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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2019

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.16340 of 2012 and
Crl.M.P.No.1 of 2012

1.C.Babu
2.Jothy Babu ... Petitioners

Versus

1.State represented by its,
Sub-Inspector of Polie,
Economic Offences Wing-II,
Chennai-2.

2.T.R.Murugavel ... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the case in Crime No.514 of 1998 on the file of respondent Police and quash the same.

For Petitioners	:	M/s.T.Karthick Srinath for M/s.K.M.Vijayan Associates
For R1	:	M/s.M.Prabhavathy Additional Public Prosecutor
For R2	:	No Appearance

ORDER

This Criminal Original Petition has been filed to quash F.I.R in Crime No.514 of 1998 on the file of 1st respondent Police.

2.The petitioners are the accused in Crime No.514 of 1998 for the offence under Sections 120(b) r/w 420 IPC registered by the Inspector of Police, CCB, Egmore, Chennai and also in Crime No.2 of 1998 for the offence under Sections 409, 420, 120(b) r/w 34 of IPC registered by the Inspector of Police, DCB, Vellore. During the course of investigation, both the cases were transferred to the file of the 1st respondent.

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3.The gist of the case is that the petitioners are the Proprietors of M/s.Indus Resorts Private Limited, Chennai-18. In course of the business, the petitioners had received time shares from 130 customers, totalling to the tune of Rs.36,39,829/-. Thereafter, the business proposal could not be completed nor the money were repaid to the time share agreement holders. When some of the time share investors visited the petitioners' company, they found that the office was not functioning there. The time share agreement holders made enquiry from the property owner and found that the properties were not in the name of the petitioners. The petitioners were taken over the right as though they are the owner and to allot time shares for enjoyment of the property. Thereafter, on coming to know that they were cheated by the petitioners, they had lodged a complaint before the Inspector of Police, CCB, Egmore, Chennai and the Inspector of Police, District Crime Branch, Vellore. During the course of investigation, both the cases were transferred to the file of the 1st respondent. Thereafter, the paper publication through "Dinamalar" and "Dinakaran" dated 21.10.2012 for settlement of amount to the customers/investors. Accordingly, the amount of Rs.36,39,829/- was settled to 101 customers out of 130 customers and balance amount of Rs.6,19.932/- has to be settled to remaining 29 customers. The petitioners had taken best efforts to find out the remaining 29 customers, but they were unable to trace them. The 1st respondent had also taken steps to find out 29 customers in the address found in the complaint. Thus 29 persons were unable to be traced in the address provided.

4.Earlier, this Court by order dated 14.06.2019 in Crl.O.P.No.16340 of 2012 directed the petitioner to deposit a sum of Rs.6,19,932/- to the credit of Crime No.514 of 1998. There seems to be some confusion with regard to the availability of the case records. Now, the case is presently pending on the file of the Chief Metropolitan Magistrate Court, Egmore, Chennai. Hence, the petitioners deposited the amount of Rs.6,19,932/- on 28.11.2019 and the receipt No.9514 has also been produced.

5.The learned counsel for the petitioner submitted that the entire amount of Rs.36,39,829/- has been deposited in Crime No.514 of 1998 on the file of the Chief Metropolitan Magistrate Court, Egmore, Chennai. Hence, he prayed for quashing of the investigation in Crime Nos.514 & 2 of 1998.

6.The learned Additional Public Prosecutor appearing for the 1st respondent filed a status report and submitted that the Crime Nos.514 & 2 of 1998 have been transferred to the file of the 1st

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respondent, who conducted the investigation and filed the charge sheet before the learned XI Metropolitan Magistrate, Saidapet and thereafter, the same is ordered to be transferred to the file of the Chief Metropolitan Magistrate, Egmore, Chennai on the point of jurisdiction in ROC.No.97/2017/D, dated 25.01.2017 by the learned Chief Metropolitan Magistrate, Egmore, Chennai, which is yet to be taken on file. In this case, there are totally 130 customers/investors, who were cheated by the petitioners to the tune of Rs.36,39,829/-. During the course of investigation, the entire amount of Rs.36,39,829/- was settled to 101 customers out of 130 customers and balance amount of Rs.6,19.932/- has to be settled to remaining 29 customers. The 1st respondent is taking due steps to find out the remaining 29 customers in the address found in the complaint. The receipt (No.9514) of balance payment of Rs.6,19,932/- on 28.11.2019 in Crime No.514 of 1998 on the file of the Chief Metropolitan Magistrate Court, Egmore, Chennai is also admitted by the 1st respondent.

7.It is seen that the petitioners have deposited the entire amount collected from the investors/depositors and the 1st respondent is also agreed for the same except 29 customers, who are unable to find out for settlement of their deposited amount. Now the balance payment of Rs.6,19,932/- has been deposited in Crime No.514 of 1998 on the file of the Chief Metropolitan Magistrate Court, Egmore for remaining 29 customers/depositors.

8.In view of the above, the investigation in Crime No.514 & 2 of 1998 and its consequent report on the file of the 1st respondent are quashed. Accordingly, this Criminal Original Petition is allowed. Consequently, the connected miscellaneous petition is closed.

9.It is made clear that whenever the remaining 29 customers approached to withdraw their deposited amount, the learned Chief Metropolitan Magistrate, Egmore, Chennai, is directed to verify the proof of their deposits and refund their deposited amount.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1.The Chief Metropolitan Magistrate,
Egmore, Chennai.

2.The Sub-Inspector of Police,
Economic Offences Wing-II,
Chennai-2.

3.The Public Prosecutor,
High Court, Madras.

+1 cc to M/s.K.M.Vijayan Associates, Sr.No.99812

AKM/22.01.2020/4P-5C/

CRL.O.P.No.16340 of 2012

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