

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.O.P.No. 2706 of 2010

R.Jothi

...Petitioner

Vs.

1.The State of Tamil Nadu,
Rep.by the Inspector of Police,
District Crime Branch,
Kanchipuram, Kanchipuram District.

2.M/s.Foxconn India Developer Private Limited,
No.A-11 & A-12 SIPCOT Industrial Park Phase II
Irungattukottai, Chennai – Bangalore National Highway (NJ-4)
Sunguvarchatram, Sriperumpudur Taluk,
Kanchipuram – 602 106.

...Respondents

Petition filed under Section 482 of Cr.P.C., to call for the records in FIR No.69 of 2009 dated 07.12.2009 on the file of the first respondent and quash the same.

For Petitioner : Mr.V.T.Gopalan, SC
for M/s.S.Radha Gopalan

For Respondent : Mr.C.Iyyapparaj, APP for R-1
M/s.G.R.Lakshmanan for R-2

ORDER

The criminal original petition has been filed invoking the inherent jurisdiction of this Court u/s 482 Cr.P.C., to call for the records pertaining to the registration of the First Information Report No. 69/2009 dated 07.12.2009 on the file of the first respondent and quash the same.

2. The facts in brief, necessary for the disposal of the case are as hereunder:-

It is the case of the defacto complainant/2nd respondent herein that the petitioner, stating that he is one of the partner in Chennai Promoters, had approached the 2nd respondent towards sale of about 400 acres of land near SIPCOT, Sriperumbudur and in pursuance of the same the petitioner had undertaken to secure the lands from the various land owners and have the lands executed in favour of the 2nd respondent for a total sale consideration of Rs.120 Crores, which includes development charges as well. Towards the same, an agreement was entered into. The 2nd respondent had agreed to part with a sum of Rs.5 Crores, which is an amount payable towards payment of sale consideration to the intending sellers, to be paid by the petitioner and that said sum of Rs.5 Crores has also been paid by way of demand draft.

3. It further transpires that though the petitioner had got an extent of about 86 acres of lands registered in favour of the 2nd respondent, for which the 2nd respondent had paid from and out of its pocket, though the petitioner had not shelled out any amount from the Rs.5 Crores received from the 2nd respondent, however, after a period of time, the petitioner had not honoured his part of the contractual obligation in getting around 400 acres registered in favour of the 2nd respondent and, therefore, the 2nd respondent, in terms of the agreement entered into, called upon the petitioner to return back the amount of Rs.5 Crores received from the 2nd respondent. In spite of several reminders, the petitioner had parted only with an amount of Rs.1.05 Crores from out of the Rs.5 Crores received from the 2nd respondent. Though various sums towards development charges and brokerage charges have been claimed by the petitioner, even thereafter a sum of about Rs.80 Lakhs is due and payable to the 2nd respondent. In spite of several reminders from the 2nd respondent, the petitioner has not taken any effort to repay the amount and, therefore, it clearly shows that the fraudulent intention of the petitioner to usurp the amount of the 2nd respondent and, therefore, the complaint was lodged with the 1st respondent, which culminated into the impugned first information report.

4. Mr.V.T.Gopalan, learned senior counsel appearing for the petitioner submitted that it is a contract entered into between the petitioner and the 2nd respondent and in case the 2nd respondent has a grievance with regard to non-performance of the contract, it is only open to the 2nd respondent to proceed against the petitioner only in terms of the dispute resolution mechanism provided under the said agreement and it is not open to the 2nd respondent to give a criminal colour to a civil transaction. The transaction entered into between the petitioner and the 2nd respondent is purely civil in nature, and mere involvement of monetary aspects in the transaction would not make the transaction border on the criminal lines. It is the submission of the learned senior counsel for the petitioner that only in order to expedite the whole litigative process, the 2nd respondent has resorted to criminalising the entire transaction, which is wholly impermissible. Further, it is the submission of the learned senior counsel that there is no element of cheating, as even according to the 2nd respondent, certain sums have been paid back to the 2nd respondent. Therefore, entertaining a civil dispute under the criminal realm is unknown to criminal jurisprudence and, accordingly, prays for quashing the first information report.

5. To buttress his contention, learned senior counsel placed reliance on the decision of the Hon'ble Apex Court in **Satishchandra Ratanlal Sah – Vs – State of Gujarat & Ors. (MANU/SC/0199/2019)**.

6. Per contra, Mr.Lakshmanan, learned counsel appearing for the 2nd respondent submitted that the transaction entered into between the 2nd respondent and the petitioner for the purchase of lands is not in dispute. It is also submitted by that the agreement entered into has not been honoured by the petitioner and, therefore, the 2nd respondent has sought return of the money repeatedly, only for the petitioner to drag the 2nd respondent interminably. The agreement itself clearly provides that for non-performance of the terms of the agreement, it is open to the 2nd respondent to revoke the agreement and the petitioner is bound to pay the amount of Rs.5 Crores received from the 2nd respondent. In spite of the categorical clause in the agreement, the petitioner not only signed it, but has, thereafter, failed to perform his part of the agreement, necessitating the 2nd respondent to revoke the agreement and call upon the petitioner to pay the amount of Rs.5 Crores received from the 2nd respondent. However, in spite of repeated reminder, only a part amount has been

paid and the balance amount has not been paid, which shows the clear intention of the petitioner to cheat the respondent of the said amount. It is therefore the submission of the learned counsel that if the above act of the petitioner does not fall under cheating attracting the provisions under the criminal jurisprudence, there would not be any act, which would attract the provisions under the criminal law. Learned counsel for the 2nd respondent, on the above submissions, prayed this Court to dismiss the present petition as wholly devoid of merits.

7. This Court paid its undivided attention to the submissions articulated by the learned counsel on either side and also perused the materials available on record and also adverted to the legal precedent cited by the learned senior counsel for the petitioner.

8. The Hon'ble Supreme Court, in the much adored decision in **State of Haryana V. Bhajan Lal (1992 Supp (1) SCC 335)**, has codified the circumstances under which the inherent powers of this Court under Section 482 Cr.P.C. Should be used and in that context, the Apex Court held as under:-

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226

or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

"(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no

prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.”

सत्यमेव जयते

9. The Hon'ble Supreme Court, in the above decision, has articulated the circumstances in which the inherent power of this Court under Section 482 Cr.P.C. should be used and has also cautioned that quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking

upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.

10. In the above backdrop of the ration laid by the Hon'ble Apex Court way back in the year 1992, learned senior counsel for the petitioner relied upon the decision in *Satishchandr Ratanlal Sah's case (supra)*, wherein, the Hon'ble Supreme Court in a case of breach of contract has held that such a case does not envisage or constitute an offence of criminal breach of trust and in that context held as under:-

"12. The law clearly recognizes a difference between simple payment/investment of money and entrustment of money or property. A mere breach of a promise, agreement or contract does not, ipso facto, constitute the offence of the criminal breach of trust contained in Section 405 Indian Penal Code without there being a clear case of entrustment."

14. The mere inability of the Appellant to return the loan amount cannot give rise to a criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, as it is this mens rea which is the crux of the offence. Even if all the facts in the complaint and material are taken on their face value, no such dishonest representation or inducement could be

found or inferred.

15. Moreover, this Court in a number of cases has usually cautioned against criminalizing civil disputes, such as breach of contractual obligations (refer to Gian Singh Vs. State of Punjab, MANU/SC/0781/2012 : (2012) 10 SCC 303). The legislature intended to criminalize only those breaches which are accompanied by fraudulent, dishonest or deceptive inducements, which resulted in involuntary and in-efficient transfers, under Section 415 of Indian Penal Code.

16. However, the High Court appears to have been carried away by the moral element involved in the breach of promise and made certain observations. Being a policy consideration, such suggestions need to be restricted. The aforementioned observations of the High Court were not only unnecessary for the adjudication of this matter, but the same could have been understood as casting some kind of aspersions on the Accused. This clearly reflected a loaded ice situation against the appellant herein."

(Emphasis Supplied)

11. There is no quarrel with the proposition of law laid down by the Hon'ble Supreme Court in *Satishchandra Ratanlal Sah's Case (supra)*. However, the pivotal question that requires to be considered in the present case is whether there has been criminal breach warranting the proceeding of the case under the criminal law.

12. There is no dispute as to the entering into agreement between the parties as also the further payments made by the 2nd respondent to the petitioner and also the registration of certain portions of land. It is the case of the 2nd respondent that after receiving the amount of Rs.5 Crores from the 2nd respondent, the petitioner has not taken steps to get 400 acres of land conveyed, but had only made arrangements to convey only around 86 acres of land. In spite of dedicated efforts by the 2nd respondent with the petitioner for conveyance of the balance portion of the land, but for conveying about 52 cents of land, no steps is alleged to have been taken by the petitioner to honour his part of the bargain. Equally, it is not in dispute that an amount of about Rs.1.05 Crores has been paid by the petitioner to the 2nd respondent and an amount of amount Rs.3 Crores is sought to be deducted towards development and brokerage charges. It is the case of the 2nd respondent that in spite of requests to the petitioner to pay the balance amount of around Rs.80 Lakhs, the petitioner is not making any payment, but literally dragging the matter.

13. Though according to the learned senior counsel this is a dispute of civil nature, which has to be thrashed out in the civil court, however, the same cannot be accepted at the present stage for the simple reason that the petitioner

is a middle man between the 2nd respondent and the actual owners of the land. The petitioner has received the money and, for the lands conveyed, he has also deducted his charges towards brokerage and all other incidental charges. For non-compliance of the agreement terms, the 2nd respondent has claimed back the amount of about Rs.80 Lakhs due and payable by the petitioner, which the petitioner is evading payment, which, according to the 2nd respondent amounts to cheating the petitioner. It is also evident from the records that the petitioner has paid a sum of Rs.1.05 Crores to the 2nd respondent in terms of the agreement. The complaint has been initiated when the petitioner failed to pay the balance of the amount to the 2nd respondent in compliance of the terms of the agreement.

14. From the above materials, it is evident that the has paid a sum of Rs.1.05 Crores. In *Satishchandra Ratanlal Sah's case (supra)* the Supreme Court has clearly stated that the mere inability to return the loan amount cannot give rise to a criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction. This Court is in agreement with the above proposition, but the same would not stand attracted to the case on hand for the simple reason that there is no question of inability on the part of the petitioner to return the amount. It is nowhere pleaded by the

petitioner that he is unable to pay the amount, but the non-return of the amount by the petitioner is not accompanied by any justifiable reason or cause shown by the petitioner. But, however, it is not proper for this Court, at this present time, to dwell into the said issue. Further, the petitioner has paid an amount of Rs.1.05 Crores, which is not in dispute. In the above backdrop of the facts, without a proper investigation, the actual genesis of the dispute in the repayment of the alleged amount would not come to light so as to treat the issue either to be civil or criminal in nature. The intention of the parties need to be looked into, which cannot be done without a proper investigation. Without a proper investigation, the true facts, the acts and intentions of the parties to the *lis* would not come to light. Therefore, quashing the FIR at the preliminary stage, as held in *Bhajan Lal's case (supra)* would be wholly inappropriate. Though a prima facie case has been made out, whether it borders on civil or criminal nature would be revealed only after a preliminary investigation is conducted by the investigating agency and quashing the investigation at this point of time would be nothing but putting the cart before the horse in deciding that the dispute is purely civil in nature.

15. Therefore, this Court, at the present point of time, is not inclined to accept the submissions of the learned senior counsel that no prima facie case

has been made out by the 2nd respondent to continue the investigation. Preliminary investigation is necessary to weed out as to whether the case is civil or criminal in nature. Therefore, this Court is of the considered view that the prayer for quashment as sought by the petitioner, at this stage, cannot be acceded to. At this point, learned counsel prays this Court to direct the investigating agency to expedite the investigation and complete the investigation within a particular time frame.

16. For the reasons aforesaid, this criminal original petition is dismissed with a direction to the 1st respondent to expedite and complete the investigation, if not already completed, within a period of six months from the date of receipt of a copy of this order.

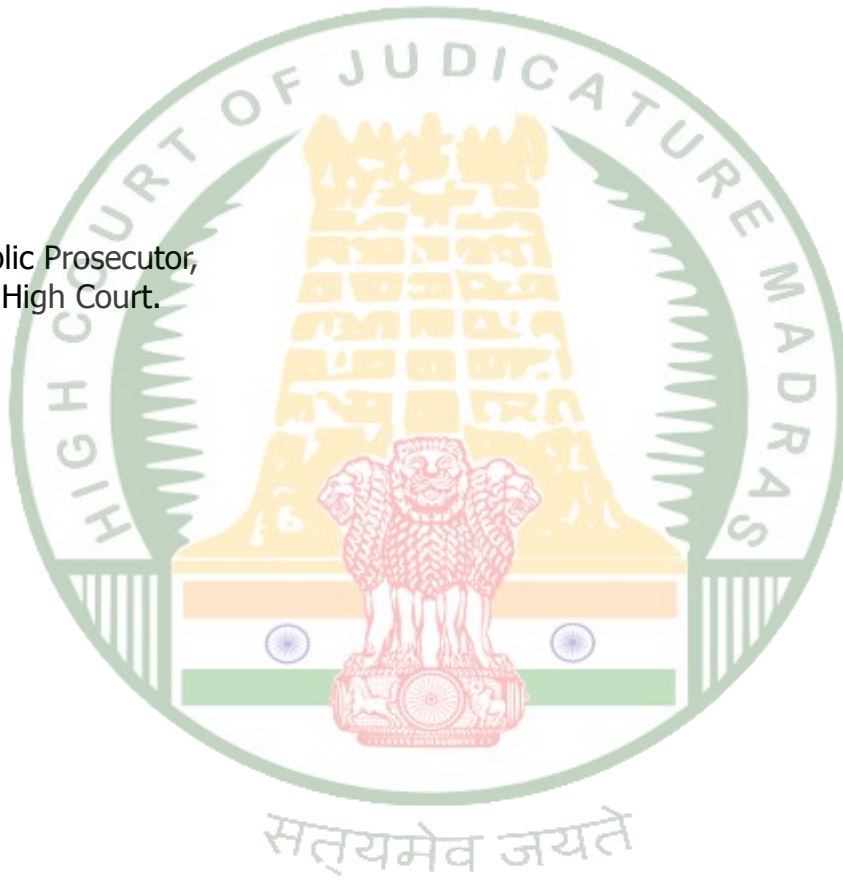
12.12.2019

kkn/GLN
Internet:Yes/No
Index:Yes/No
Speaking/Non-speaking

सत्यमेव जयते
WEB COPY

To

1.The Public Prosecutor,
Madras High Court.



WEB COPY

M.DHANDAPANI, J.

kkn/GLN



Crl.O.P.No. 2706 of 2010

WEB COPY

12.12.2019