

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.06.2019

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.R.C.No.401 of 2019

M/s.Sutherland Development
Company Private Limited.,

Represented by its

Authorised Representative,

Mr.Kiran Vargees Thomas,

S/o.(Late) Thomas Vargees,

No.45 A, Velachery Main Road,

Velachery, Chennai-600 042. ...

Petitioner/de facto
complainant

Vs.

The State represented by

Inspector of Police,

Central Crime Branch,

Team IV, EDF-II,

Vepery, Chennai-600 007. ...

(Cr.No.351 of 2015)

Respondent/Complainant

Criminal Revision filed under Section 397 r/w 401 Cr.P.C.,
to set aside the order dated 08.02.2019 passed in
Crl.M.P.No.4818 of 2018 on the file of the CCB and CBCID
Metropolitan Magistrate Court, Egmore, Chennai and to call for
the records in Crl.M.P.No.4818 of 2018 on the file of the CCB
and CBCID Metropolitan Magistrate Court, Egmore, Chennai.

For Petitioner : Mr.M.Mohammed Rafi

For Respondent : Mrs.P.Kritika Kamal
Government Advocate (Crl.Side)

ORDER

This criminal revision has been preferred seeking to set
aside the order dated 08.02.2019 passed in Crl.M.P.No.4818 of
2018 on the file of the CCB and CBCID Metropolitan Magistrate
Court, Egmore, Chennai and to call for the records in the said
petition.

2. For the sake of convenience, the petitioner herein is referred to as "Sutherland".

3. Sutherland lodged a complaint, based on which, a case in C.C.B.Crime.No.351 of 2015 under Sections 406, 420, 506(I) and 120-B IPC, was registered on 12.09.2015 against three persons viz., D.Muthu Narayanan (A1), S.Venkataramanan (A2) and Kamalesh Kumar Seth (A3). The gist of the complaint is as under:

Sutherland was incorporated as a Private Limited Company under the Companies Act, 1956, in the year 2010 and D.Muthu Narayanan (A1) was its Managing Director during the relevant point of time. Sutherland was into real estate business and wanted to acquire properties. Sutherland engaged the services of S.Venkataramanan (A2) and Kamalesh Kumar Seth (A3) as brokers for facilitating the purchase of lands. A sum of Rs.50,00,00,000/- was earmarked for the purchase of lands in Perumbakkam village and was sanctioned by Sutherland to be paid to S.Venkataramanan (A2) and Kamalesh Kumar Seth (A3) for purchasing the lands. D.Muthu Narayanan (A1), S.Venkataramanan (A2) and Kamalesh Kumar Seth (A3) conspired to cheat the company by not purchasing the lands and misappropriated the amount of Rs.50,00,00,000/-.

4. During the course of investigation, D.Muthu Narayanan (A1) and Kamalesh Kumar Seth (A3) were arrested by the police on 15.09.2015. It is alleged that S.Venkataramanan (A2) was in abscondence and thereafter, was arrested in Maharashtra in some other case and was in custody. On coming to know about that, Tamil Nadu police brought him under transit warrant and effected his arrest.

5. After completing the investigation, the police filed the closure report dated 23.05.2018 before the Metropolitan Magistrate for CCB cases, Chennai. After notice to Sutherland (de-facto complainant), the learned Metropolitan Magistrate heard their objections and rejected the same by accepting the closure report by the impugned order dated 08.02.2019. Challenging the same, Sutherland is before this Court.

6. Heard Mr.M.Mohammed Rafi, learned counsel for the petitioner and Mrs.P.Kritika Kamal, Government Advocate (Crl.Side) for the respondent/State.

7. Mr.M.Mohammed Rafi, learned counsel for the petitioner contended that the order of the learned Metropolitan Magistrate accepting the closure report is bristled with illegality, inasmuch as the learned Metropolitan Magistrate has stated that, since Sutherland has filed a civil suit in C.S.No.435 of 2016 against S.Venkataramanan (A2) and obtained a decree, the present criminal prosecution cannot be maintained. The learned counsel

for the petitioner further stated that the confession statement of S.Venkatramanan (A2) was recorded by another Magistrate under Section 164 Cr.P.C., in which he has clearly stated that Rs.32,00,00,000/- was distributed to D.Muthu Narayanan (A1) and Kamalesh Kumar Seth (A3) without purchasing any land; hence, after obtaining so much of incriminating materials, the police ought not to have closed the case as "mistake of fact" and should have proceeded further with the investigation and prosecuted the accused.

8. This Court, by order dated 03.06.2019, directed the Investigating Officer to be present with the case diary and accordingly, Mr.I.Rajapal, Inspector of Police, is present today with the case diary.

9. Mrs.P.Kritika Kamal, learned Government Advocate submitted that Sutherland had suppressed several earlier transactions in their complaint and they have given a criminal colour to a civil transaction in order to recover the money from the accused. In support of her contention, she produced the case diary for the perusal of this Court.

10. This Court perused the case diary. It is seen that prior to the starting of Sutherland in the year 2010, the promoters floated a company by name K.R.V. Properties in the year 2006 and engaged the services of both S.Venkatramanan (A2) and Kamalesh Kumar Seth (A3) for purchasing lands to promote their real estate business. Accordingly, S.Venkatramanan (A2) and Kamalesh Kumar Seth (A3) had purchased lands to an extent of 10.99 acres worth about Rs.17 crores in Perumbakkam for the company. Thereafter, on account of boom in real estate, they were not able to procure lands at low prices. Therefore, the company passed an internal resolution on 13.11.2013 authorizing S.Venkatramanan (A2) to scout for lands in Karunilam area with the balance of Rs.32.45 crores. S.Venkatramanan (A2) appears to have found certain sellers and had obtained mortgage deeds in respect of the lands in order to secure them. He has also issued promissory notes to Sutherland to the tune of Rs.32,85,24,000/- in the year 2013. These facts have been concealed in the complaint given by Sutherland. Thus, the allegation of Sutherland that D.Muthu Narayanan (A1) S.Venkatramanan (A2) and Kamalesh Kumar Seth (A3) had conspired to cheat a sum of Rs.32,45,24,000/- without purchasing the lands appears to be incorrect.

11. As regards the judicial confession of S.Venkatramanan (A2), Mrs.P.Kritika Kamal, learned Government Advocate submitted that the police had not sponsored the confession statement of S.Venkatramanan (A2) under Section 164 Cr.P.C. and the police themselves came to know about the confession only after they

received a notice from the Court that such statement has been recorded. The CD entries that were perused by the Court vindicates the stand taken by the learned Government Advocate.

12. In *Jogendra Nahak and others vs. State of Orissa and Others* [(2000) 1 SCC 272], the Supreme Court has held that a statement under Section 164, Cr.P.C., can be recorded by the Magistrate only when it is sponsored by the police and not at the instance of any other person. Obviously, it is the police who can first identify to the Magistrate, the person whose statement, the police think, is essential for prosecuting the accused. Of course, when an accused in a case comes forward voluntarily to give a judicial confession, the Magistrate can record the same and inform the police and furnish a copy of the confession statement to the police.

13. This Court called for the records from the file of the Chief Metropolitan Magistrate, Egmore, Chennai, relating to the recording of the confession statement of S.Venkatramanan (A2).

14. On perusal of the records, it is seen that S.Venkatramanan (A2) has sent a type written letter dated 16.03.2018, which runs to four pages, addressed to Chief Metropolitan Magistrate, Egmore, Chennai, through the Additional Superintendent of Prison, Puzhal, Chennai, where he was lodged as an under trial prisoner. It is not known as to how he managed to have a computer typed written letter while in judicial custody. In that letter, he has stated several facts and in the concluding portion, he has stated that he wants to give a statement under Section 164 Cr.P.C. before a Magistrate. Further, the records and the case diary show that the Investigating Officer was not even aware of this request by S.Venkatramanan (A2). The Chief Metropolitan Magistrate, Egmore, Chennai, by proceedings dated 22.03.2018, nominated the VIII Metropolitan Magistrate, George Town, Chennai, to record the confession statement of S.Venkatramanan (A2). Accordingly, on the directions of the VIII Metropolitan Magistrate, George Town, Chennai, S.Venkatramanan (A2) was produced from the prison on 07.04.2018 and his confession statement was recorded. In that statement, he has stated that D.Muthu Narayanan (A1) and Kamalesh Kumar Seth (A3) approached him in the year 2006, for purchasing lands; they transferred an excess amount of Rs.31,00,00,000/- to his bank account and he returned a sum of Rs.12,00,00,000/- to Kamalesh Kumar Seth (A3) and gave a sum of Rs.15,00,00,000/- on various dates to D.Muthu Narayanan (A1). He has not made any statement incriminating himself in the offence. For a statement to qualify as a confession, there should be an unequivocal admission of the commission of offence. In the opinion of this Court, the statement of S.Venkatramanan (A2) does not satisfy this criteria.

15. Be that as it may, the Investigating Officer has conducted a thorough investigation and has come to a conclusion that there is no element of cheating as alleged by the de facto complainant. The conclusion does not suffer from any manifest perversity or illegality. Hence, the consequent order passed by the learned Metropolitan Magistrate, accepting the closure report also does not suffer from any illegality or impropriety, for this Court to interfere in exercise of its revisional jurisdiction. It is made clear that any observation made in this case shall not prejudice the rights of either parties.

In the result, this criminal revision is dismissed as being devoid of merits.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

nsd

To

- 1) The Metropolitan Magistrate,
CCB and CBCID cases,
Egmore, Chennai.
- 2) The Inspector of Police,
Central Crime Branch,
Team IV, EDF -II,
Vepery, Chennai - 600 007.
- 3) The Public Prosecutor,
High Court, Madras.

copy to: The Section Officer,
Criminal Section, High Court, Madras.

+1 cc to Mr.M.Mohammed Rafi, Advocate, S.R.No.46561

PA(CO)
SSM(18/07/2019).

Cr1.R.C.No.401 of 2019