

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.4674 of 2020
and CrI.M.P.No. 2674 of 2020

K.Ramachandra Kurup,
S/o.Krishna Kurup,
No.4/7, Second Floor,
Nathan Building,
North Usman Road,
T.Nagar, Chennai-600 017.

...Petitioner/
Sole Accused

Vs.

1. The Inspector of Police,
R4, Police Station,
Soundharapandinar Anghadi,
T.Nagar, Chennai - 600 017.

2. A.Venkatesan,
No.2/28, Postal Garden Colony,
Second Street,
Saligramam,
Chennai - 600 093.

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records on the file of the first respondent in respect of F.I.R.No.528 of 2012 dated 28.03.2012 and quash the same.

For Petitioner : Mr.T.T.Ravichandran

For Respondents

For R1 : Mr.S.Karthikeyan

Additional Public Prosecutor.

For R2 : No appearance.

ORDER

This petition has been filed to quash the FIR in Crime No.528 of 2012 on the file of the first respondent registered for the offences punishable under Sections 420 and 406 of IPC, as against the petitioner.

2. The learned counsel appearing for the petitioner would submit that on the complaint lodged by the second respondent,

the first respondent registered a case in Crime No.528 of 2012. The petitioner is the sole accused and he claims to be a life time member of the association by name Cine Technicians Association of South India formed for the benefit of cinema technicians, in which the second respondent is the member of the association. The second respondent lodged complaint with the allegations that there was a housing scheme promoted by the Association at Mangadu, in which the second respondent approached the petitioner to purchase a plot in Phase-II of CTA Garden for a price of Rs.35,15,300/- and he paid a sum of Rs.1 lakh on 15.04.2005 as first instalment and a sum of Rs.1,40,000/- on 02.05.2005 as second instalment and a sum of Rs.70,000/- as third instalment and a further sum of Rs.25,000/- on 20.05.2005. After receipt of the same, it was informed that the sale deed will be registered in favour of the second respondent, at the time of the construction of the said plot. It is further alleged that the petitioner being the President of the Association informed the second respondent that the building will have to be constructed atleast an area measuring about 4000 sq.ft., and the building will have to construct by one K.Elangovan. However, the plot No.8 was not sold to him and as such the petitioner has committed the offence under Section 406 and 420 of IPC.

2.1. He further submitted that even according to the complainant, after receipt of the amount, plot No.12 was registered in his name and he also obtained sale deed in his favour. The case of the defacto complainant is that he was not allotted the plot No.8. The present complaint has been filed after seven years from the date of registration of the said document, only for the reason that the second respondent was expelled from the association by a showcase notice dated 29.07.2011. The said act was challenged by the second respondent before the First Additional City Civil Court, Chennai in O.S.No.6407 of 2011 for declaration declaring that the show cause notice issued against him on 29.07.2011 is biased, illegal and non-est in the eye of law and for consequential relief of permanent injunction restraining the Association, not to in any manner remove the second respondent as a member of the Association. The said suit was dismissed on 09.01.2019. Therefore after initiation of the said suit and also after expelled from the association through showcase notice dated 29.07.2011, the second respondent lodged the present impugned complaint on 28.03.2012. Therefore, the present FIR is nothing but clear abuse of process of law, and only to take revenge as against the petitioner, the present complaint has been lodged. Therefore he prayed for quashment of the FIR.

3. The learned Additional Public Prosecutor submitted that the case of the complainant is that he is a member of the

Association viz., Cine Technicians Association of South India and there was an housing scheme promoted by the said association at Mangadu and the second respondent approached the petitioner to purchase a plot for a price of Rs.3,15,300/-. The second respondent had paid a sum of Rs.1 lakh on 15.04.2005 as first instalment and a sum of Rs.1,40,000/- on 02.05.2005 as second instalment and a sum of Rs.70,000/- as third instalment and a further sum of Rs.25,000/- on 20.05.2005. After receipt of the same, it was informed that the sale deed will be registered in favour of the second respondent, at the time of the construction of the said plot. It is further alleged that the petitioner being the President of the Association informed the second respondent that the building will have to be constructed atleast an area measuring about 4000 sq.ft., and the building will have to constructed by one K.Elangovan. However, the plot No.8 was not sold to him and therefore the second respondent lodged the present complainant. He further submitted that the investigations is still pending and therefore sought for dismissal of this petition.

4. Heard Mr.T.T.Ravichandran, learned counsel appearing for the petitioner and Mr.S.Karthikeyan, learned Additional Public Prosecutor appearing for the first respondent police. Though notice served to the second respondent, no one is appeared on behalf of the second respondent either by person or through pleader.

5. The petitioner is the president of Cinema Technician Association of South India in which the second respondent is a member. The association promoted a housing scheme, in which the second respondent paid a sum of Rs.3,15,300/- to purchase a plot. Accordingly the petitioner association was also executed a sale deed in his favour of plot No.12. But the second respondent lodged complainant with the allegation that the plot No.8 was not sold to him and thereby the petitioner cheated the defacto complainant. On perusal of record, the sale consideration was received by the petitioner on behalf of the association in the capacity of president of the association in the year 2005 and immediately, the sale deed was executed in favour of the second respondent. The second respondent has not agreed with the execution of the sale deed in respect of other plot and after period of seven years, he lodged the present complaint with allegations that plot No.8 was not sold to him.

6. It is also seen that the second respondent was expelled from the Cine Technicians Association of South India by showcase notice dated 29.07.2011. Immediately, the second respondent challenging the said show case notice, filed a suit in O.S.No.6407 of 2011 for declaration declaring that the show case notice is biased and illegal and none-est in the eye of law with

consequential relief of permanent injunction restraining the Association not to in any manner remove the second respondent from his membership of the association. After filing the suit, the second respondent failed to obtain any interim order and as such he lodged the complaint on 28.03.2012 with the above allegations that too after the period of seven years from the payment made by him to purchase the property. Though the belated complaint was registered by the first respondent on 28.03.2012, even till today for the past eight years, it is pending without any progress. It shows that the second respondent has no interest to proceed with the complaint, since the entire allegations have no prima facie case to attract the offences under Sections 406 and 420 of IPC as against the petitioner. Further the suit filed by the second respondent also dismissed by the judgment and decree dated 09.01.2019. Therefore, the pendency of the FIR would not serve any purpose, since no offence has been made out as against the petitioner as alleged by the second respondent.

7. In this regard, it is relevant to extract the judgement reported in (1992) SCC Cr1. 426 in the case of Bajanlal v. State of Haryana, wherein the Hon'ble Supreme Court has listed out the following category of case in which the criminal proceedings can be quashed using the inherent jurisdiction of the High Court under Section 482 Cr.P.C.:

"7. Where a criminal proceeding is manifestly attended with malafide and/or where the proceedings is maliciously instituted with an ulterior motive for wrecking vengeance on the accused and with a view to spite him due to private and personal grudge."

Therefore, the impugned complaint is nothing but clear abuse of process of law and it cannot be sustained as against the petitioner.

8. Accordingly, this Criminal Original Petition stands allowed and the FIR in Crime No.528 of 2012 on the file of the first respondent is hereby quashed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

To

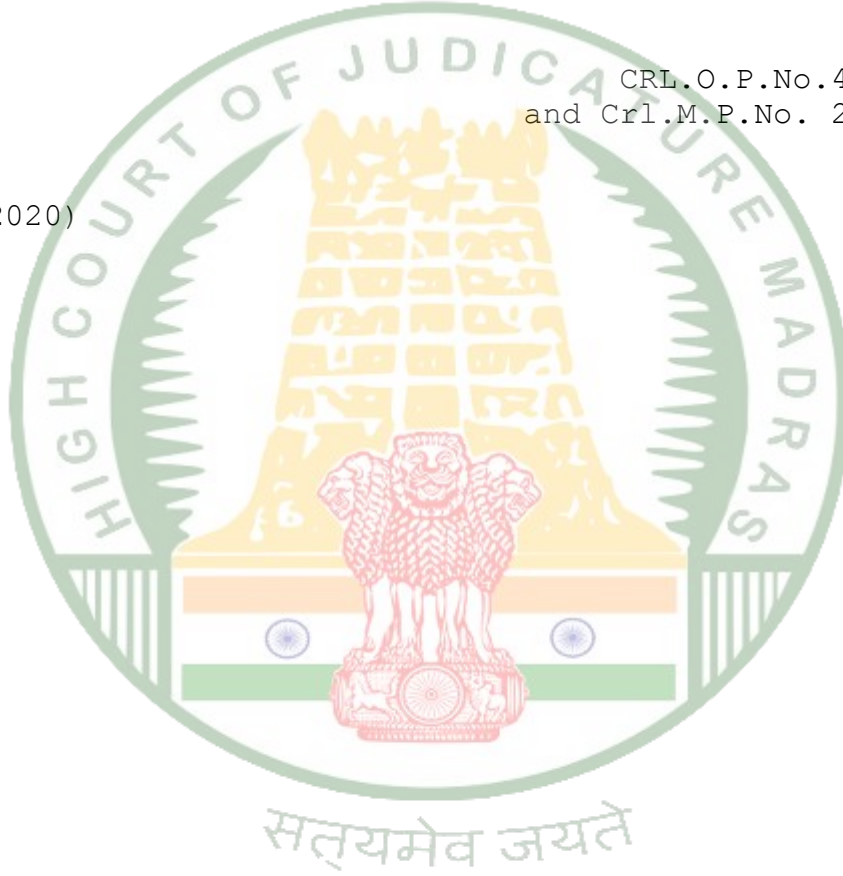
1. The Inspector of Police,
R4, Police Station,
Soundharapandinar Anghadi,
T.Nagar, Chennai - 600 017.

2. The Public Prosecutor
Madras High Court,
Chennai.

+lcc to M/s.T.T.Ravichandran, Advocate in SR.NO..27970

CRL.O.P.No.4674 of 2020
and Crl.M.P.No. 2674 of 2020

AJS (CO)
RV (15/10/2020)



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