

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2019

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.4038 of 2019
and
Crl.M.P.Nos.2490 & 2491 of 2019

M.Selvaraj Petitioner/Accused

Vs.

M/s Dewan Housing Finance Corporation Ltd.,
Kalpalthika Towers,
Old No.24, New No. 36, Dr.Ambedkar Road,
Ashok Nagar Main Road,
Kodambakkam,
Chennai-600 024,
Rep. by its Manager (Legal)
Mr.T. Vijay Kumar Respondent

Prayer: Criminal Original petition is filed under Section 482 of Cr.P.C, to call for the records in C.C.No.5033 of 2018 before the learned XVIII Metropolitan Magistrate Court, Saidapet, Chennai.

For Petitioner : Mr.E.Raj Thilak

ORDER

This Criminal Original petition has been filed by the petitioner under Section 482 of Cr.P.C, to call for the records in C.C.No.5033 of 2018 before the learned XVIII Metropolitan Magistrate Court, Saidapet, Chennai.

2.The learned counsel for the petitioner would submit that the defacto complainant is the Public Limited Company registered under the provisions of the Indian Companies Act,1956. The petitioner obtained housing loan from the respondents company regarding buying of Villas from one "RRP Housing". Th petitioner on 06.10.2013 paid a token advance of Rs.40,000/- to the complainant and on 15.10.2013 another advance of Rs.90,000/- was paid as advance towards the villas. On 27.02.2014 the petitioner and the complainant entered into a construction

agreement and it was agreed by the RRP Housing that a residential villa bearing Block-B in Plot No.8 of Phase-I will be constructed and handed over to the petitioner. On 01.03.2014 the respondent herein i.e. DHFL issued a revised letter of offer cum acceptance sanctioning the loan amount of Rs.11,77,213 for the above mentioned Villas from RRP housing and demanded for 12 security post dated cheques from the ECS account and the same was given by the petitioner. On 05.03.2014 a letter was issued to the petitioner by the respondent along with the copy of the Loan agreement provisional income tax certificate, loan repayment schedule and a Home loan ready reckoner. On 13.03.2014 the petitioner had entered into an agreement with the respondent namely the Memorandum of deposit where the properties to be purchased from RRP housing was given as security to the respondent herein towards the loan obtained from them. On 14.03.2014 the sale deed was executed in the name of the petitioner by RRP housing and was registered. The learned counsel would further submit that after the sale deed the property was never handed over to the petitioner till day. All the purchasers were cheated by RRP housing. The petitioner also made a complaint but he was later called and his 161 statement was recorded by DCB, Thiruvallur. Hence, this petition.

3.The defacto complainant filed a complaint under Section 200 of Cr.P.C. for an offence under Section 138 to 142 of the Negotiable Instruments Act, stating that the petitioner availed a Housing Loan and entered into a Home Loan Agreement 00000831, 00000832 with respect of the property Plot No.8, B-Block, Phase-I, Amudham Homes, Nungambakkam Village Thiruvallur, Tamil Nadu 602002. The petitioner issued a cheque bearing No.000041 for a sum of Rs.2,50,000/- on 31.03.2017 and when the same was presented, it has returned with an endorsement funds insufficient.

4.Heard the learned counsel for the petitioner.

5.It is seen from the records that the petitioner availed loan from the defacto complainant and the defacto complainant directly paid the entire amount to the builders, and only because the builders failed to complete the construction and handover the possession of the property, the complaint has been registered as against the petitioner. Therefore, all the points raised before this Court shall be considered only at the time of trial. Hence, this Court is not inclined to quash the proceedings in C.C.No.5033 of 2018 before the learned XVIII Metropolitan Magistrate Court, Saidapet, Chennai. Accordingly, this criminal original petition stands dismissed. Consequently, the connected CrI.M.P.No.2490 of 2019 is closed.

6.However, considering the age of the petitioner and nature of the case, this Court is inclined to dispense with the appearance of the petitioner except the presence insisted by the Trial Court in C.C.No.5033 of 2018 before the learned XVIII Metropolitan Magistrate Court, Saidapet, Chennai. Accordingly, the connected CrI.M.P.No.2491 of 2019 is ordered.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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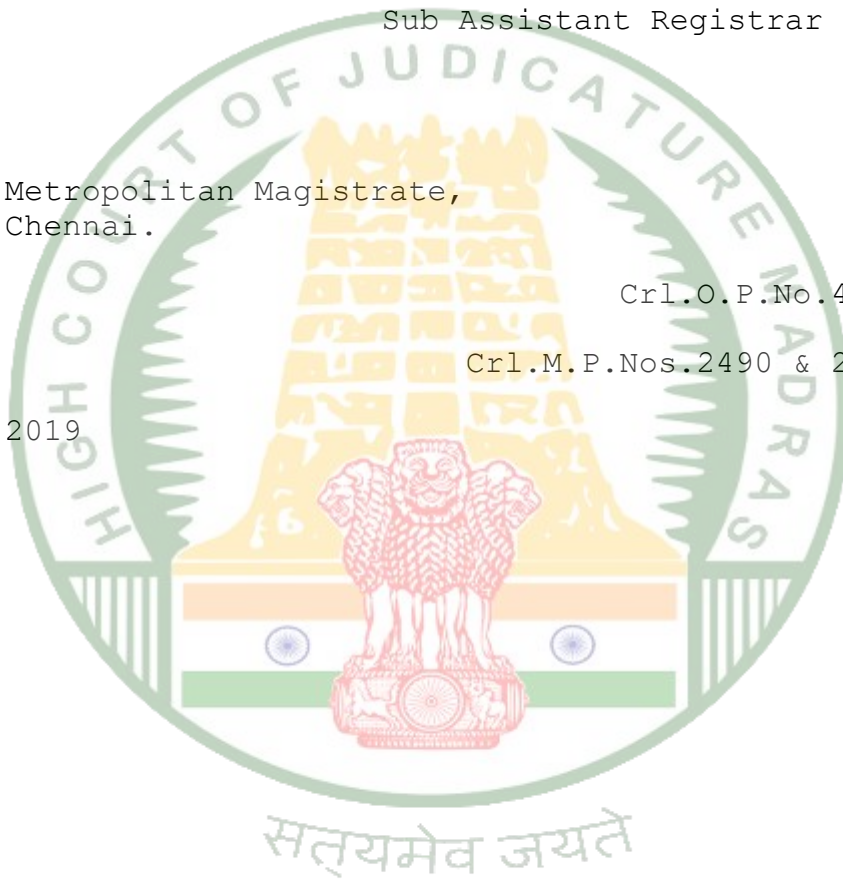
To

The XVIII Metropolitan Magistrate,
Saidapet, Chennai.

CrI.O.P.No.4038 of 2019
and

CrI.M.P.Nos.2490 & 2491 of 2019

SJ(CO)
CSL/19.03.2019



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