

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.06.2020

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CrI.O.P.No.2901 of 2020 and
CrI.M.P.No.1756 of 2020

Rajesh Krishnan ... Petitioner/Accused No.1

Vs.

1.The State,
Rep. by the Inspector of Police,
District Crime Branch,
Kanchipuram District
(Cr.No.30 of 2019)

2.R.VenkateshRespondents/Complainant &
Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482
Cr.P.C. praying to call for the records and quash the FIR in
Cr.No.30 of 2019, pending investigation on the file of the
first respondent police.

For Petitioner : Mr.V.Padmanabhan,
Senior Counsel
for Mr.S.B.Viswanathan

For Respondents
For R1 : Mr.M.Mohamed Riyaz,
Additional Public Prosecutor

For R2 : Mr.A.R.L.Sundaresan,
Senior Counsel
for Mr.R.Chandramohan

ORDER

This Criminal Original Petition has been filed to
quash the FIR in Cr.No.30 of 2019 registered against the
petitioner and two others for the offences punishable under
Section 420 r/w 34 of IPC on the file of the first respondent

Police.

2. The case of the prosecution is that there are three accused, in which the petitioner is arrayed as A1. On the complaint lodged by the second respondent, the first respondent registered a case alleging that the second respondent paid a sum of Rs.32,54,675/- towards consideration for allotment of two residential flats in the project of M/s.Sheltrex Developers Private Limited and received allotment orders. Thereafter, the first accused sent an e-mail stating that they dropped the project at Maraimalainagar and expressing their readiness to allot residential flats at Appur Village, Oragadam. It was agreed by the defacto complainant and on 30.12.2015, they executed two sale deeds in respect of undivided share of land and also executed two construction agreements in favour of the wife of the defacto complainant. As per the terms of the construction agreement, they have to complete the construction within a period of 18 months. Thereafter, the petitioner and others failed to start project and agreed to repay the amount by instalments. Accordingly, Rs.2,00,000/- have been repaid by four instalments and thereafter stopped making payments. Therefore, the defacto complainant caused legal notice and lodged the complaint.

3. Mr.V.Padmanabhan, the learned Senior Counsel for the petitioner contended that the entire allegations are false and frivolous and fictitious and no evidence is made out as against the petitioner and as such FIR itself cannot be sustained as against the petitioner. The entire allegations are civil in nature and instead of filing civil suit, the defacto complainant lodged the present complaint. There is absolutely no intention to add the inception of agreement by the petitioner to cheat the defacto complainant and as such the offences under Section 420 IPC is not at all made out as against the petitioner. He further contended that the first respondent without even conducting any preliminary enquiry on the complaint lodged by the defacto complainant, straight away registered the case and as such it is complete violation of the judgment of the Hon'ble Supreme Court of India in the case of Lalita Kumari Vs. State of U.P. reported in (2014) 2 SCC 1.

3.1 He further contended that the first respondent also did not issue any notice under Section 41-A of Cr.P.C. before securing the petitioner. Therefore, it is also violation of the order passed by the Hon'ble Supreme Court of India in the case of Arnesh Kumar Vs. State of Bihar reported in 2014 (5) SCC 324. The petitioner is neither Director nor Managing Director of M/s.Sheltrex Developers Private Limited and he

involved in the day to day affairs of the company. Therefore, the petitioner is no way connected with the said allegations made by the defacto complainant. In fact, one of the creditors M/s.Brick Eagle initiated proceedings before the National Company Law Tribunal, Chennai as against M/s.Sheltrex Developers Private Limited, in which Interim Resolution Professional was appointed. Further, admittedly two sale deeds have been registered in favour of the defacto complainant insofar as undivided share and also executed construction agreement. Therefore, the remedy available for the defacto complainant only before the Real Estate Regulation Authority, Chennai to enforce the said construction agreements. Instead of doing that, the defacto complainant lodged complaint with false and frivolous allegations. In fact, the defacto complainant has already submitted his claim application before the Interim Resolution Professional for recovery of money from M/s.Sheltrex Developers Private limited. In support of his contention, he relied upon the following judgements:

- (i) Lalita Kumari Vs. State of U.P.
reported in (2014) 2 SCC 1
- (ii) Arnesh Kumar Vs. State of Bihar and another
reported in 2014 (8) SCC 273.
- (iii) State of Karnataka Vs. L.Muniswamy and others
reported in (1977) 2 SCC 699
- (iv) Nagesh Vs. State rep. by the Inspector of Police, All Women Police Station, Guindy, Chennai District reported in 2019(1) LW (Cr1.) 473
- (v) State of Haryana and others Vs. Bhajan and Others reported in 1992 Supp(1) SCC 335
- (vi) Paramjeet Batra Vs. State of Uttarkhand and others reported in (2013) 11 SCC 673
- (vii) V.Y.Jose and Others Vs. State of Gujarat and Another reported in (2009) 3 SCC 78
- (viii) Amit Kapoor Vs. Ramesh Chander and another reported in (2012) 9 SCC 460
- (ix) Commissioner of Police & Others Vs. Devender Anand & Others reported in 2019 AIR (SC) 3807
- (x) Hazari Lal Gupta Vs. Rameshwar Prasad and another, etc reported in (1972) 1 SCC 452.

4. Per contra, Mr.A.R.L.Sundaresan, the learned Senior Counsel for the second respondent submitted that there are specific allegations in the complaint to attract offences under Section 420 r/w 34 IPC against the accused persons. The petitioner is arrayed as A1, and he is the person who mailed to the defacto complainant in respect of their project.

Further, initially the accused persons had started project at Maraimalainagar, in which the defacto complainant paid a sum of Rs.32,54,675/- to purchase two residential flats. On receipt of the same, the defacto complainant's wife was allotted two flats bearing Nos.A17-101 and 17-102 at Maraimalainagar project. The petitioner being the Chief Executive Officer of M/s.Sheltrex Developers Private Limited sent an email to the defacto complainant stating that they dropped the Maraimalainagar project and expressing their readiness to allot residential flats in their project at Appur Village, Oragadam. Therefore, the defacto complainant consented for the same and again allotted two flats in Appur Village project at Oragadam. Accordingly, they have to complete the project within a period of 18 months and also executed sale deeds in respect of undivided share. Thereafter, they did not continue the project and assured to return the amount paid by the defacto complainant by instalments. Accordingly, they paid only Rs.2,00,000/- by instalments and thereafter failed to return the amount. Therefore, they all with common intention only to cheat the defacto complainant entered into an agreement and thereafter completely dropped the project as such committed offences under Section 420 r/w 34 IPC and the case has to be investigated in depth and it cannot be quashed on its threshold.

5. Mr.M.Mohamed Riyaz, Additional Public Prosecutor appearing for the first respondent police would submit there are totally three accused, in which the petitioner is arrayed as A1. The second respondent paid a sum of Rs.32,54,675/- towards consideration for allotment of two residential flats in the project of M/s.Sheltrex Developers Private Limited and received allotment orders. Thereafter, the first accused sent an e-mail stating that they dropped the project at Maraimalainagar and expressing their readiness to allot residential flats at Appur Village, Oragadam. It was agreed by the defacto complainant and on 30.12.2015, they executed two sale deeds in respect of undivided share of land and also executed two construction agreements in favour of the wife of the defacto complainant. As per the terms of the construction agreement, they have to complete the construction within a period of 18 months. However, the petitioner and others failed to start project, pursuant to which they agreed to repay the amount by instalments. Accordingly, Rs.2,00,000/- have been repaid by four instalments and thereafter they stopped making payments. He further submitted that there are specific allegations as against the petitioner to attract offences under Section 420 IPC, and therefore he vehemently opposed to

quash the FIR.

6. Heard Mr.V.Padmanabhan, Senior Counsel appearing for the petitioner, Mr.A.R.L.Sundaresan, Senior Counsel appearing for the second respondent, and Mr.M.Mohamed Riyaz, Additional Public Prosecutor appearing for the first respondent Police.

7. It is seen that on the complaint lodged by the second respondent, the first respondent registered a case in Cr.No.30 of 2019 against the petitioner and two others for the offences punishable under Sections 420 r/w 34 of IPC alleging that the second respondent paid a sum of Rs.32,54,675/- towards consideration for allotment of two residential flats in the project of M/s.Sheltrex Developers Private Limited and received allotment orders. Thereafter, the project at Maraimalainagar was stopped and as requested by the second respondent for the allotment of residential flats at Appur Village, Oragadam, the defacto complainant agreed and two sale deeds were executed in respect of undivided share of land and also executed two construction agreements in favour of the wife of the defacto complainant. As per the terms of the construction agreement, they have to complete the construction within a period of 18 months. Thereafter, the petitioner and others failed to start project and agreed to repay the amount by instalments. Accordingly, Rs.2,00,000/- have been repaid by four instalments and thereafter stopped making payments.

8. Though the learned Senior Counsel for the petitioner vehemently contended that the entire transaction was civil in nature and no offence is made out as against the petitioner, on perusal of the complaint, there is a specific allegation as against the petitioner and two others to attract offences under Section 420 IPC, since initially they received amount for the project at Maraimalai Nagar, but thereafter they stopped the said project and adjusted the amount received from the defacto complainant towards other project at Appur Village at Oragadam. Even then, they did not start the project and assured to return the money and also paid a sum of Rs.2,00,000/-, that too by four instalments out of total amount of Rs.32,54,675/-. Therefore, their intention is very clear even at the time of inception of agreement as such offence under Section 420 IPC is made out as against the petitioner and other accused persons.

9. In fact, there are so many complainants, in which the first respondent received their complaints as against the accused persons. Further, one of the creditors approached the

National Company Law Tribunal, in which Interim Resolution Professional was appointed and the petitioner also made claim before the Interim Resolution Professional appointed by the National Company Law Tribunal of Chennai. However, mere filing the claim could not be the impediment for lodging a complaint for the offences committed by the accused persons under Section 420 IPC.

10. Further, the learned Senior Counsel for the petitioner vehemently contended that all the allegations are civil in nature and as such the defacto complainant ought to have filed a suit for recovery instead of filing complaint for the offences under Section 420 IPC. In support of his contention, he cited so many judgments. In the case on hand, as discussed above, in the inception of agreement itself, the accused persons' intentions are very clear that only to cheat the defacto complainant, they received money in the name of projects, and thereafter they also assured to return the money and failed to return the same. Therefore, the judgments cited by the learned Senior Counsel for the petitioner are not helpful to the case on hand.

11. It is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in CrI.A.No.255 of 2019 dated 12.02.2019 in the case of Sau. Kamal Shivaji Pokarnekar vs. the State of Maharashtra & ors., 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.

.....

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."

12. Further, it is seen from the First Information Report that there are specific allegations as against the petitioner to attract the offences, which have to be investigated in depth. Further the FIR is not an encyclopedia and it need not contain all facts and it cannot be quashed in the threshold. This Court finds that the FIR discloses prima

facie commission of cognizable offence and as such this Court cannot interfere with the investigation. The investigating machinery has to step in to investigate, grab and unearth the crime in accordance with the procedures prescribed in the Code.

13. In view of the above discussion, this Court is not inclined to quash the First Information Report. Accordingly, this Criminal Original Petition stands dismissed. However, considering the facts and circumstances of the case, the first respondent is directed to complete the investigation in Crime No.30 of 2019 and file a final report within a period of two months from the date of receipt of copy of this Order, before the jurisdiction Magistrate, if not already filed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

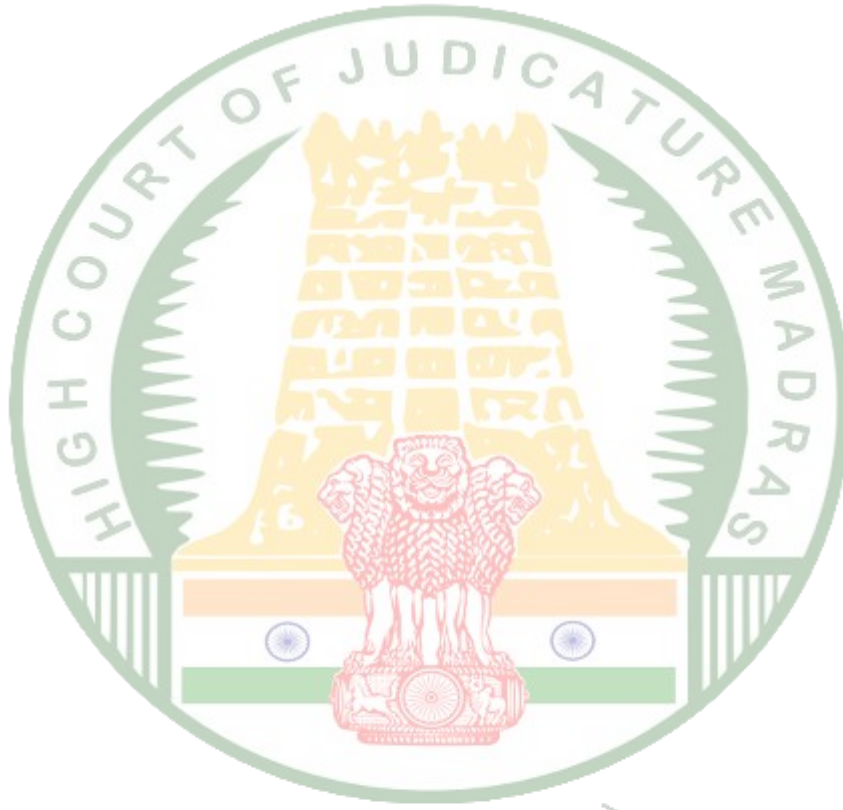
1. The Inspector of Police,
District Crime Branch,
Kanchipuram District
2. The Public Prosecutor,
High Court of Madras.

Cr1.O.P.No.2901 of 2020

VSN II (CO)
CB(31/07/2020)

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