

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.04.2021

CORAM

THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

Crl.O.P No.6658 of 2021
and Crl.M.P.Nos.4444 & 4445 of 2021

1.Sivakumar
2.Anusha

... Petitioners

vs.

1.State Rep. by
The Sub Inspector of Police,
CCB Crime Branch-II,
EDF-III, Team 20A,
Vepery, Chennai - 600 007.
(Crime No.199 of 2014)

2.S.Ravi

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the case in C.C.No.1125 of 2020 on the file of the learned Judicial Magistrate Alandur, Chennai and quash the same.

For Petitioners: Mr.R.Sasikumar

For R1 : Mr.M.Mohammed Riyaz,
Additional Public Prosecutor

सत्यमेव जयते
O R D E R

The Criminal Original Petition has been filed to call for the records relating to the case in C.C.No.1125 of 2020 on the file of the learned Judicial Magistrate Alandur, Chennai and quash the same.

2.The learned counsel appearing for the petitioners submitted that the first petitioner is a builder and running business in the name and style of M/s. M.S.Builders at Tenkasi. The second petitioner is the wife of the first petitioner. The defacto complainant as a capacity of the Power Agent of his brother viz. Srinivasan approached the first petitioner to

construct a building in Alandur Chennai, based on which a construction agreement dated 22.08.2012 has been entered into between them, by fixing the total construction cost as Rs.85,43,160/- but due to the extra works and special drawing which increased the cost as Rs.1,40,52,683/-. After completing the construction of 95% of the building the defacto complainant made a false allegation against the petitioner. The first petitioner also filed a suit in O.S.No.849 of 2013 before the District Munsif Court at Alandur for permanent injunction against the defacto complainant and his brother Srinivasan.

3. The learned counsel appearing for the petitioner further submitted that when the Construction of building agreement was entered between the first petitioner and the defacto complainant, the first petitioner handed over some blank cheques and documents which is now used by the defacto complainant for filing the criminal complaint against the petitioners. The first petitioner is already facing a case under Section 138 of the Negotiable Instruments Act before the Judicial Magistrate Court, Fast Track Court, Alandur. Further the documents which were given as security now has been projected that the first petitioner has received a sum of Rs.47,50,000/- towards advance. Based on the documents and the terms of sale of the property to them, it was found that the first petitioner was not the owner of the property. Earlier, the complaint was lodged and the same was closed. Thereafter, the first petitioner approached the Judicial Magistrate Court and an FIR came to be registered and the first respondent herein without conducting proper investigation filed the charge sheet against the petitioners.

4.The learned Additional Public Prosecutor appearing for the first respondent submitted that on receipt of the complaint from the Judicial Magistrate under Section 156(3) the case was registered and thorough investigation was conducted and the role played by the petitioners were proved and the evidence and materials were produced and found that the petitioners had cheated the defacto complainant to the tune of Rs.47,50,000/- Further the point raised by the petitioners are to be raised before the trial court during the trial.

5.On perusal of the materials, this Court finds that though it appears that the above said points are to be raised before the trial court and not to be raised in a quash petition. In view of the above, this Court is not inclined to allow this Criminal Original Petition. It is left open to the petitioners to raise these grounds before the Court below and the Court below shall consider the same on its own merits and in accordance with law.

6.The learned counsel appearing for the petitioners requested this Court to dispense with the presence of the petitioners considering their age. The presence of the petitioners are dispensed with and they shall be represented by a counsel, who shall cross examine the witnesses on the same day, they are examined in Chief. The petitioners shall be present before the Court below at the time of questioning under Section 313 Cr.P.C and at the time of passing of the final judgement.

7.Accordingly, this Criminal Original Petition stands dismissed. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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To

1.The Judicial Magistrate,
Alandur, Chennai.

2.The Sub Inspector of Police,
CCB Crime Branch-II,
EDF-III, Team 20A,
Vepery, Chennai - 600 007.

3.The Public Prosecutor,
High Court,
Madras.

सत्यमेव जयते

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