement on 10.11.2008 in respect of the portions which were allotted to the accused Nos.1 and 2. He further submitted that even though the said document was executed on 10.11.2008, it was registered on 12.02.2009 and further as per clause 3 of the said lease deed, the said lease will take effect only upon the first accused obtaining completion certificate and electricity connection and therefore, they have not committed any offence and hence, he requests to quash the proceedings against the accused Nos.3 and 4.

9. The learned Government Advocate (Crl.side) who is appearing for the first respondent has submitted that as per the terms and conditions of the agreement, the petitioners have not constructed the building and hence, the second respondent refused to take possession of the properties. He further submitted that the earlier complaint was filed in respect of the sale deeds executed by the petitioners in respect of 50% of the property, whereas the second complaint was lodged by the second respondent with regard to the lease deed executed by the accused Nos.1 and 2 in favour of the accused numbers 3 and 4. He further submitted that the Investigating Officer after thorough investigation has filed a charge sheet stating that, the

petitioners herein have committed offences punishable under Sections 409, 420 and 120-B IPC. He further submitted that it is too early to decide whether the petitioners have committed offences or not and therefore, he prayed to dismiss these petitions.

10. The learned senior counsel for the second respondent has submitted that the earlier complaint was filed by the second respondent with regard to the execution of the sale deed by the accused Nos.1 and 2 in respect of 50% of the built up area, whereas the present case has been filed with regard to the lease deed executed by the accused Nos.1 and 2 in favour of accused Nos.3 and 4. He further submitted that as per the agreement entered between the accused Nos.1 and 2 and the second respondent, only after completion of the entire building, accused Nos.1 and 2 can lease out their portion to third parties, but in this case even before getting completion certificate from the CMDA, the accused Nos.1 and 2 have entered into a lease agreement with the accused Nos.3 and 4 and hence, a prima facie case is made out against the petitioners herein and therefore he prayed to discuss the petitions.

11. It is the second round of litigation. Earlier, the second respondent has filed a private complaint alleging that the accused Nos.1 and 2 have executed sale deeds in respect of the 50% of the built up area even before completion of the construction and hence, they are liable to be punished under Sections 405, 409, 415, 418, 420 and 423 IPC. Based on the said complaint, the learned 11th Metropolitan Magistrate, Saidapet, Chennai, has taken the case on file in C.C.No.9652 of 2009 and issued summons to the accused persons. After receipt of the summons, the accused persons therein filed CrI.O.P.No.12771 of 2009 to quash the proceedings against them. This Court, after considering the submissions made by both sides and after elaborate discussion, by the order dated 25.07.2012, has allowed the said petition and quashed the proceedings in C.C.No.9652 of 2009 on the file of the 11th Metropolitan Magistrate, Saidapet, Chennai. As against the same, the second respondent herein has filed SLP (CRL)O.P.No.8825 of 2012 before the Hon'ble Supreme Court. The Hon'ble Supreme Court by the order dated 26.11.2012 has dismissed the said SLP. As against the same, the second respondent herein has filed Review Petition (CRL)No.31 of 2013 before the Hon'ble Supreme Court. The said review petition was also dismissed on 21.02.2013. So, the findings which were recorded by this Court in CrI.O.P.No.12771 of 2009 have become final.

12. This Court in CrI.O.P.No.12771 of 2009 has observed that the learned senior counsel for the respondent / complainant submitted that from the averments made in the complaint, the offence under Section 409 alone is made out. Further the

learned senior counsel for the respondent/complainant would concede that even the offence under Section 420 IPC is not made out. Therefore, this Court has recorded that the learned senior counsel for the respondent has no objection for dropping the penal provisions viz., Sections 405, 415, 418, 420 and 423 IPC.

13. In that case, the learned senior counsel, who was appearing for the respondent has submitted that there are materials to show that offence under Section 409 IPC was committed by the accused and therefore, the proceedings are not liable to be quashed. This Court after referring to the definition "Dishonestly" under Section 24 and definition of criminal breach of trust under Section 405 IPC has held that from the materials on record, it could be seen that there is absolutely nothing to show that the first accused company acted with dishonest intention. Further it was held that it is very well clear that the construction was commenced as per the terms of the agreement and at the time, when the agreement was entered into, initially, there was no deception played or fraud played upon by the accused on the land owners. Further, it was held that the agreement was entered into between the first accused company and the land owners with honest intention and by mutual trust only.

14. Further this Court has observed that it is not in dispute that the first accused Company, using the first power of attorney, started construction of building, after getting necessary permission and approvals from the authorities concerned. The structure of the building was also completed. The dispute arose only at the time of the first accused company claiming that the construction of the building completed, whereas according to the complainant, the construction of the building was not complete. That dispute is exactly the subject matter, which is being dealt with by the arbitrator. The Criminal Court cannot be decided as there is breach of terms of the agreement or not. Further this Court has held that the said dispute is clearly civil in nature, which cannot be gone into by the Criminal Court. After holding so, finally this Court has allowed the said petition and quashed the proceedings in C.C.No.9652 of 2009 on the file of the 11th Metropolitan Magistrate, Saidapet, Chennai.

15. As already pointed out that, the second respondent has filed second private complaint before the same Magistrate stating that, the accused Nos.1 and 2 have entered into a lease agreement with the accused Nos.3 and 4 in respect of 50% of the built up area, which was allotted to the accused Nos.1 and 2. The said complaint was forwarded to the first respondent by the

Metropolitan Magistrate, Saidapet, Chennai under Section 156(3) Cr.P.C. and after receipt of the said complaint, the first respondent has registered an FIR and investigated the matter and filed charge sheet stating that the petitioners herein have committed offences punishable under Sections 409, 420 and 120 B IPC.

16. As already stated that in respect of the sale deeds said to have been executed by the accused Nos.1 and 2, a private complaint filed and the same was taken on file in C.C.No.9652 of 2009 on the file of the 11th Metropolitan Magistrate, Chennai and the same was quashed by this Court as against which SLP was filed and the same was dismissed and the review petition was filed by the second respondent herein was also dismissed. So, this Court is of the view that once again the dispute with regard to whether the accused Nos.1 and 2 have violated the agreement need not be gone into.

17. It is an admitted fact that, the accused Nos.1 and 2 are entitled to 50% of the built up area and with regard to the same, already they have executed sale deeds in their favour and questioning the same, a private complaint was filed and this Court has quashed the said complaint. This complaint is relating to lease agreement executed by the accused Nos.1 and 2 in favour of the accused Nos.3 and 4. Admittedly, the said lease deed was executed by the accused Nos.1 and 2 only in respect of the portion which is meant for them. As already pointed out that the accused Nos.1 and 2 got execution of the sale deed in their favour by exercising the power which was conferred under the power of attorney and with regard to the said dispute also, civil suit is pending and also arbitration proceeding is pending. This Court has in Crl.OP.No.12771 of 2009 has held that the said dispute is purely civil in nature, which cannot be gone into by the Criminal Court. The same principle will apply to this case also. This case has been filed with regard to the lease deed said to have been executed by the accused Nos.1 and 2 in favour of the accused Nos.3 and 4. Therefore, the said transaction is purely civil in nature and the same cannot be decided by the Criminal Court. Further, the act of the accused Nos.1 and 2 cannot be termed as they have acted with a dishonest intention with a view to cause wrongful loss to the second respondent. Therefore, the continuance of the proceedings against the petitioners herein in C.C.No.2496 of 2013 pending on the file of the 11th Metropolitan Magistrate, Saidapet, Chennai, would amount to abuse of process of court.

18. In the result, these petitions are allowed. Consequently, connected miscellaneous petitions are closed. The proceedings against the petitioners herein in C.C.No.2496 of 2013 pending on the file of the 11th Metropolitan Magistrate, Saidapet, Chennai are quashed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1.The 11th Metropolitan Magistrate,
Saidapet,
Chennai.

2.The Inspector of Police,
Central Crime Branch Team-XV
Anti Land Grabbing Special Cell,
Egmore, Chennai -20.

3.The Public Prosecutor,
Madras High Court,
Chennai.

+lcc to Mr.S.Suresh, Advocate sr.no.80754

+lcc to M/s.C.Seethapathy, Advocate sr.no.80221

CrI.O.P.Nos.17044 and 24013 of 2013
and
M.P.Nos.1 and 1 of 2013

ssd(co)
nr 24/12/2018