

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.18557 of 2016

CRL.M.P.No.8715 of 2016

S.R.Muttukumaran

... Petitioner

Vs.

1.Inspector of Police,
J2, Adyar Police Station,
L.B.Road, Adyar,
Chennai.
Crime No.313/2016

2.Premakumari Mani

... Respondents

Prayer : Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records pertaining to the FIR in connection with Crime No.313 of 2016 pending on the file of the 1st respondent herein and quash the same.

For petitioner : Mr.A.Devnarenderan

For Respondents : Mr.C.Iyyappa Raj
Additional Public Prosecutor for R1
Mr.M.Murali Dharan for R2

O R D E R

The petitioner, who is accused in Crime No.313 of 2016 for offence under Sections 406 & 420 IPC, has filed this quash petition.

2. The case of the prosecution is that the respondent/defacto complainant had lodged a complaint with the Assistant Commissioner of Police, Adyar on 05.11.2015, which was forwarded to the respondent Police, who registered a case in Crime No.313 of 2016 for offence under Sections 406, 420 IPC on 09.05.2016. The defacto complainant was residing along with her husband in Flat No.S-1, 2nd Floor, Door No.69 (Old No.33), flat No.335-W, 1st Avenue, Indira Nagar, Adyar, Chennai-600 020. The said property was owned by the defacto complainant. During the year 2011, the petitioner herein approached the defacto complainant through a common friend and expressed his

willingness to develop the property jointly with them. The defacto complainant agreed to construct "6" flats and that "2" flats will be allotted to the petitioner and the remaining "4" flats will be allotted to the defacto complainant. After construction, the defacto complainant took possession of the flats allotted to her. The defacto complainant offered to sell one flat bearing No.T-2. The petitioner agreed to carry out woodwork/furnishing in the flats. During the month of March and April 2014, the petitioner informed the defacto complainant that he was unable to find a Buyer for Rs.2,00,00,000/- as assured in the agreement. Thereafter, the petitioner stated that one person was willing to purchase the flat at Rs.1.85 crores. Further, the petitioner had to submit the receipts, vouchers and bills for the wood work/furnishing of the flats and the defacto complainant also offered to pay the money spent by him. Thereafter, the said flat was sold by executing a sale deed for Rs.1.60 crores. The defacto complainant also agreed and received a sum of Rs.1.45 crores through bank transaction. During the year 2015, the sale deed was executed. Until now, the petitioner did not introduce the purchaser to the defacto complainant and the petitioner started creating problem for car parking allotted to each flat. Thereafter, the petitioner had gone to the extent of foisting a complaint against the defacto complainant's husband, who was aged about 83 years. When the defacto complainant enquired with Mrs.Vasutharini, who had purchased the flat, she came to know that the said Vasutharini gave a sum of Rs.2,14,00,000/- for purchasing the flat. Thus, the petitioner failed to pay the entire sale amount received from the purchaser and also failed to furnish the accounts for woodwork/furnishing. The cheque given by the petitioner was dishonoured. When the defacto complainant asked about dishonour of cheque issued by the petitioner, the petitioner threatened the defacto complainant with dire consequences by using hooligans and goondas. Thereby, the petitioner committed offence of misappropriation and cheating. Hence, a complaint was filed by the respondent. Based on the complaint, FIR came to be registered.

3. The learned counsel for the petitioner submitted that the defacto complainant is the land owner. Joint Venture Agreement and Construction Agreement was entered between the petitioner and the defacto complainant on 19.10.2011. As per the Joint Venture Agreement, the petitioner has to build six flats and two flats were retained by him towards the cost of construction and four flats were handed over to the land owner/defacto complainant. After completion of construction, four flats were handed over to the defacto complainant. In the meanwhile, the petitioner was shocked about the additional amenities and wood work, which was carried out by him, that amounted to Rs.34,90,000/-. But, the defacto complainant failed to pay the

amount. Hence, the defacto complainant offered to sell one of the flats for repaying the due. Initially, the flat was fixed at the rate of Rs.2 crores, but, there was no buyers. Hence, it was agreed that the flat would be sold at Rs.1.85 crores. During the execution of the sale deed in favour of M/s.Vasutharini for Flat No.T-2, the defacto complainant refused to cooperate for the registration and demanded an additional sum of Rs.15 lakhs. Thereafter, the petitioner had no other alternate and issued a cheque for sum of Rs.15,00,000/- on 29.05.2015. Thereafter, the sale deed was executed. Pursuant to the registration of Flat T-2, the petitioner demanded a sum of Rs.34,90,000/- which the complainant was liable to pay towards Additional Expenditure. As per the construction agreement, it was agreed by the defacto complainant that the addition and alteration works to be carried out at the cost of the defacto complainant. The defacto complainant, by giving one reason or other, was delaying the payment and finally, she refused to make the payment and requested to waive the additional costs. Hence, there was some dispute arouse between them. Thereafter, the petitioner had instructed his bankers to stop payment and the cheque given by the petitioner got dishonoured and a notice was issued on 14.09.2015. The petitioner, in his reply on 29.09.2015, stated that he was not liable to pay the amount to the defacto complainant. Suppressing all these facts, the defacto complainant had lodged a complaint on 05.11.2015 and later, FIR came to be registered. Thereafter, the petitioner produced the Joint Venture Agreement and Construction agreement and filed a suit for recovery of Rs.34,90,000/- from the defacto complainant in C.S.No.614 of 2014 before this Court. Later, on the point of pecuniary jurisdiction, the suit was transferred to VI Additional City Civil Court, which is pending in O.S.No.4476 of 2019. The defacto complainant had also filed a suit seeking repayment of Rs.15,00,000/-. Further, in the said civil suit, the defacto complainant had admitted that she received a sum of Rs.1.45 crores and the due is only Rs.15,00,000/-. Thus the dispute between the petitioner and the defacto complainant is only civil dispute arising out of Joint Venture Agreement and Construction Agreement. As per the Construction Agreement, addition and alterations works had been carried out by the petitioner, for which, the defacto complainant is due to the tune of Rs.34,90,000/-. But, the defacto complainant is unable to pay the money and offered to sell one flat at the rate of Rs.1.85 crores, for which, an advance of Rs.10,00,000/- was received. Thereafter, flat was sold at 1.6 crores. The dispute is only with regard to Rs.15,00,000/- to be paid by the petitioner and Rs.34,90,000/- for addition and alteration works to be paid by the defacto complainant. In this regard, both the petitioner and the defacto complainant have filed civil suits. Hence, he prayed for quashing of the complaint.

4. The learned counsel for the second respondent submitted that since the construction, addition and alteration work has been carried out by the petitioner, he had to submit the bills, vouchers and supporting documents. So far, he had not produced any documents. Hence, the dispute in payment of Rs.34,90,000/- is still pending, for which, the petitioner had filed a civil suit. Further, it is submitted that both the parties agreed to sell the flat at Rs.1.85 crores. However, the flat was sold at Rs.1.6 crores and for balance, he had given a cheque for a sum of Rs.15,00,000/-. But the cheque was dishonoured. Thereafter, the petitioner had failed to make the payment of Rs.15,00,000 with false intention. The petitioner was acting as a broker. Through the purchaser, the defacto complainant/second respondent came to know that the purchaser gave a sum of Rs.2.14 crores for purchasing the flat. Suppressing all these facts, the petitioner gave only a sum of Rs.1.45 crores to the defacto complainant/second respondent and failed to make the balance payment. Thereafter, the defacto complainant asked the petitioner to pay the balance amount. Hence, the petitioners created problem with regard to the allotment of car parking and threatened the defacto complainant and her husband, who are elderly persons. Hence, the complaint was lodged and thereafter, FIR has been registered. On completion of investigation, the veracity and truthfulness of the petitioner could be ascertained. Hence, he prayed for dismissal of the petition.

5. Considering the submissions and on perusal of materials, it is seen that as per the Joint Venture Agreement, six flats were constructed. Four flats were handed over to the defacto complainant and two flats were retained by the petitioner towards the cost incurred for construction. It is seen from the Joint Venture Agreement, sharing of construction area and car parking have been clearly stated in the agreement. Thereafter, a construction agreement dated 19.10.2011 was entered between the petitioner and the second respondent. As per the construction agreement, it was agreed that the addition and alterations works to be carried out by the petitioner. For that, the petitioner incurred a sum of Rs.34,90,000/-. As per the Construction agreement, addition and alteration costs are to be paid by the second respondent. In this case, addition and alteration works made is not in dispute. The dispute is with regard to non-production of bills, vouchers and other documents connected to the addition and alteration works. The petitioner had already given the details of the addition and alteration work on 12.06.2015 and a sum of Rs.34,90,000/- was also incurred for the same by the petitioner. Thereafter, the defacto complainant also inclined to sell one flat namely T-2 for a sum of Rs.1.85 crores to Mrs.Vasutharini. Both the petitioner and the defacto complainant's husband have signed the same. The sale was executed in the year 2015 which is not in dispute. Only dispute

between the petitioner and the defacto complainant is that the payment of Rs.15,00,000/-, for which, the petitioner had given a cheque and later, the petitioner had instructed bankers to stop the payment. In this regard, 138 Notice was given on 14.09.2015 for dishonour of cheque. A reply was sent by the petitioner on 29.09.2015. In the meanwhile, the petitioner filed a civil suit in C.S.No.614 of 2014 claiming a sum of Rs.34,90,000/- and the defacto complainant filed a suit claiming a sum of Rs.15,00,000/-. On reading of the complaint, it is seen that M/s.Vasutharini gave a sum of Rs.2.14 crores to the petitioner for purchasing a flat. Hence, the petitioner had committed an offence of cheating and misappropriation. It is purely civil dispute with regard to the commercial transaction. Further, already there is a dispute with regard to the allotment of car parking area between them and the Civil Court has taken cognisance of this dispute. In view of the above, this Court finds that there is no ingredients of offence under Sections 406, 420 IPC and the continuance of the proceedings against the petitioner would amount to abuse of process of law. Therefore, this Court is inclined to quash the FIR in Crime No.313 of 2016. Hence, the Criminal Original petition is allowed. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

ssb
To

1.The Inspector of Police,
J2, Adyar Police Station,
L.B.Road, Adyar,
Chennai.

2.The Public Prosecutor,
High Court, Madras.

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