

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.NO.6984 OF 2020

AND

CRL.M.P.NO.3802 OF 2020

V.Poornima
W/o.S.Vijayakumar,
Flate No.1A, A Block,
New No.41, Old No.22,
Perumal koil Street,
Devinaray Temple Gate,
Kottur, Chennai - 600 085. ... Petitioner

Vs.

Devinarayan Housing & Property
Development Pvt., Ltd.,
Rep. by its Authorized Signatory,
N.Ashok Kumar,
Having office at No.2,
Link Street, First Floor,
Kottur Gardens,
Chennai - 600 0085 ... Respondent

PRAYER:

Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records in C.C.No.4455 of 2019 on the file of the learned FTC-III, Metropolitan Magistrate, Saidapet, Chennai and quash the same.

For Petitioner : Mr.G.Ravikumar

For Respondent : Mr.Ravikiran
For Mr.Mothilal & Goda.

ORDER

This petition has been filed to quash the proceedings in C.C.No.4455 of 2019 on the file of the learned FTC-III, Metropolitan Magistrate, Saidapet, Chennai, thereby taken cognizance for the offences under Section 138 of Negotiable Instruments Act, 1881 (herein after referred to as NI Act).

2. The learned counsel would submit that the petitioner is a sole accused on the complaint lodged by the respondent herein for the offences punishable under Section 138 of NI Act. He further submitted that the petitioner purchased a flat from the respondent herein after payment of entire sale consideration and on receipt of the entire consideration, the respondent executed sale deed in favour of the petitioner in respect of undivided share of flat. In respect of the flat, on the basis of the said sale deed, the respondent executed construction agreement in favour of the petitioner herein. After receipt of the entire payment, the respondent duly handed over the possession of the flat vide letter dated 20.08.2015. The possession certificate was also issued in favour of the petitioner by the respondent herein. The alleged cheque which issued by the petitioner as a security purpose at the time of entered into the agreement for construction. Now presented for collection by the respondent and filed the present false complaint as against the petitioner herein. The document which was annexed along with the complaint categorically shows that the possession of flat was already handed over to the petitioner and he is in possession and enjoyment of the said flat for the past three years. In fact after receipt of the cheque bearing No..220015, which was given for the purpose of security, the respondent duly acknowledged the same and issued receipt dated 20.08.2015. Therefore, the cheque is clearly barred by limitation and simply filled the present dated and presented for collection by the respondent herein. Therefore, the entire complaint is nothing but clear abuse of process of law and only to extract more money from the petitioner, the respondent herein lodged the complaint. Therefore, he sought for quashment of the entire proceedings.

3. Per contra, the learned counsel appearing for the respondent submitted that the respondent entered into an agreement for construction with the petitioner and the petitioner is in due of Rs.5,36,000/-. Towards the said payment, the petitioner issued cheque for a sum of Rs.5,36,000/-, which was presented for collection and the same was returned dishonour with an endorsement funds insufficient. Thereafter the respondent caused legal notice dated 25.10.2018, which was returned with an endorsement "refused". Therefore the petitioner has committed the offence punishable under Section 138 of NI Act and the complaint is very much maintainable as against the petitioner herein. Insofar as the cheque is concerned, which was issued only on 22.10.2018 and as such the complaint is never barred by limitation.

4. Heard Mr.G.Ravikumar, learned counsel appearing for the petitioner and Mr.Ravikran, learned counsel appearing for the respondents.

5. The petitioner is the sole accused on the complaint

lodged by the respondent herein for the offences punishable under Section 138 of NI act. The respondent lodged complaint alleging that the petitioner purchased a flat in the apartment complex called Devinarayan Temple Gate and she paid part payment. On the basis of the sale deed, a construction agreement was entered with the respondent herein. In respect of the above said transaction, at the time of handing over the flat and issuing possession letter the accused issued the cheque towards balance consideration payable by her for the sum of Rs.5,36,000/-. The cheque was presented for collection on 22.10.2018 and the same was returned dishonoured for the reason funds insufficient. After issuing statutory notice, the respondent initiated proceedings for the offence punishable under Section 138 of NI Act as against the petitioner herein.

6. Admittedly, the petitioner purchased a flat from the respondent herein in the apartment complex called Devinarayana temple gate. The respondent is being a developer executed sale deed in favour of the petitioner in respect of undivided share. On the strength of the sale deed, the petitioner entered into an agreement for consideration with the respondent herein. Accordingly, the respondent completed the construction and handed over the possession of a flat at Devinarayana temple gate complex situated at No.22, Perumal Koil Street, Kottur, Chennai - 85. In the document of handing over the possession viz., Possession Certificate, the respondent categorically stated that they also confirm that the technical team and accounts department has informed that "all dues cleared and suitable to hand over the possession of that apartment". It shows that the respondent received entire payment from the petitioner. Normally, the developer would not hand over the possession, if the purchaser is in due of even single rupee.

7. In fact, the respondent also executed possession certificate in favour of the petitioner on 20.08.2015, in which the respondent categorically stated that all payments due to the developer have been paid by the purchaser and this certifies the full and final payment/settlement of all dues of the developer and there shall be no further claim by the developer. Therefore, there is absolutely no payment due by the petitioner even as on 20.08.2015 itself. After execution of possession certificate and also handed over the apartment by the letter dated 20.08.2015, the petitioner is in possession and enjoyment of the flat. Even assuming that the alleged cheque was issued on the date of execution of possession certificate and also handing over the document, definitely the it would reflect on those two documents executed by the respondent herein. On perusal of the two documents, which were produced along with the complaint by the respondent herein, there is absolutely no indication of about the issuance of alleged cheque by the petitioner herein.

8. That apart, on receipt of the alleged cheque by the respondent herein, the respondent issued receipt dated 20.08.2015 to the petitioner for the sum of Rs.5,36,000/- Therefore, it shows that the cheque was issued for the security purpose and it is categorically proved by the documents produced by the petitioner, which were annexed along with the complaint by the respondent herein. Therefore, the petitioner has no legally enforceable debts to the respondent, since she already paid the entire sale consideration and on receipt of the same the respondent registered the sale deed in favour of the petitioner in respect of the undivided share. After sale deed, the petitioner entered into agreement for consideration with the respondent herein. After receipt of the entire payment, the respondent executed the possession certificate and also handed over the apartment by letter dated 20.08.2015. Therefore, the present proceeding is noting but clear abuse of process of Court and only to extract more money from the petitioner, the present complaint has been lodged. Accordingly, the present complaint cannot be sustained as against the petitioner and it is liable to be quashed.

9. In view of the above discussion, this criminal original petition is allowed and the proceeding in C.C.No.4455 of 2019 on the file of the learned FTC-III, Metropolitan Magistrate, Saidapet, Chennai, is hereby quashed. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rts

To

1. The Metropolitan Magistrate,
FTC-III, Saidapet, Chennai.

+1cc to Mr.G.Ravikumar, Advocate, S.R.No.28423

CRL.O.P.No. 6984 of 2020
and Crl.M.P.No.3802 of 2020

AJS (CO)
CS/03/11/2020