

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.28002 of 2019
Crl.M.P.Nos.14944 & 19000 of 2019

G.Kiran Kumar
S/o. Giriraj
No.17, 3rd Street,
Viswanathapuram,
Kodambakkam,
Chennai - 600 024.

.... Petitioner/Single Accused

Vs.

1. The State rep. by
The Inspector of Police,
Central Crime Branch,
EDF-II, Team IX-A,
Vepery, Chennai.

....1st Respondent/Complainant

2. Muralidhar Naidu
S/o. Dhamodaran
G.K. Homes,
Sapthagiri Flat No.S1,
Second Floor, 58/31,
Raghavan Colony Main Road,
Vadapalani, Chennai - 600 026.

.... 2nd Respondent/Defacto
Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records and quash the FIR registered as against the petitioner in Crime No.134 of 2019 on the file of CCB EDF-II, Team IX-A, Vepery, Chennai.

For Petitioner
For Respondents
For R1

: Mr.Jerome Pushparaj
: Mr.M.Mohammed Riyaz,
Additional Public Prosecutor.

For R2

: Mr.N.Manoharan

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O R D E R

This petition has been filed to quash the FIR in Crime No.134 of 2019 on the file of the first respondent Police registered for the offences under Sections 409 and 420 of IPC, on the complaint lodged by the second respondent herein.

2. The learned counsel appearing for the petitioner submitted that the ingredients of the offences under Sections 409 and 420 of IPC were not made out as against the petitioner. The entire allegations are civil in nature and unnecessarily had given criminal colour in order to take revenge by the defacto complainant. Even according to the defacto complainant, there is no violation or breach of contract, since the second respondent accepted the excess constructed area towards adjustment of the free money. Therefore, the complaint cannot be sustained as against the petitioner and it is liable to be quashed. He also submitted that the petitioner filed a suit in O.S.No.5479 of 2018 for recovery of Rs.6,07,000/- on the file of the VIII Assistant City Civil Court, Chennai, and on receipt of the summons from the above suit, the second respondent lodged this present complaint and as such prayed for quashment of the FIR.

3. Per contra, the learned counsel appearing for the second respondent submitted that the second respondent is the owner of the land measuring 3848 sq.ft. and he was entered into the joint venture agreement dated 25.11.2015, with the petitioner herein to construct apartment. As per the agreement, the petitioner shall hand over the three flats consist of 1000 Sq.ft. build up area and also pay a sum of Rs.2.1 crores. At the time of entering into the agreement the petitioner has paid a sum of Rs.40,00,000/- and after completion of construction, he has to pay the remaining amount of Rs.1.70 crore. The petitioner handed over the three flats to the second respondent but the remaining amount of Rs.1.70 crores was not paid. In fact, the time for construction was fixed as one year and the petitioner failed to comply with the condition and after expiry of one year, he completed the construction and handed over the possession of the flats. Further at the time of agreement, the petitioner agreed to pay a sum of Rs.1.70 crores, after completion of the project. Even after completion of project, the petitioner failed to comply with the conditions as agreed by them. Therefore, the offences under Sections 409, 420 of IPC are clearly made out as against the petitioner.

3.1. He further submitted that the investigation of the FIR is in initial stage and it cannot be quashed on its threshold. It is nothing but killing of new born baby and it has to be investigated to find out the truth. Therefore he prayed for

dismissal of this quash petition. To support of his contention, he relied upon the following reported judgment:-

(i) (2013) 2 SCC 801 - Arun Bhandari Vs. State of Uttar Pradesh

and ors

(ii) (2019) 9 SCC 677 - Dr.Lakshman Vs. State of Karnataka and ors

4. Heard Mr. Jerome Pushparaj, learned counsel appearing for the petitioner, Mr.N.Manoharan, learned counsel appearing for the second respondent and Mr.M.Mohamed Riyaz, learned Additional Public Prosecutor appearing for the first respondent police.

5. This petition has been filed to quash the FIR in Crime No.134 of 2019 registered against the petitioner for the offences under Sections 409 & 420 of IPC. The second respondent lodged complaint alleging that he is the owner of the land ad measuring 3848 Sq.ft., and he entered into the joint venture agreement with the petitioner for construction of flats. As per the joint venture agreement dated 25.11.2015, the petitioner agreed to pay a sum of Rs.2.1 crores as free money, in which a sum of Rs.40,00,000/- to be paid on the date of agreement and the balance amount of Rs.1.70 crore has to be paid on completion of the project and also the petitioner agreed to allot three flats consisting 1000 sq.ft., each. Accordingly, the petitioner completed the construction and handed over the flats in flat No.F2 ad measuring 1265 sq.ft., flat No.S1 ad measuring 1462 sq.ft. and flat No.S2 ad measuring 1412 sq.ft. in total 4139 sq.ft. sale-able area to the second respondent herein. Therefore, the petitioner had given 1139 sq.ft., excess to the second respondent.

6. According to the petitioner he paid a sum of Rs.40 lakhs on the date of joint venture agreement and a sum of Rs.28 lakhs was adjusted to rectify the defects in survey number and to obtain patta for the land. Further a sum of Rs.1,48,70,000/- was adjusted towards excess sale-able area handed over to the second respondent at the rate of Rs.13,000/- per square feet. Therefore, in total the petitioner paid a sum of Rs.2,16,07,000/-. However, as per joint venture agreement dated 25.11.2015, the petitioner has to pay a sum of Rs.2,10,00,000/- only. Therefore, the petitioner filed a suit for recovery of balance amount of Rs.6,07,000/- from the second respondent in O.S.No.5479 of 2018 and the same is pending before the VIII Assistant City Civil Court, Chennai. After receiving the summons from the said suit, the second respondent filed this present complaint.

7. On perusal of complaint the allegations are that, as agreed by the petitioner herein, he failed to pay a sum of Rs. 2,10,00,000 after completion of construction. Admittedly, the petitioner constructed six plots in which three plots have been handed over to the second respondent in all three floors. There is no dispute about the total area ad measuring 4139 sq.ft. On perusal of the joint venture agreement, the petitioner has to given only 3000 sq.ft. Entire construction was completed and the possession was also taken over by the second respondent in the month of April 2018 itself. Thereafter on 22.10.2019 the petitioner initiated suit in O.S.No.5479 of 2018, for recovery of remaining balance amount payable by the second respondent. The second respondent has been kept quite for the period of 1-1/2 years and now that too after receipt of summons from the said suit initiated by the petitioner herein, he come forward with this present complaint, which was registered under Sections 409 and 420 of IPC.

8. It is relevant to extract the provision under Section 415 of IPC and punishable under Section 420 of IPC.

"415. Cheating.—Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

Explanation.—A dishonest concealment of facts is a deception within the meaning of this section.

.....सत्यमेव जयते.....
420. Cheating and dishonestly inducing delivery of property.—Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. "

9. In the case on hand, admittedly the petitioner have completed the entire construction and also handed over the possession of the three plots consisting more than 3000 sq.ft viz., 4139 sq.ft., to the second respondent herein. In fact the petitioner also initiated civil suit for recovery of money from the second respondent in respect of the excess sq.ft., handed over in favour of the second respondent. On perusal of the complaint, all the averments made in the complaint read on its face, do not disclose the ingredients necessary to constitute the offence under the penal Code.

10. It is also seen that the second respondent though alleged that the petitioner failed to pay a sum of Rs.1.70 crore, as per the joint venture agreement, he did not institute any suit to recover the money even till today. Even then, the second respondent lodged complaint that too for the offences under Sections 409 and 420 of IPC. It is a growing trend in business circles to convert the civil dispute into criminal and this action appears to be malafide and unsustainable. Further any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged.

11. It is relevant to rely upon the judgment of the Hon'ble Supreme Court of India reported in (1992) 1 SCC 335 in the case of State of Haryana and ors Vs. Bhajan Lal and ors, which reads as follows :-

"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 extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of 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 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 FIR 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."

The above case is squarely applicable to the case on hand and the present criminal proceedings cannot be sustained as against the petitioner.

12. In view of the above, this Court find that the prosecution is malafide, untenable and solely intended to harass the petitioner. Accordingly, this criminal original petition is allowed and the FIR in Crime No.134 of 2019 on the file of CCB EDF-II, Team IX-A, Vepery, Chennai, is hereby quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Inspector of Police,
Central Crime Branch,
EDF-II, Team IX-A,
Vepery, Chennai.
2. The Public Prosecutor,
High Court of Madras,
Chennai.

+1cc to Mr.Jerome Pushparaj, Advocate in Sr.No.22877

CRL.O.P.No.28002 of 2019 and
Crl.M.P.Nos.14944 & 19000 of 2019

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