



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 27.06.2018

DELIVERED ON : 27.07.2018

CORAM :

THE HONOURABLE MRS. JUSTICE R. THARANI

Crl.R.C.(MD) No.341 of 2018

and

Crl.M.P.(MD) Nos.4763 and 4734 of 2018

1.Ramaamirdham

2.Thilakar

3.Sriragavendra

4.Sriram

... Petitioners

vs.

The Inspector of Police,
Central Crime Branch,
City Police Commissioneriat,
Trichy.

... Respondent

Prayer:- Criminal Revision Petition filed under Sections 397 r/w. 401 of the Code of Criminal Procedure, 1973, to set aside the order passed in Crl.M.P.No.615 of 2018 dated 03.04.2018 in C.C.No.393 of 2017 on the file of the learned Judicial Magistrate No.I, Trichy and discharge petitioners from the charge under sections 417, 420, 465, 466, 471 and 120(b) of IPC.

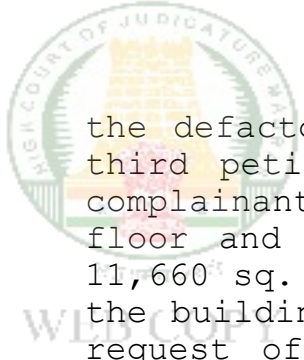
For Petitioners	: Mr.Raja Karthikeyan
For Respondent	: Mr.K.Suyambulinga Bharathi Government Advocate (Crl. Side)

ORDER

Heard Mr.Raja Karthikeyan, learned counsel appearing for the petitioners and Mr.K.Suyambulinga Bharathi, learned Government Advocate (Crl. Side) appearing for the respondent.

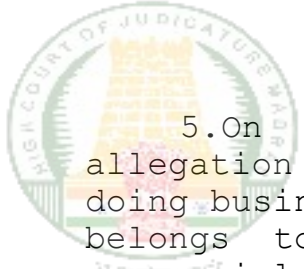
2.This petition has been filed to set aside the order passed in Crl.M.P.No.615 of 2018 dated 03.04.2018 in C.C.No.393 of 2017 on the file of the learned Judicial Magistrate No.I, Trichy and discharge petitioners from the charge under sections 417, 420, 465, 466, 471 and 120(b) of IPC.

3.The petitioners inherited the property and entered into an unregistered joint venture for construction of shopping mall with



the defacto complainant on 24.04.2008. At the time, the second and third petitioners were minors. As per the agreement, the defacto complainant has to construct a ground floor, first floor, second floor and third floor (totally four floors) with total extend of 11,660 sq. ft. As per the agreement, 50% of the constructed area of the building should be given to the defacto complainant. As per the request of the complainant, the petitioner executed the power of attorney in favour of the defacto complainant. The minors are represented by the guardian/father. In the year 2009, the third petitioner attained majority and he executed power of attorney in favour of the complainant. At the request of the complainant, a guardian original suit in O.S.No.18 of 2009 was filed before the learned Additional District Judge, Trichy to grant permission to the petitioners to enter into the joint venture agreement with minor Sriram. All the steps were taken by the defacto complainant through the counsel and the suit was decreed on 23.11.2010. Even before the commencement of the building work, the defacto complainant sold shop No.A to one Jabarsingh and shop No.B to one Vasanthi Devi and the defacto complainant completed 30% of the ground work and handed over the shop to those people. The remaining portion of the ground floor was kept vacant and no further work was done by the complainant until the power of attorney was cancelled on 07.10.2014. The defacto complainant failed to submit accounts to the principals/petitioners herein. The defacto complainant failed to complete the construction as per the agreement and hence, the petitioners decided to cancel the power deed. The petitioners received a sum of Rs.25,00,000/- (Rupees Twenty Five Lakhs only) as advance for commencement of the projects. But the defacto complainant received Rs.63,00,000/- (Rupees Sixty Three Lakhs only) but had not submitted any accounts to the petitioners.

4.The civil suit in O.S.No.802 of 2015 is filed before the District Munsif, Thiruchirappalli. The husband of the complainant gave a complaint before the Commissioner of Police, Trichy. The petitioners obtained an order from this Court in CrI.O.P.(MD) No.12564 of 2015 directing the respondent not to harass the petitioner in view of the complaint given by the complainant and in turn the defacto complainant filed another petition in CrI.O.P.(MD) No.12696 of 2015 to register the case against the petitioners. The Court has passed an order to conduct enquiry and to take action in accordance with law. Though the petitioners gave a complaint against the defacto complainant and made representation before the respondent Police on 31.07.2015, the respondent Police registered a case against the petitioners. The petitioner filed a petition for anticipatory bail before this Court in CrI.O.P.No.17119 of 2015. The matter was referred to Mediation Centre attached to this Court, but it failed and thereafter, this Court granted anticipatory bail to the petitioners. The respondent filed a charge sheet before the learned Judicial Magistrate, Trichy. The petitioner filed a discharge petition under Section 239 of Cr.P.C., and the same was dismissed by the learned Judicial Magistrate No.I, Trichy without assailing any reason.



5. On the side of the respondent, it is stated that the allegation against the petitioners is that the petitioners were doing business with the defacto complainant and offered a land which belongs to the petitioners for construction of shopping mall commercial building and asked 50% of the constructed area in favour of the defacto complainant and that they entered into a joint venture agreement and promised to obtain an order to alienate the property of the minors by filing G.W.O.P before the Court and to discharge the mortgage loan on the same property with the State Bank of Mysore, Trichy. They obtained a sum of Rs.25,00,000/- (Rupees Twenty Five Lakhs only) from the defacto complainant and they executed a power of attorney in favour of the defacto complainant on 23.02.2009. Afterwards, A1 approached the complainant's wife and got the original joint venture agreement for filing the same before the Court in G.W.O.P.No.18 of 2009 and after some days, the petitioners returned back a xerox copy of the joint venture agreement and the accused failed to give the amount as per the joint venture agreement till now. The defacto complainant invested a sum of Rs.1,35,000/- (Rupees One Lakh and Thirty Five Thousand only) towards the construction of the building and the defacto complainant has paid a sum of Rs.25,00,000/- (Rupees Twenty Five Lakhs only) to the accused and subsequently on 07.10.2014, the accused obtained Rs.15,00,000/- (Rupees Fifteen Lakhs only) without giving any receipt and that the petitioners had cancelled the power of attorney without giving any intimation to the complainant.

6. Subsequently, the defacto complainant came to know that the petitioners after getting original documents prepared a forged documents and filed a Guardian Original Suit filed by them. The petitioners obtained a certified xerox copy from the Court and came to know that page 2 and 3 of the joint venture agreement are forged and the total extend is '15,728' instead of '11,660' is typed and instead of 50% of the constructed area '7,864' sq. ft. '5,830' sq. ft. is typed and in those pages, the signature of the complainant's wife is not there. The basement floor is 10,360 sq. ft. the same is altered as 11,660 sq. ft and the share that were available in the joint venture agreement is not available in the forged xerox copy documents. The defacto complainant came to know that for some reasons or other, the accused replaced the original document with a forged document. A case was registered against the petitioners for the offences under Sections 417, 420, 465, 466, 471 and 120(b) of IPC.

7. On the side of the petitioners, it is stated that the subject matter of the case is civil in nature and only a xerox copy of the joint venture agreement is marked in O.S.No.18 of 2009. While filing the petition, only an attested xerox copy of the document is filed. The defacto complainant has no locus standi to file the complaint. As under Section 195 Cr.P.C., only the Court can initiate the proceedings. It is further stated that joint venture agreement is an unregistered one and it is expired. On expiration of three years, it is stated that even after the date of agreement of six years, the

defacto complainant failed to complete the construction and only the pillars are put to ground level and completed 2 shops and abandoned the building in total.

8. On the side of the petitioners, it is stated that since the complaint is invalid, the entire case become invalid. A civil case in O.S.No.18 of 2009 is pending regarding the same matter. The joint venture agreement has lapsed.

9. On the side of the respondent, it is stated that prima facie case is made out against the petitioners and the petitioners filed a petition under Section 239 of Cr.P.C., which is dismissed by the lower Court and the amount involved is Rs.1,75,00,000/- (Rupees One Crore and Seventy Five Lakhs only). The complainant is the affected party and the copy of the xerox paper reveals the intention of the petitioner in committing the offence.

10. The learned counsel appearing for the petitioner relied on the Judgment passed by High Court of Delhi in the case of Nakul Kohli v. State in CrI.M.C.NO.2029 of 2010, which reads as follows:

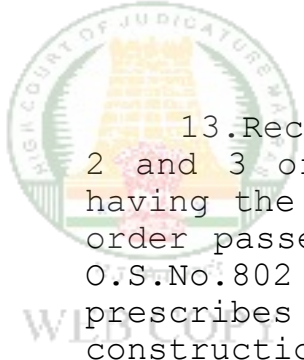
"no offence punishable under Section 471 of IPC can be made out as only a photograph was being used and for an offence under Section 471 of IPC to be attracted, it is essential that the document should be signed or executed."

11. The learned counsel appearing for the petitioner relied on the Judgment passed by the Hon'ble Supreme Court in the case of Iqbal Singh Marwah and Another v. Meenakshi Marwah and Another in Criminal Appeal No.402 of 2005, which reads as follows:

"The learned Magistrate passed order holding that as the question whether the Will was genuine or not was an issue before the District Judge in the probate proceedings where the Will had been filed Section 195(1)(b)(ii) of Code of Criminal Procedure operated as a bar for taking cognizance of the offence, and dismissed the complaint....

The contention is that since Section 195(1)(b)(ii) affords protection from private prosecution, it should not be given a restrictive interpretation to curtail its scope. We are unable to accept such broad proposition as has been sought to be urged. The principle that a statute enacting an offence or imposing a penalty is to be strictly constructed is not of universal application which must necessarily be observed in every case."

12. On the side of the petitioners, In support, Judgments passed by the Hon'ble Supreme Court in the cases of Hridaya Ranjan Prasad Verma and others v. State of Bihar and another reported in (2000) 4 Supreme Court Cases 168 and Chandran Ratnaswamy v. K.C.Palanisamy and others reported in (2013) 6 Supreme Court Cases 740 are cited.



13. Records perused. A perusal of the records reveals that page 2 and 3 of the xerox copy of the joint venture agreement is not having the signature of the wife of the defacto complainant. In the order passed in O.S.No.18 of 2009 and in the copy of the plaint in O.S.No.802 of 2015, it is clearly indicated that the joint venture prescribes the share of each of the parties and the area of construction as stated in the complaint itself is 15,728 sq.ft., whereas in the copy of the joint venture agreement filed along with the type set of papers total sq. ft. is stated as 11,660 sq. ft. In the copy of the Judgment in O.S.No.18 of 2009 also, a specific share for each parties are mentioned. In this circumstances, there seems to be prima facie case is made out against the petitioners.

14. Whether the joint venture is valid or lapsed can be decided only in the original suit pending between the parties. It is stated that the defacto complainant has invested a sum of Rs.1,75,00,000/- (Rupees One Crore and Seventy Five Lakhs only). It is further stated that the petitioners are cheating the defacto complainant and made a complaint also. There is a prima facie case is made out under Section 417 and 420 of IPC. In the circumstances, this Court comes to the conclusion that there is prima facie case made out against the petitioners and the lower Court is correct in dismissing the discharge petition. On the side of the defacto complainant, it is stated that the petitioner without the knowledge of the defacto complainant has cancelled the power deed. The case is filed not only under Sections 466 and 467 of IPC but also under Sections 417, 420, 471 and 120(b) of IPC. Whether the petitioners are having locus standi to file a complaint can also be decided after the completion of the trial. The completion of the trial is necessary in this case. There is no necessity to interfere in the order passed by the lower Court at this stage. This Criminal Revision Petition is dismissed. Consequently, Crl. M.P.(MD)Nos.4763 and 4764 of 2018 are closed.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar(CS-II)

To

1.The Judicial Magistrate No.I,
Trichy.

2.The Inspector of Police,
Central Crime Branch,
City Police Commissioneriat,
Trichy.



3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+lcc to M/S.Raja Karthikeyan, Advocate SR.No. 75583

Crl.R.C.(MD) No.341 of 2018
27.07.2018

mrn

JM/KAK/SAR 2/02.08.2018/6P/5C