IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 23.10.2018

Pronounced on : 23.11.2018

CORAM
THE HONOURABLE Mr. JUSTICE.P.VELMURUGAN

Crl.R.C.No. 1146 of 2013

Association for the welfare of Persons
Affected by Sai Hi Value Properties,
Madipakkam,
A Registered Society
No.189 4th Cross Street,
Sadasivam Nagar,
Madipakkam, Chennai 600 091.
Rep. by Its Secretary Mr.R.Raja Mohan ...Petitioner

Vs

1. Dr. S.S.R. Ramadass

2. V. Subash Chandra Bose

3. G. Suriyamurthy

4. The Sub Inspector of Police,
Chennai Crime Branch -IV Team,
Egmore, Chennai-8. ... Respondents

PRAYER: The Criminal Revision filed under Sections 397 and 401of the Criminal Procedure Code, to call for the records relating to the order dated 06.08.2013 in Crl.M.P.No.552 of 2008 in X Crime No.577 of 2006 On the file of the learned Chief Metropolitan Magistrate, Chennai-8 and set aside the same and order re-investigation in X Crime No.577 of 2006 on the file of the 4th respondent herein by any other investigating Agency.

For Petitioner : Mr.A.R.L. Sundaresan Sr.c for
M/S.A.C.Gandhimathi

For Respondent: Mr.R.Muniyappa raj - For R1 to R3

Mr.R.Ravichandran
Government Advocate (Crl. Side) for R4

O R D E R

The Revision Petitioner herein filed a complaint against the respondents 1 to 3 before the 4th respondent. Based on the complaint, FIR was registered in Crime No.577 of 2006.

After investigation, police filed final deferred charge sheet under Section 173(2) of Cr.P.C. before the learned Additional Chief Metropolitan Magistrate, Egmore, as civil in nature. The revision petitioner filed a protest petition to reject the final report dated 08.02.2008 filed by 4th respondent and to direct the police to re-investigate the matter. The learned Magistrate, after giving opportunity to the both parties, accepted the final report filed by the 4th respondent and rejected the protest petition. Challenging the said order passed by the learned Additional Chief Metropolitan Magistrate in Crime No.552 of 2008 in X Crime No.577 of 2006, the petitioner therein/the defacto complainant has filed the present revision petition before this Court.

2. It is the case of the revision petitioner that the respondents 1 to 3 herein being the partners of M/s. Sai Hi Value Properties, initiated a project, by which they would acquire 300 acres of land to be apportioned among 3000 Government Employees and Retired Employees and fixed Rs.43,200/- as the cost of a plot to be sold. The accused floated advertisement, inviting the Government Servants to join them as members in the project and invited them to deposit the cost of the plot, as if they had identified the entire 300 acres to be acquired and that they had already arranged for the access to the land. The respondents 1 to 3 had also shown as if all arrangements had been made for approval by the CMDA and only a formal application was needed to be made. A large number of people were made to believe that the respondents 1 to 3 were sincere, and became members in the project and entrusted with the respondents 1 to 3 Crores of money, by depositing the cost over plots into the bank account number specifically opened by the accused for the purchase and processing of land for the project way back in 2001. The respondents 1 to 3 acquired a paltry 67 acres of land and conveyed the lands by sale deeds to the members in groups. Simultaneously, with the execution of the sale deeds the accused obtained powers of attorney from the new owners for the purpose of developing the land and obtaining CMDA sanction etc. After about four years, the respondents 1 to 3 started saying that enough people have not joined the project and CMDA sanction could not be obtained and therefore they were abandoning the project and called the members to take their money back. The real reason being that the cost of land had appreciated manifold and the accused who were holding the lands in trust for the members developed ill designs and intended to enrich themselves by disposing of the lands for colossal profits which rightfully belonged to the members. Besides, as per the auditors report, about Rs.2 Crores was withdrawn by the respondents 1 to 3 from the bank for undisclosed purposes and the money has been misappropriated by the respondents 1 to 3.

3. Having been altered to misappropriation of funds and the fraudulent intentions of the respondents 1 to 3, about 117 persons who had made their investment for the purchase of 143 plots refused to accept the offer made by the accused and formed the petitioner association to seek justice.

4. The petitioner association preferred a complaint with the 4th respondent, who registered the case in X Crime No.577 of 2001 and took up investigation of the offences. The respondents moved this Court for getting anticipatory bail and were granted anticipatory bail on deposit of Rs.75 lakhs. The 4th respondent opposed the bail application and also have stated that there was prima facie case against the respondent 1 to 3. After the investigation, they have filed the deferred charge sheet in order to safeguard the respondents 1 to 3. Therefore, the petitioner filed the protest petition which was not considered by the learned Chief Metropolitan Magistrate and the same was dismissed. against which, the present revision petition has been filed.

5. The case of the respondents 1 to 3 is that they being the partners of M/s. Sai Hi Value Properties initiated a project, sale deed of the lands were registered, and the land owners executed the Powers of Attorney documents and appointed the second respondent as their power agent to obtain necessary classification of the agricultural land and for getting approval from CMDA for layout and to execute sale deed in respect of the plots. After getting approval to the members who paid the full payment, individual agreements were also executed on various dates during 2001. As per the clause 14 of the said agreement, if approval of the lay out could not be obtained within two years, the respondent 1 to 3 would repay the amount to the members with bank interest and compound interest and the registration charges would be borne by the members in respect of the sale deeds with interest. The respondents 1 to 3 could not get approval for the lay out within the stipulated period as there was no access road to the said land and that as the investors were giving pressure to the respondents 1 to 3 to refund the amount with interest to 779 members from 16.06.2006 and made settlement to the tune of Rs.5,50,00,000/- and obtained due receipts from them.

6. On earlier occasion, some members filed criminal complaint against these respondents with the Central Crime Branch and on enquiry, the 2nd respondent established that the complaints are false and that the respondents 1 to 3 were ready and willing to return the amount to whose who are all came forward to receive the amount and thereafter, the said complaints were closed and as per the direction of this Court at the time of considering the anticipatory bail

application, these respondents deposited a sum of Rs.75,00,000/- into the Court. The investigation officer conducted the investigation and closed the FIR as ''Civil in nature'' and the investors have not initiated any civil suit to set aside the sale and prayed to dismiss the petition.

7. The case of the 4th respondent is that they have conducted the investigation and also collected the document. As per Clause 4 of the agreement which provides in case of non compliance of agreement, namely, the selling of property, the depositors are entitled to get back the amount with interest. They also obtained opinion from Additional Public Prosecutor -Grade-I and since the dispute is civil in nature, they have filed the deferred charge sheet.

8. Heard the learned senior counsel appearing for the revision petitioner who would submit that the 4th respondent without conducting the investigation in proper manner, has filed the deferred charge sheet. Even though the respondent 1 to 3 filed anticipatory bail application, in which the 4th respondent had stated that there is a prima facie case and objected to release them on bail. But, subsequently, for reasons best known to them, they have filed the differed charge sheet. They have not made any investigation properly. They have only referred to Clause 14 of the agreement and obtained opinion from the APP - Grade I and they have filed the deferred charge sheet without any annexure. The petitioner has clearly stated that the respondents have misappropriated the fund and have also cheated the petitioner. Therefore, a prima facie case is made out against the respondents 1 to 3 for the offence under Sections 420 and 406 IPC. Even the bank statement would show that Rs.2 Crores have been misappropriated and this shows that the prosecution has not investigated the matter in right direction. Therefore, the petitioner filed the protest petition before the learned Additional Chief Metropolitan Magistrate. The learned Magistrate failed to consider the background of the case and also the closure report.

9. As far as the protest petition is concerned the role of the respondents 1 to 3 are very limited. The Court has to see the nature of the complaint and the final report filed by the police and the allegations levelled in the complaints of the revision petitioner. On a reading of the allegations prima facie case made out. Therefore, the order passed by the learned Magistrate is liable to the set aside.

10. The learned Counsel for the respondents 1 to 3 would submit that though they tried their level best, they could

not get approval from CMDA for the lay out and execute the sale deed in respect of plots after approval to the members. Therefore, as per Clause 14 of the agreement, they decided to repay the amount with interest. They have been deposited Rs.75 lakhs during anticipatory bail moved before this Court. Further, they were ready and willing to repay the amount and the willing persons have already received the amount. Therefore, the respondents have executed the sale deed as they promised. They tried their level best for re-classification and approval from CMDA. However, they could not get approval from CMDA, since there was serious objection from SIDCO. Therefore, they have not committed any offence much less cheating and misappropriation of the funds. Even now they ready and willing to repay the amount and some of the members have received the amount. All the amount are lying in the bank deposits. These respondents never cheated the petitioner or any of the investors or misappropriated the public money. They have got Powers of Attorney executed on their favour only to get approval from CMDA. Therefore, the respondents have not committed any offence. The 4^{th} respondent investigated the matter in right directions and filed a charge sheet. The learned Additional Chief Metropolitan Magistrate has also rightly appreciated the case and also accepted the charge sheet filed by the 4^{th} respondent and rejected the protest petition filed by the revision petitioner. Therefore, there is no perversity in the order passed by the learned Magistrate.

11. On a perusal of the records, the allegation levelled against the respondents 1 to 3 by the revision petitioner is that they have not acted as per the promise. There was no access to the land and despite knowing this fact well, they have cheated the investors and acquired huge amount. Further, they have misappropriated the funds. On a reading of the complaint filed by the petitioners and also the order passed by this Court in earlier occasions, it is not in dispute that most of the members are Government officers and they have invested the huge amount. Though the petitioners have got the sale deeds executed in their favour, they executed the Powers of Attorney jointly in order to get order of re-classification and approval of CMDA. According to the respondent 1 to 3 they have deposited the amount in the bank and they are ready and willing to return back the amount, as per Clause 14 of the agreement. The transaction is purely civil in nature.

12. Further the learned Magistrate has failed to appreciate the fact that the respondents 1 to 3 have withdrawn Rs.2 Crores from the accounts and there is no records to show how it was utilised. There is no proper explanation for auditor report. Therefore the 4^{th} respondent has not properly done investigation and simply they have

referred to Clause 14 of the agreement and also the opinion of the Additional Public Prosecutor – Grade I, they have filed a different charge sheet. This Court is of the view that the 4th respondent has not done the investigation properly. The learned Magistrate has not properly appreciated the protest petition filed by the revision petitioners. Therefore, this Court finds that the protest petition deserves to be allowed. Therefore, under these circumstances, the revision petition is allowed and the order passed by the learned Magistrate is set aside and the 4th respondent is directed to re-investigate the matter and after completing the investigation, file a fresh final report within six months from the date of this judgment.

13. With the above directions, the Criminal Revision is disposed of. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To
1. The Chief Metropolitan Magistrate, Chennai-8

2.The Sub Inspector of Police,
Chennai Crime Branch -IV Team,
Egmore, Chennai-8.

3. The Public Prosecutor,
High Court, Madras.

4.The section officer,
Criminal Section,
High court
Madras

+1cc to Mr..A.C.Gandhimathi , Advocate SR.No. 80327

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ASK(17/12/2018)