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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.10.2021

PRONOUNCED ON : 22.10.2021

CORAM

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

CRL.O.P.NO.13298 OF 2015

AND

CRL.M.P.NO.1 OF 2015

1. Lancor Holdings Ltd.,
Rep.by its
Managing Director, R.V.Shekar,
Arihant VTN Square,
New No.58, G.N.Chetty Road,
Chennai - 17

2. R.V.Shekar,
Managing Director,
Lancor Holding Ltd.,
Arihant VTN Square,
New No.58, G.N.Chetty Road,
Chennai - 17

... Petitioners / Accused 1 to 2

Vs.

1. Kishore Kumar Menon

2. Housing Development Finance Corporation Ltd.,
A company incorporated under the Companies Act,
2nd Floor, ITC Centre, Anna Salai, Chennai - 600 002.

3. Mr.Joseph Mathew
Regional Manager,
Housing Development Finance Corporation Ltd.,
2nd Floor, ITC Centre, Anna Salai, Chennai - 600 002.



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4. State represented by
The Sub-Inspector of Police,
Team XI A, EDF,
Central Crime Branch,
Greater Chennai Police,
Egmore, Chennai - 600 020.

4th respondent impleaded as per the
order of this Court made in
M.P.No.3 of 2015.

... Respondents

Prayer: Criminal Original Petition filed under Section 482
Cr.P.C., to call for the records in C.C.No.539 of 2013 pending
on the file of the XI Metropolitan Magistrate, Saidapet, Chennai
and quash the same.

For Petitioners .. Mr.P.R.Raman, Senior Counsel

For R1 .. Mr.M.Mohammed Rafi

For R2 & R3 .. Mr.N.Ravishankar Vallatharasu

For R4 .. Mr.E.Rajthilak(App)

ORDER

This Criminal Original Petition has been filed under
Section 482 Cr.P.C., by A1 and A2 in C.C.No.539 of 2013 now
pending on the file of the XI Metropolitan Magistrate, Saidapet,
Chennai to quash the Calendar Case.

2.It must be kept in mind that by order dated 18.03.2015
in Cr1.R.C.No.89 of 2015 and Cr1.O.P.No.1896 of 2015, the
Calendar Case has been quashed by a learned Single Judge of this
Court as against A3 and A4.

3.The 1st petitioner is a limited company involved in
real estate property development and the 2nd petitioner is a
promoter of the said company. They had entered into a Joint
Development Agreement dated 17.12.2004 with the 1st respondent /
defacto complainant to develop the property belonging to the 1st



respondent and his two brothers at Door No.165, St. Mary's Road, Alwarpet, Chennai - 600 018. The two brothers incidentally not complainants in the calendar case. Supplemental Agreements had also been entered into on 29.03.2006 and 22.02.2007. Two Powers of Attorney were also executed in favour of the 1st petitioner on 29.03.2006 to carry out construction and to deal with 50% undivided share in the land. A sum of Rs.6.82 Crores had been paid by the petitioners as refundable security deposit. In the Joint Venture Agreement, it had been provided that the petitioners can mortgage 50% share of the proposed building and undivided share of the land and utilize the money for the purpose of development of the property. Discharge of the mortgage was the sole responsibility of the petitioners herein. The petitioners claimed that they had also constructed a Software Technology Part measuring 1.86 Lakh Sq.ft in the said property. The building was completed on 20.10.2008 and completion certificate also been issued by the CMDA. However, differences arose between the petitioners on the one hand and the 1st respondent / his brothers on the other hand. Arbitration Proceedings were initiated. A suit had also been filed.

4.The 1st respondent lodged a complaint against the petitioners and others on 16.02.2009 alleging commission of various offences. After investigation, action was dropped. The 1st respondent lodged a private complaint which was taken cognizance as C.C.No.9652 of 2009 by the XI Metropolitan Magistrate, Saidapet, accusing the petitioners among others of having committed offences under Sections 405, 409, 415, 418, 420 and 423 of IPC. That Calendar Case was quashed by a learned Single Judge of this Court by order dated 25.07.2012 in CrI.O.P.No.12771 of 2009. An appeal filed against the said order was dismissed by the Hon'ble Supreme Court by order dated 21.02.2013. The 1st respondent filed another private complaint which was taken cognizance as C.C.No.2496 of 2013 alleging that the petitioners among others had committed offence under Sections 409, 420 and 120(b) IPC. The petitioners filed CrI.O.P.No.17044 of 2013 and the same was allowed by order dated 23.11.2018 by a learned Single Judge of this Court and in the result C.C.No.2496 of 2013 was also quashed.

5.The petitioners herein had mortgaged 50% of the undivided share of land and the building there on with Housing Development Finance Corporation Limited. Alleging that the



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petitioners had mortgaged the entire property and had obtained a sum more than Rs.7.5 Crores which was the limit agreed between the parties that could be availed as loan on a mortgage and therefore claiming that the petitioners herein and the Regional Manager of Housing Development Finance Corporation Limited and the said company had committed offences under Sections 406, 418, 420 IPC read with 120(b) IPC, the 1st respondent had filed another private complaint which was taken cognizance by the XI Metropolitan Magistrate Saidapet as C.C.No.539 of 2013. The Housing Development Finance Corporation Limited and Joseph Mathew, Regional Manager of the said Corporation Limited who were shown as A3 and A4 in the said Calendar Case, filed CrI.O.P.No.1896 of 2015 and CrI.R.C.No.89 of 2015 which were both allowed by a learned Single Judge of this Court by order dated 18.03.2015. This in effect meant that as against A3 and A4, C.C.No.539 of 2013 had been quashed. Now by this petition, A1 and A2 also seek to quash the said Calendar Case as against them.

6.Heard arguments advanced by Mr.P.R.Raman, learned Senior Counsel appearing on behalf of the petitioners, Mr.M.Mohammed Rafi, learned counsel for the 1st respondent and Mr.N.Ravishankar Vallatharasu, learned counsel for the 2nd and 3rd respondents.

7.The main thrust of the arguments advanced by Mr.P.R.Raman, learned Senior Counsel appearing for the petitioners is that the 1st respondent acting for himself and probably also on behalf of his two brothers had been continuously filing complaint after complaint under Section 200 Cr.P.C basing all of them on the same documents namely, the Joint Development Agreement dated 17.12.2004 and the Supplemental Agreements dated 29.03.2006 and 22.02.2007.

8.In the instant case, it had been complained by the 1st respondent that the petitioners had committed offences under Sections 406, 418, 420 IPC read with 120(b) IPC, primarily because they had entered into a mortgage with the 2nd and 3rd respondents, according to the 1st respondent, mortgaging more than the undivided 50% of the land for which they were entitled and had obtained loan of more than Rs.7.50 Crores which was the maximum limit which can be availed on mortgage. It was therefore alleged that the petitioners and the 2nd and 3rd respondents had



committed the aforesaid offences.

9.Mr.P.R.Raman, learned Senior Counsel, however pointed out the mortgage by Memorandum of Title Deeds registered as Document No.1800 of 2006 in the office of the Sub-Registrar, Mylapore, Chennai on 31.05.2006, wherein, it had been very clearly stated that the documents referred in schedule - A had been handed over to the mortgagee namely, the 2nd and 3rd respondents herein to create an equitable mortgage over the property described in schedule - B to the said document. Schedule - B referred in the document was 50% undivided share in the property measuring 20 grounds and 600 Sq.ft in Door No.165, Old Door No.110, St.Mary's Road, Chennai - 600 018.

10.Pointing out this particular fact, Mr.P.R.Raman, learned Senior Counsel stated that the mortgage had been created only with respect to the 50% of the undivided share of the land and the mortgage deed alone speaks about the actual land mortgaged and stated that other allied correspondences cannot override the schedule given in the registered mortgage deed. It was therefore pointed out by the learned Senior Counsel that the petitioners had not violated any of the terms of the agreement. The learned Senior Counsel charged the 1st respondent with being inflicted with the habit of filing complaint after complaint alleging criminal offences, while also simultaneously enforcing the arbitration clause and also instituting a civil suit.

11.The learned Senior Counsel also pointed out that the mortgage had been totally discharged and the 2nd and 3rd respondents had also returned back the original title deeds which were deposited with them. This fact is also asserted by the learned counsel for the 2nd and 3rd respondents Mr.N.Ravishankar Vallatharasu, who stated that the mortgage had been discharged and the documents had been returned back and there is no further existing contractual or other relationship between the petitioners and the 2nd and 3rd respondents. It was pointed out that the Hon'ble Supreme Court had also quashed the Calendar Case as against the 2nd and 3rd respondent holding that there was no element of criminal offence involved in entering into the Memorandum of Deposit of Title Deeds.

12.Mr.M.Mohammed Rafi, learned counsel for the 1st respondent on the other hand stated that in a letter, the



details had been wrongly given and whether such mistake was inadvertent or otherwise is a question of fact which can be determined only during the course of trial. The learned counsel justified filing of the complaint and further pointed out that the Hon'ble Supreme Court while affirming the order of the learned Single Judge of this Court quashing the Calendar Case as against the 2nd and 3rd respondents had very categorically stated that the order can enure only to the 2nd and 3rd respondents and not to the petitioners herein.

13.I have carefully considered the arguments advanced.

14.In (2021) 5 SCC 435, Krishna Lal Chawla and others V. State of Uttar Pradesh and Another, the Hon'ble Supreme Court had an occasion to examine lodging of a second complaint against the same accused with respect to the same incident / transactions and had categorically held that such attempt is impermissible. It was also held that such a complaint would also be violative of Article 21 of the Constitution of India.

15.In the course of the said judgment, the Hon'ble Supreme Court had also examined the judgment reported in (2004) 13 SCC 292, Upkar Singh V. Ved Prakash, wherein, the Hon'ble Supreme Court had referred to an earlier ruling of the Hon'ble Supreme Court reported in (2001) 6 SCC 181, T.T.Antony V. State of Kerala. The Hon'ble Supreme Court had observed that in (2004) 13 SCC 292, Upkar Singh, referred supra, the Hon'ble Supreme Court was more concerned with a complaint and a counter complaint and held that if lodging of a second complaint is to be strictly constituted as impermissible, then it should not come in the way of a counter complaint being filed. That distinction was pointed out by the Hon'ble Supreme Court in (2021) 5 SCC 435, Krishna Lal Chawla and others V. State of Uttar Pradesh and Another.

16.In (2004) 13 SCC 292, Upkar Singh V. Ved Prakash at paragraph 17, the Hon'ble Supreme Court also affirmed the principle laid down in (2001) 6 SCC 181, T.T.Antony V. State of Kerala and had held as follows:

"17. ... In our opinion, this Court in that case only held that any further complaint by the same complainant or others against the same



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accused, subsequent to the registration of a case, is prohibited under the Code because an investigation in this regard would have already started and further complaint against the same accused will amount to an improvement on the facts mentioned in the original complaint, hence will be prohibited under Section 162 of the Code."

(emphasis supplied)

17. In (2001) 6 SCC 181, T.T. Antony V. State of Kerala, the Hon'ble Supreme Court had held as follows:

"27. A just balance between the fundamental rights of the citizens under Articles 19 and 21 of the Constitution and the expansive power of the police to investigate a cognizable offence has to be struck by the court. There cannot be any controversy that sub-section (8) of Section 173 CrPC empowers the police to make further investigation, obtain further evidence (both oral and documentary) and forward a further report or reports to the Magistrate. In Narang case [Ram Lal Narang v. State (Delhi Admn.), (1979) 2 SCC 322 : 1979 SCC (Cri) 479] it was, however, observed that it would be appropriate to conduct further investigation with the permission of the court. However, the sweeping power of investigation does not warrant subjecting a citizen each time to fresh investigation by the police in respect of the same incident, giving rise to one or more cognizable offences, consequent upon filing of successive FIRs whether before or after filing the final report under Section 173(2) CrPC."

(emphasis supplied)

18. In Amitbhai Anilchandra Shah v. CBI reported in (2013) 6 SCC 348, at paragraph 37, the Hon'ble Supreme Court had held as follows:

"37. This Court has consistently laid down the law on the issue interpreting the



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Code, that a second FIR in respect of an offence or different offences committed in the course of the same transaction is not only impermissible but it violates Article 21 of the Constitution. In T.T. Antony [T.T. Antony v. State of Kerala, (2001) 6 SCC 181 : 2001 SCC (Cri) 1048] , this Court has categorically held that registration of second FIR (which is not a cross-case) is violative of Article 21 of the Constitution."

(emphasis supplied)

19. In (2021) 5 SCC 435, Krishna Lal Chawla and others V. State of Uttar Pradesh and Another, at paragraph 10, the Hon'ble Supreme Court held as follows:

"10. Article 21 of the Constitution guarantees that the right to life and liberty shall not be taken away except by due process of law. Permitting multiple complaints by the same party in respect of the same incident, whether it involves a cognizable or private complaint offence, will lead to the accused being entangled in numerous criminal proceedings. As such, he would be forced to keep surrendering his liberty and precious time before the police and the courts, as and when required in each case. As this Court has held in Amitbhai Anilchandra Shah [Amitbhai Anilchandra Shah v. CBI, (2013) 6 SCC 348 : (2014) 1 SCC (Cri) 309] , such an absurd and mischievous interpretation of the provisions of the CrPC will not stand the test of constitutional scrutiny, and therefore cannot be adopted by us."

(emphasis supplied)

20. In the instant case, it must be noted that the Mortgage by Deposit of Title Deeds which is the basis of the complaint given by the 1st respondent had been executed on 31.05.2006. This fact was to the knowledge of the 1st respondent even when the 1st complaint was lodged on 16.02.2009, in which action had been dropped by the Investigating Officer stating that the dispute is civil in nature and following which a complaint had been lodged before the Magistrate in C.C.No.9652



of 2009. Therefore, when that particular complaint was lodged, the 1st respondent had deliberately not chosen to allege that by the said deposit of title deeds, the petitioners herein had committed offences under Sections 406, 418 and 420 IPC read with 120(b) IPC. Though, the document was available and it was a registered document, no reason has been given in the present complaint as to why this aspect was not taken up in the 1st complaint. It was also not taken up in the 2nd complaint. The petitioners had to come to Court again and again and at every point, this Court had quashed the Calendar Cases. As stated in the judgment referred supra preferring multiple complaints is violative of Article 21 of the Constitution of India. The petitioners herein have been directly put to serious prejudice by the lodging of the 3rd complaint on the basis of a document which was in existence even much before the 1st complaint was lodged.

21. In (2021) 5 SCC 435, Krishna Lal Chawla and others V. State of Uttar Pradesh and Another, the Hon'ble Supreme had also observed as follows with respect to the role of the Magistrate in preventing abuse of Court process. The observations are instructive and binding and they are extracted below:-

“Role of the lower judiciary in preventing abuse of court process

16. We find it imperative to observe that this is a case that should not have been allowed to reach as far as this Court. The justice dispensation machinery in India is plagued with backlogs, with 70% of the pendency before the subordinate courts being on the criminal side. [Roshni Sinha, “Examining Pendency of Cases in the Judiciary”, PRS INDIA (8-8-2019).] A significant factor in this backlog is the vast mass of frivolous litigation instituted year after year by litigants with an intent to use the courts of justice for their own mischievous ends. Curtailing such vexatious litigation is, thus, a crucial step towards a more effective justice system—a step that cannot be taken without the active involvement of the lower judiciary, especially in criminal proceedings.



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17. Immediately after the criminal justice system is set in motion, its course is almost entirely dependent on the judicial application of mind by the Magistrate. When a police complaint is filed on the commission of a cognizable offence under Section 154 CrPC, the Magistrate decides if the charge against the accused person is made out before the trial begins. Separate procedure is prescribed if the complaint under Section 200 CrPC is filed. The aforesaid provisions make it abundantly clear that the Magistrate carries the stream of criminal proceeding forward after it is set in motion by the informant/complainant. Consequently, and automatically, the Magistrate also carries the responsibility for ensuring this stream does not carry forward in cases where it should not.

18. The aforesaid powers bestowed on the Magistrate have grave repercussions on individual citizens' life and liberty. Thus, these powers also confer great responsibility on the shoulders of the Magistrate – and must be exercised with great caution, and after suitable judicial application of mind. Observations in a similar vein were made by this Court in *Pepsi Foods Ltd. v. Special Judicial Magistrate* [*Pepsi Foods Ltd. v. Special Judicial Magistrate*, (1998) 5 SCC 749 : 1998 SCC (Cri) 1400] : (SCC p. 760, para 28)

“28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that



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be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

(emphasis supplied)

This Court, thus, clearly emphasised that the power to issue a summoning order is a matter of grave importance, and that the Magistrate must only allow criminal law to take its course after satisfying himself that there is a real case to be made.

19. Similarly, the power conferred on the Magistrate under Section 202 CrPC to postpone the issue of process pursuant to a private complaint also provides an important avenue for filtering out of frivolous complaints that must be fully exercised. A four-Judge Bench of this Court has eloquently expounded on this in Chandra Deo Singh v. Prokash Chandra Bose [Chandra Deo Singh v. Prokash Chandra Bose, AIR 1963 SC 1430 : (1963) 2 Cri LJ 397] : (AIR p. 1433, para 7)

"7. ... No doubt, one of the objects behind the provisions of Section 202 CrPC is to enable the Magistrate to scrutinise carefully the allegations made in the complaint with a view to prevent a person named therein as accused from being called upon to face an obviously frivolous complaint. But there is also another object behind this provision and it is to find out what material there is to support the allegations made in the



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in All India Judges' Assn. (1) v. Union of India [All India Judges' Assn. (1) v. Union of India, (1992) 1 SCC 119 : 1992 SCC (L&S) 9] . Ranganath Misra, C.J. (as he was then) writing for himself and two others stated: (SCC p. 134, para 42)

"42. The trial Judge is the kingpin in the hierarchical system of administration of justice. He directly comes in contact with the litigant during the proceedings in Court. On him lies the responsibility of building up of the case appropriately and on his understanding of the matter the cause of justice is first answered. The personality, knowledge, judicial restraint, capacity to maintain dignity are the additional aspects which go into making the Court's functioning successful."

22. Frivolous litigation should not become the order of the day in India. From misusing the public interest litigation jurisdiction of the Indian courts to abusing the criminal procedure for harassing their adversaries, the justice delivery system should not be used as a tool to fulfil personal vendetta. The Indian judiciary has taken cognizance of this issue. In 2014, this Court elucidated as follows, the plight of a litigant caught in the cobweb of frivolous proceedings in Subrata Roy Sahara v. Union of India [Subrata Roy Sahara v. Union of India, (2014) 8 SCC 470 : (2014) 4 SCC (Civ) 424 : (2014) 3 SCC (Cri) 712] : (SCC p. 642, para 191)

"191. ... One needs to keep in mind, that in the process of litigation, there is an innocent sufferer on the other side, of every irresponsible and senseless claim. He suffers long drawn anxious periods of nervousness and restlessness, whilst the litigation is pending, without any fault on his part. He pays for the litigation, from out of his



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savings (or out of his borrowings), worrying that the other side may trick him into defeat, for no fault of his. He spends invaluable time briefing counsel and preparing them for his claim. Time which he should have spent at work, or with his family, is lost, for no fault of his."

While the Court's ruling pertained to civil proceedings, these observations ring true for the criminal justice machinery as well. We note, with regret, that 7 years hence, and there has still been no reduction in such plight. A falsely accused person not only suffers monetary damages but is exposed to disrepute and stigma from society. While running from pillar to post to find a lawyer to represent his case and arranging finances to defend himself before the court of law, he loses a part of himself.

23. As aforesaid, the trial courts and the Magistrates have an important role in curbing this injustice. They are the first lines of defence for both the integrity of the criminal justice system, and the harassed and distraught litigant. We are of the considered opinion that the trial courts have the power to not merely decide on acquittal or conviction of the accused person after the trial, but also the duty to nip frivolous litigations in the bud even before they reach the stage of trial by discharging the accused in fit cases. This would not only save judicial time that comes at the cost of public money, but would also protect the right to liberty that every person is entitled to under Article 21 of the Constitution. In this context, the trial Judges have as much, if not more, responsibility in safeguarding the fundamental rights of the citizens of India as the highest court of this land."

(emphasis supplied)



22. In the instant case, it is very clearly seen that the 1st respondent appears to take pleasure in lodging complaint after complaint. The Magistrate should have noted that the instant complaint is based on documents which were in existence even when the 1st complaint was lodged and therefore should have put a gentle question to the 1st respondent as to why these allegations were not placed earlier. Even otherwise, a perusal of the document shows that only 50% undivided share of the land had been actually mortgaged. The mortgage had also been discharged and the title deeds had been returned back to the petitioners herein. These are facts which stare in the face of the Magistrate. The Magistrate should have examined them. Taking cognizance merely because a complaint had been filed would only indicate that the Magistrate had played into the hands of litigants who want to exploit the judicial process for their own unlawful ends to coerce the other party to submit to some sought of settlement, obviously detrimental and violative of the terms of agreement already entered into between them. This cannot be permitted. It has to be prohibited. It is prohibited in this case.

23. The learned counsel for the respondents relied on Priti Saraf and Another V. State of NCT of Delhi and Another reported in (2021) SCC OnLine 206 and pointed out that when there are disputed questions of fact, trial is the answer.

24. However, in the instant case, I hold that the Calendar Case has to be quashed on the ground that there has been a series of successive complaints filed on a cause which existed even when the 1st complaint was lodged. Moreover, a reading of the Mortgage Deed reveals that the cause was only imaginary and never existed. It is alleged that the petitioners had mortgaged the entire land, but a reading of the very first line of the schedule giving the description of the land mortgaged would show that only 50% of the undivided share of the land had been mortgaged. Thus the complaint falls to the ground even on a cursory reading of the document. The possibility of conviction is remote. Undergoing the trial process would only be an ordeal and violative of Article 21 of the Constitution of India.

25. In view of the above reasoning, the Criminal Original Petition is allowed and the Calendar Case in C.C.No.539 of 2013 now pending on the file of the XI Metropolitan Magistrate,



Saidapet, Chennai is quashed insofar as the petitioners / A1 and A2 are concerned. Consequently, the connected Miscellaneous Petition is closed.

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Sd/-
Assistant Registrar(CS-VII)

// True Copy //

Sub Assistant Registrar

smv

To

1. The XI Metropolitan Magistrate,
Saidpet, Chennai.
2. The Sub-Inspector of Police,
Team XI A, EDF,
Central Crime Branch,
Greater Chennai Police,
Egmore, Chennai - 600 020.
3. The Public Prosecutor
High Court of Madras.

+1cc to M/s.C.Seethapathy, Advocate, S.R.No.54479

+1cc to Mr.N.Ravishankar Vallatharasu, Advocate, S.R.No.54197

Cr1.O.P.No.13298 of 2015

KSM(CO)
RLP(02/11/2021)