IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
08.01.2020	21.01.2020

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

CRL.O.P.NO.5185 OF 2013

1. K.Rajendran
2. R.Amudha
3. R.Sathishkumar .. Petitioners/Accuseds

- Vs -

1. State, by
   Inspector of Police
   Appakoodal Police Station
   Erode District.
   .. Respondent/Complainant

2. Dr.K.R.Balakrishnan

3. D.Arunkumar .. Respondents/Defacto Complainant

   (RR-3 impleaded as per order of Court dated 23.8.17 in Crl. M.P. No.10471/17)

Criminal Revision Case filed u/s 482 of the Code of Criminal Procedure, to call for the records pertaining to the final report filed in C.C. No.312/2012 on the file of the Judicial Magistrate, Bhavani and quash the same.

For Petitioner : Mr.P.Wilson, SC, for
Mr.R.Ramkumar

For Respondent : Mr.C.Iyyapparaj, APP for R-1
Mr.C.Kasirajan, for
Mr.M.R.Sivakumar for R-2

ORDER

The present revision has been filed to call for the records pertaining to the final report filed in C.C. No.312/2012 on the file of the Judicial Magistrate, Bhavani and quash the same.

2. It is case of the petitioners that in response to the complaint lodged by the 2nd respondent, the 1st respondent has registered a case in Crime No.45/09 for

the offence u/s 120 (B) and 420 IPC on the allegation that inspite of the agreement entered into between the 1st petitioner and the 2nd respondent on 10.9.07 for the sale of property situated at Ponnam Village, Bhavani Taluk in Survey No.402/1, 4, 421, 427, 428/1 and 430/1, 2 and 3 for a total extent of 46 acres for which the defacto complainant had paid a sum of Rs.21,15,000/-, and that the 2nd respondent being ready and willing to pay the sale consideration and to get the sale deed registered, the petitioners are wilfully and wantonly delaying the process of execution of the sale deed. It is the further allegation of the 2nd respondent that as early as on 20.1.00, the petitioners have entered into a sale agreement with one Sriman Narayanan and Karthikeyan for the sale of the very same property and by suppressing the sale agreement dated 20.1.00, the present sale deed with the 2nd respondent had come to be entered into. Based on the said allegation, on the basis of the complaint lodged by the 2nd respondent, the criminal machinery was set in motion by registration of a case in Crime No.45 of 2009.

3. It is the further case of the petitioners that the 1st respondent without conducting a proper investigation, has filed the final report before the Judicial Magistrate, Bhavani, which has been taken on file in C.C. No.312/2012 in which the petitioners have been arrayed as A-1 to A-3. It is the stand of the petitioners that the entire allegation in the complaint being civil in nature, no criminal liability can be fastened on the petitioners. It is the further stand of the petitioners that in regard to the very same transaction, a civil suit in O.S. No.43/2010 has been filed by the 2nd respondent and the same is pending on the file of the Principal District Judge, Erode. It is the further case of the petitioners that even before the institution of the above suit, Sriman Narayanan and Karthikeyan, who are alleged to be the persons, who had entered into an agreement with the petitioners for the purchase of the property, had filed suits in O.S. Nos.63 and 65 of 2008 before the very same court and the 2nd respondent has taken out an application in I.A. No.134 of 2008 to implead himself as party in the said suits, which petitions, after contest, were dismissed.

4. It is the further stand of the petitioners that the agreement alleged to have been entered into between the petitioners and the 2nd respondents is a fabricated document and that no advance amount, as claimed, has been received by the petitioners. It is the further case of the petitioners that in relation to some other transactions, the petitioners have signed in blank papers and given it to one Dr.Natarajan, who has colluded with the 2nd respondent and utilised the blank papers for the purpose of fabricating the above document. It is the contention of the petitioners that there is no prima facie case available in the final report filed by the 1st respondent.

However, the trial court, without applying its mind to the materials and satisfying itself whether a prima facie case has been made out against the petitioners, has taken the report on file and the same needs to be quashed, lest irreparable loss and damage would be caused to the petitioners. Therefore, the present petition has been filed for quashment.

5. Learned senior counsel appearing for the petitioners vehemently contended that the alleged agreement said to have been entered into between the petitioners and the 2nd respondent, in itself is a fabricated document, as would be evident from the clauses in the agreement. Attention of this Court was drawn to the portion of the clause in the agreement in which it has been accepted between the parties that in the event of the 2nd respondents's failure to pay the balance amount within a particular time, the said amount would stand forfeited. It is the submission of the learned senior counsel that the said clause in itself shows the sham nature of the document. It is the further contention of the learned senior counsel that the 2nd respondent has not filed any suit for specific performance and that the application for impleadment of the 2nd respondent herein as a party in the suit filed by Sriman Narayanan and Karthikeyan has been dismissed after contest. It is the further submission of the learned senior counsel that the case of the 2nd respondent that the petitioners have already entered into an agreement with Sriman Narayanan and Karthikeyan for the sale of lands in the year 2000 itself is nothing but a figment of imagination roped in only for the purpose of strengthening the case of the 2nd respondent. The materials available on record and the report filed by the 1st respondent categorically reveal no criminality and there are no materials attributing a criminal colour to the entire transaction. Only to harass the petitioners, the complaint was filed culminating in the court below taking cognizance and registering a case. Therefore, it is prayed that this Court may quash the proceedings pending on the file of the Principal District Judge, Erode.

6. Per contra, counter has been filed on behalf of the 2nd respondent and the learned counsel appearing for the 2nd respondent strenuously contended that the 2nd respondent had entered into the sale agreement with the petitioners and in lieu of the said agreement, the 2nd respondent had paid an advance of Rs.15,00,000/-, which has been acknowledged by the 1st petitioner by making an endorsement in the sale agreement towards receipt of the amount. However, inspite of the 2nd respondent being ready and willing to pay the balance sale consideration and for execution of the sale deed, however, the petitioners were not forthcoming to execute the sale deed. It is the further submission of the learned counsel for the 2nd respondent that the reluctance of the petitioners to execute the sale deed is on

account of the previous agreement entered into between the petitioners and Sriman Narayanan and Karthikeyan on 20.1.00. However, suppressing the said agreement, the petitioners have entered into the sale agreement with the 2nd respondent and have received huge amounts, which has been acknowledged and their reluctance to execute the sale deed inspite of very many requests made by the 2nd respondent clearly show their intent in usurping the amount given by the 2nd respondent towards advance, which shows the criminal mind of the petitioners and their criminal intention to defraud the petitioners. It is the further submission of the 2nd respondent that statements have been obtained from Sriman Narayanan and Karthikeyan u/s 161 (3) Cr.P.C., which reveals that they are aware about the agreement entered into between the petitioners and the 2nd respondent. It is the submission of the 2nd respondent that the petitioners have acknowledged receipt of Rs.36,15,000/- towards advance for the sale of the property, which is evidenced by records and, the 1st respondent, after thorough enquiry has filed the final report, which has been taken on file by the court below, being satisfied that a prima facie case has been made out and, therefore, no interference is warranted with the said act of the court below.

7. Learned Addl. Public Prosecutor, appearing for the 1st respondent submitted that the 1st respondent has conducted a fair investigation and after examining the necessary witnesses and collecting all materials has filed the final report, which has been taken cognizance of by the court below.

8. This Court heard the learned senior counsel appearing for the petitioners, the learned Addl. Public Prosecutor appearing for the 1st respondent and the learned counsel appearing for the 2nd respondent and perused the materials available on record.

9. Time and again, this Court as well as the Supreme Court has cautioned the courts about the necessary precautions to be taken while quashing the charge sheet at the initial stage. Useful reference in this regard can be had to the decision of the Apex Court in State of Haryana - Vs - Bhajan Lal (1992 SCC (Crl.) 426) wherein 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 extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Code of Criminal Procedure, which we have extracted 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 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 F.I.R. 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."

10. The above decision of the Supreme Court unambiguously makes it clear that this Court can exercise the extra-ordinary power under Article 226 of the Constitution or the inherent powers under Section 482 of Code of Criminal Procedure either to prevent abuse of the process of any Court or otherwise to meet the ends of justice. Further, if the charge do not disclose a cognizable offence and make out a case against the accused, and 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 where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused due to private and personal grudge, then the Court can interfere with the charge sheet.

11. Keeping the above proposition of law in mind, a careful perusal of the materials available on record reveal that an agreement of sale is alleged to have been entered into between the petitioners and the 2nd respondent. There is a further allegation by the 2nd respondent that the petitioners have already entered into an agreement of sale with one Sriman Narayanan and Karthikeyan to sell the very same even in the year 2000 and suppressing the same the present agreement to sell has been entered into with the 2nd respondent and huge amounts have been paid as advance amount, which has been acknowledged by the petitioners in the agreement itself. However, it is the case of the 2nd respondent that the amount has been paid by way of cash, though it is disputed by the petitioners. Further, the contention of the petitioners is that one of the clause in the agreement provides for forfeiture of the advance amount in the event of the balance sale consideration not being paid within the time prescribed therein. It is the stand of the petitioners that the 2nd respondent has not paid the balance sale consideration within the time prescribed in the clause and, therefore, the said amount stands forfeited, but the 2nd respondent, after a lapse of almost ten months from the date when the amount stood forfeited, has given the complaint and, thereafter, has filed the suit, which itself clearly shows the mala fide intent of the 2nd respondent.

12. The above materials, which form the basis for allegation and counter allegation clearly reveal that it is not as if there is no case made out and that it is only with a mala fide intent the complaint has been lodged, which has been taken cognizance leading to the filing of the case. This Court is of the considered view that there definitely exists a prima facie case, which the court below has rightly appreciated and has taken the report on file leading to the filing of the case.

13. Though it is contention of the learned senior counsel appearing for the petitioners that a civil liability has been given a criminal colour and the criminal machinery has been set in motion, which shows the clear ulterior motive and in this regard, the decision of the Supreme Court in Nageshwar Prasad singh - Vs - Narayan Singh & Anr. (1998 (5) SCC 694), is relied on, the said case pertains to deposit of earnest money deposit and not advance amount towards purchase of the property. Earnest money deposited cannot in any way be equated with advance amount paid towards the purchase as advance amount is a portion of the sale consideration whereas earnest money is a deposit, which would stand returned on the fulfilment of the agreement.

14. One other contention advanced by the learned senior counsel appearing for the appellant relating to framing of a charge u/s 420 IPC is concerned and in this regard, the decision of the Supreme Court in Thermax Ltd. & Ors. - Vs - K.M.Johny & Ors. (2011 (13) SCC 412) has been relied on, it is to be pointed out that the facts of the case are different from the facts of this case. Moreover, the Supreme Court, in the abovesaid judgment, has observed that for an offence to be made out u/s 420 IPC, a dishonest intention to deceive another person requires to be made out for making out an offence u/s 420 IPC. In the case on hand, it is the case of the petitioners that Sriman Narayanan and Karthikeyan have filed suit against the petitioners. Equally so, the 2nd respondent contends that subsequent to entering into an agreement with Sriman Narayanan and Karthikeyan, the petitioners, suppressing the said agreement, have entered into contract with him and without executing the sale deed, inspite of his repeated attempts to get it executed, have cheated him for a huge amounts. Though it is the case of the petitioners that the transaction is civil in nature but, however, criminality has been painted and, therefore, the charges have to be quashed, the said submission does not merit acceptance for the simple reason that three individuals have filed separate suits against the petitioners for the sale of the property and one of the person, the 2nd respondent herein, has alleged cheating by the petitioners claiming that the petitioners have received huge amounts, but have not executed the sale deed inspite of repeated requests

made by the 2nd respondent. Therefore, two parties have filed suit against the petitioners and without a trial, it cannot be said that there is no prima facie with regard to cheating or otherwise by the petitioners at this point of time.

15. It has been consistently held by the Courts that the trial court, at the initial stage should not make a roving enquiry and the courts ought to discern a strong suspicion over the existence of facts constituting the offence as against the accused and that at that stage, evidentiary value need not be gone into at all by the court. Therefore, where there exists some material, which gives rise to a likelihood of involvement of the accused in the fraudulent transaction the courts should be circumspect in quashing the charge sheet at the threshold.

16. In the above circumstances, the trial court has rightly taken the case on file and this Court is of the considered view that no prejudice would be caused to the petitioners if they are subjected to due trial as sufficient opportunity would be given to the petitioner to put forth their defence. The petitioners cannot be let by quashing the charge framed against them as that would completely undermine the alleged acts, which is the subject matter of criminal trial pending against them.

17. For the reasons aforesaid, this Court finds no ground or scope to quash C.C. No.312/12, pending on the file of the learned Judicial Magistrate, Bhavani. Accordingly, this petition, being devoid of merits, is dismissed. Consequently, connected miscellaneous petitions are also dismissed.

18. Learned senior counsel appearing for the petitioners submitted that this Court may consider dispensing with the personal appearance of the petitioners before the court below. Taking into consideration the request as made by the learned senior counsel for the petitioners, the appearance of the petitioners before the trial court is dispensed with except for their appearance for the purpose of receiving the copy of the proceedings u/s 207 Cr.P.C., framing of charges, questioning under Section 313 Cr.P.C. and on the day on which judgment is to be pronounced. However, if for any particular reason, the presence of the petitioners is necessary, the trial court, at its wisdom, shall direct their appearance on those days.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

GLN

To

1. The Judicial Magistrate
   Bhavani.

2. The Chief Judicial Magistrate,
   Bhavani.

3. The Public Prosecutor
   High Court, Madras.

+2cc to Mr.R.Ramkumar, Advocate, S.R.No.3699

CRL.O.P.NO.5185 OF 2013

PP(CO)
CS/28/02/2020