

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.7356 of 2019
and
Crl.M.P.No.4085 of 2019

1.R.Kumar
2.K.Gomathy

... Petitioners

Vs

1.The State,
Represented by the Inspector of Police,
CCB-II,
Greater Chennai Police Commissioner Office,
Vepery, Chennai - 600 007.

2. S.Gunasundari

... Respondents

Prayer:

Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records in relating to the case registered in Crime No.223 of 2018 pending on the file of the first respondent police and quash the same.

For Petitioners : M/s. M. Ravichandiran

For Respondent-1 : Mr.M.Mohamed Riyaz,
Additional Public Prosecutor.

ORDER

This Criminal Original Petition has been filed for quashing the FIR in Crime No.223 of 2018 pending on the file of the first respondent police, CCB-II, Greater Chennai Police Commissioner Office, Vepery, Chennai - 600 007.

2. The case of the prosecution, as could be seen from the FIR, is that the complainant had entered into an agreement dated 15.03.2017 with the first petitioner agreeing to sell the property for a total consideration of Rs.50 lakh and the first

petitioner paid an advance amount of Rs.10 lakh and issued a cheque in favour of complainant's husband. The said cheque was deposited and credited in complainant's husband account. Subsequently, after three months, the first respondent insisted the complainant's husband to return the said sum of Rs.10lakh since the property belongs to the complainant and accordingly, on 19.05.2017, the complainant and her husband returned Rs.10lakh through cheque in favour of Sri Durga Industries, which belongs to the first petitioner. Later, during the time of executing the sale agreement, the first petitioner issued a cheque for Rs.10lakh in favour of the complainant with a request not to deposit the said cheque for remittance. Before executing the sale deed, the first petitioner approached the complainant and informed that the sale consideration was to be given in instalments. The first sale deed is for a portion with part sale consideration of Rs.1.60 Crores and issued a cheque in favour of the complainant for an amount of Rs.1.10 Crores as part sale consideration and the same was deposited and credit in complainant's account. Thereafter, the first petitioner insisted the complainant to return Rs.11lakh for TDS and for that, a cheque was issued to his account. The first petitioner paid only Rs.1.20 Crores and did not even pay Rs.40 lakh mentioned in the sale deed and further taken Rs.11 lakh. The amount complainant received was only Rs.1.09 crore. However, the first petitioner mortgaged the property and got Rs.1.92 Crores. On 31.07.2017, the complainant had executed the sale deed in favour of the first petitioner for an extent of 2312 sq.ft. out of 3983 sq.ft.s. On the same day, by indulgingly the first petitioner obtained the signature from the complainant in the power of attorney to his wife Gomathi, the second petitioner. When the complainant questioned, the first petitioner replied that the signature was obtained for future payment of balance sale consideration amount. Later, the complainant came to understand that the power of attorney was not for the balance sale consideration amount but to cheat the property of the complainant. Thus, the petitioners have indulged by illegal fraudulent manner, by trying to dispose the same on the signature for the remaining portion of complainant's property to an extent of 1648 sq.ft. Despite repeated request for paying the remaining amount of Rs.1.39 Crores, the petitioners evaded and avoided by not answering the phone calls. While so, on 16.3.2018, the complainant cancelled the power of attorney dated 31.07.2017 through cancellation deed. But to the shock and surprise, the complainant's remaining property viz., 1648 sq. ft. was fraudulently and illegally transferred through sale deed to one Ajitha Virgiliyaz by using the power of attorney on 29.6.2018. Thus, the petitioners colluded and conspired and cheated the complainant and her husband. Hence, the complainant lodged the complaint before the first respondent police and they registered the case in Crime No.223 of 2018

under Sections 406, 420, 467 read with 34 IPC.

3. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor for the first respondent.

4. In *Sau. Kamal Shivaji Pokarnekar vs. The State of Maharashtra & Ors*, reported in 2019 SCC OnLine SC 182 [C.A.No.255 of 2019, dated 12.02.2019], the Hon'ble Supreme Court observed as follows:

"4. The only point that arises for our consideration in this case is whether the High Court was right in setting aside the order by which process was issued. It is settled law that the Magistrate, at the stage of taking cognizance and summoning, is required to apply his judicial mind only with a view to taking cognizance of the offence, or in other words, to find out whether a prima facie case has been made out for summoning the accused persons. The learned Magistrate is not required to evaluate the merits of the material or evidence in support of the complaint, because the Magistrate must not undertake the exercise to find out whether the materials would lead to a conviction or not."

5. Quashing the criminal proceedings is called for only in a case where the complaint does not disclose any offence, or is frivolous, vexatious, or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same. It is not necessary that a meticulous analysis of the case should be done before the Trial to find out whether the case would end in conviction or acquittal. If it appears on a reading of the complaint and consideration of the allegations therein, in the light of the statement made on oath that the ingredients of the offence are disclosed, there would be no justification for the High Court to interfere.

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9. Having heard the learned Senior Counsel and examined the material on record, we are of the considered view that the High Court ought not to have set aside the order passed by the Trial Court issuing summons to the Respondents. A perusal of the complaint discloses that prima facie, offences that are alleged against the Respondents. The correctness or otherwise of the said allegations has to be decided only in the Trial. At the initial stage of

issuance of process it is not open to the Courts to stifle the proceedings by entering into the merits of the contentions made on behalf of the accused. Criminal complaints cannot be quashed only on the ground that the allegations made therein appear to be of a civil nature. If the ingredients of the offence alleged against the accused are prima facie made out in the complaint, the criminal proceeding shall not be interdicted."

5. In the case on hand, there is specific allegations to attract the offences against the petitioners. Therefore, the FIR cannot be quashed on its birth.

6. In view of the decision of the Hon'ble Supreme Court, supra, this Court is not inclined to entertain this petition. Accordingly, the Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petition is closed. Further, the first respondent is directed to file a final report within a period of three months from the date of receipt of a copy of this order.

msm

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1 The Inspector of Police,
CCB-II, Greater Chennai Police Commissioner Office,
Vepery, Chennai - 600 007.

2.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.M.Ravichandiran, Advocate, SR.No.27402

CrI.O.P.No.7356 of 2019

Kak(14/05/2019)