

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.07.2021

CORAM:

THE HONOURABLE **MR.JUSTICE M.DHANDAPANI**

Crl.OP.No.155 of 2018
and Crl.OP.Nos.55 & 56 of 2018

1. A.K.Shankar
2. K.A.Thangavelu
3. K.Duraimurugan
4. V.Muthukumar
5. Kandababu
6. P.Vijayakumar
7. M.Palaniyappan
8. S.Punitha
9. Ruba

... Petitioners

S.Sathyaraj

.. Respondent

Vs.

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records of the criminal proceeding pending against the petitioners in CC.No.383 of 2017 on the file of the learned Judicial Magistrate-III, Coimbatore and quash the same.

For Petitioners : Mr.P.M.Duraiswamy

For Respondent : Mr.I.Abrar Md. Abdhullah

ORDER

This petition has been filed by the petitioners challenging the order passed by the learned Judicial Magistrate-III, Coimbatore whereby the learned Magistrate has taken cognizance of the complaint preferred by the respondent herein and issued notice to the petitioners.

2. It is the case of the complainant that he is the Admin (Manager) of M/s.Dhanaas Property Developers situated at Coimbatore. It is the further case of the complainant that an E-mail was received dated 18.09.2017 from one of the flat owner containing defamatory imputations against the complainant and the company. The said company involved in construction and selling the flats. It is the further case of the complainant that on 21.09.2017, one of the residents of building complex named "Vriksha" handed over a print out which contain allegations made against the company. In the print out, it is mentioned that the company has failed to furnish basic amenities after the building was handed over to the parties. There are also other allegations made in the said E-mail sent by the flat owner.

3. According to the complainant, the contents of the e-mail are derogatory in nature which severely affects the reputation of the Society. Therefore, the complainant has preferred a private complaint before the learned Judicial Magistrate-III, Coimbatore. The learned Magistrate has examined two witnesses and on perusal of the complaint, has passed an order, which is impugned in this original petition, by observing that there exists the *prima facie* case to take cognizance of the complaint and accordingly, issued notice to the accused. Challenging the same, the petitioners/accused have preferred this petition.

4. Heard the learned counsel for both sides and I have perused the documents and records filed in support of the original petition.

5. A reading of the E-mail would show that there is no specific allegation or imputation made against the respondent herein. The contents of the e-mail would show that there exists simmering anger among the flat owners against M/s.Dhanaas Property Developers, who

sold the flats. It is mentioned in the e-mail that the company adopted "the divide and Rule Policy" among the flat owners, the builders have failed to provide the basic amenities even after handing over the flats to the owners. The builders are trying to gain support on the basis of sympathy and compass grounds and that the builders have cheated the flat owners. These allegations would show that there is a complaint against the developers and no where the name of the respondent is mentioned. While so, it is not known as to how the respondent feels that he is individually targeted and his reputation is also diminished in the society and there is a danger to reputation and goodwill in the society.

6. It is seen from the records that the petitioners' residential association on 05.10.2017 has filed a complaint against M/s.Dhanaas Property Developers under Section 31 of the Real Estate (Regulation and Development Act) 2016 seeking reliefs such as transfer of open space reservation to the local authority etc.,The builders have sent a reply dated 27.11.2017 through their Advocate that the facilities in the lay out shall be provided on completion of the project. It is the case of the flat owners

that such promise has not been honored so far. It is the case of the petitioners that the present e-mail has been authored by either the respondent or his associates so as to divert the attention of the flat owners from the existing complaint that was preferred against the builders and make the petitioners undertake the ordeal of trial, imaginary grounds,

7. This Court is of the considered view that there is not even a grain of allegation against the respondent presently and the complaint in the e-mail is only against the builders. This Court has noticed the existing previous complaint against the builders by the flat owners. The witnesses examined by the learned Magistrate are none other than employees of the property developers and a close friend of the respondent himself. The learned Magistrate has failed to note that the contents of the e mail nowhere attack the petitioners informing and therefore, the offence under Section 500 is not at all attracted.

8. In such instructions, this Court has no hesitation to hold that the

petitioners need not to undergo the ordeal of trial to establish when the petitioners have not been targeted in their individual capacity and that there existence of a previous litigation between the developers and building owners.

9. For the foregoing reasons, this Criminal Original Petition is allowed and the proceedings in CC.No.383 of 2017 on the file of the learned Judicial Magistrate-III, Coimbatore is quashed. Consequently, connected miscellaneous petition is closed.

01.07.2021

Index:Yes/No

Internet:Yes/No

Speaking Order/Non-speaking order

rli

To

The Judicial Magistrate-III, Coimbatore

M.DHANDAPANI,J

rli



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