

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.09.2020
PRONOUNCED ON : 10.03.2021

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.24570 of 2017
and
CRL.M.P.No.14215 of 2017

- 1.M/s.Pace Builders Madras Ltd.,
Rep.by Managing Director,
Mr.N.Krishnakumar
No.B-58, Anna Nagar East,
Chennai - 600 102.
- 2.N.Krishnakumar
- 3.N.Rajashekar ... Petitioners / Accused

Vs.

- 1.State Rep.by
The Inspector of Police,
CCB-II Central Crime Branch,
Office of the Commissioner of Police,
Vepery, Chennai - 600 007. ...1st Respondent/Complainant

- 2.M/s.Jain Housing and Constructions Ltd.,
Rep.by Mr.Chennaram Seni,
No.82, High Gates, Santhome High Road,
Vepery,
Chennai - 600 007. ... 2nd Respondent/Defacto Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for records in Crime No.13 of 2017, on the file of the 1st respondent and quash the proceedings.

For Petitioners : Mr.S.Ashok Kumar

For 1st Respondent : Mr.C.Iyyappa Raj,
Additional Public Prosecutor

<https://hcservices.ecourts.gov.in/hcservices/> For 2nd Respondent : Mr.T.Gowthaman

O R D E R

This Criminal Original Petition has been filed praying to quash the proceedings in Crime No.13 of 2017, on the file of the 1st respondent.

2. The short facts of the case reads as follows:

(i) The petitioners along with the defacto complainant had jointly agreed to develop property at Selaiyur and an MOU, dated 01.09.2006 was entered. Subsequently, two other agreements were executed and finally, a revised allocation agreement, dated 24.10.2008 was entered between the parties and it was mutually agreed that Multi Storey Building will be put up as per Master Plan II and thereby, both parties shall realize more saleable area.

(ii) In the complaint it is alleged that even though approval for construction is a single unit, the petitioners executed sale deeds to 3rd parties, without obtaining signature of the defacto complainant. Therefore, the defacto complainant was constrained to file an Original Suit in O.S.No.171 of 2012 before the Sub Court, Tambaram, for an injunction, against the petitioners.

3. The learned counsel for the petitioner submitted that the 2nd respondent / defacto complainant lodged a complaint, dated 20.02.2015 before the Commissioner of Police, Chennai and after enquiry, the same was closed on 22.02.2015. Aggrieved by the same, the defacto complainant filed a petition in CrI.O.P.No.16641 of 2015 before this Court, and this Court, vide order dated 17.08.2015, directed the Deputy Commissioner of Police, City Crime Branch, Greater Chennai, Chennai, to reopen the enquiry and the 2nd respondent was directed to produce the necessary proof with regard to the alleged signature to the respondent Police.

4. The learned counsel continuing further would submit that the Assistant Commissioner of Police, CCB reopened the case and conducted further enquiry, pursuant to the direction of this Court. After thorough enquiry, the case was closed as civil in nature. After closure, the 1st respondent Police, now registered the FIR in Crime No.13 of 2017, against the petitioners for the very same complaint dated 20.02.2015, for the offence under Sections 410, 465, 468, 471 r/w 34 of IPC. Hence, the registration of FIR is illegal and not maintainable, more particularly, when it has been closed by a Higher Authority.

5. The learned counsel for the petitioner further submitted that the FIR has been registered with an ulterior

motive, tainted with mala fide with an intention to coerce and cause undue duress to the petitioners herein by giving a criminal colour to a civil and commercial transaction between the parties. The learned counsel, in support of his contentions, has relied on the Judgment of this Court in D.Ramesh and Others Vs. V.Vijayakumar and Others reported in (2018 (2) L.W (CrI.)220) and the Judgment of Hon'ble Supreme Court in Prof.R.K.Vijayasathya Vs. Sudha Seetharam reported in (2019 (16) SCC 739).

6. Countering the submissions made by the learned counsel for the petitioner, the learned counsel for the 2nd respondent/defacto-complainant submitted that the allegations made in the complaint would clearly make out a cognizable offence as against the petitioners. The petitioners by forging the signature, cheated the defacto complainant. Therefore, there is a case for investigation and this is not a fit case to quash the complaint.

7. Per contra, the learned Additional Public Prosecutor appearing for the State vehemently argued and submitted that at this premature stage, it cannot be held that a case has been made out or not as against the petitioners herein. At this premature stage, this Court cannot verify and hold a mini trial so as to come to the conclusion that a case has been made out or not. On these grounds, he prayed for dismissal of the petition.

8. I have carefully and cautiously gone through the submissions made by the learned counsel for the parties and perused the records.

9. The admitted fact is that there was a Memorandum of Understanding entered between the petitioners and the 2nd respondent-defacto complainant, on 01.09.2006 and as per the said MOU, the 2nd respondent agreed to surrender all its rights over the property measuring 24 cents in Survey No.69/1B, in favour of the petitioners and the petitioners agreed to construct and deliver 29,000 sq.ft. Of super builtup area proportionately in all the floors with one covered car park. Further, the 2nd respondent also agreed to make some payments and the project to be completed within 24 months from the date of approval from the Authorities.

10. Thereafter, on 07.04.2007, Allocation Agreement has been entered between them wherein, the flats, and the Units and the cash component has again be reiterated along with the proposed plan. Thereafter, on 24.04.2007, a Supplementary Agreement has been entered followed it by a Revised Allocation Agreement, dated 24.08.2008. As per the Revised Allocation Agreement, the petitioner to achieve a total super builtup

area of 4,19,305 sq.ft and the respondent was allotted 55,770 sq.ft. This is subject to the approval by CMDA and again the cash components are mentioned and with a list showing the sold out area in Block No.1 and the available area have been enlisted and the site floor plans are annexed.

11. Thereafter, on 29.09.2010, the petitioner herein had informed the 2nd respondent about the approved plan from CMDA for the Multi-Storied building for their Selaiyur Project and the Agreement, dated 20.04.2008, wherein the 2nd respondent was allotted 55900 sq.ft of built-up area out of the total salable area of 4,19,305 sq.ft. As per the approved plan of CMDA, the approval was given for total salable area at 3,92,444 sq.ft and the 2nd respondent was eligible for 52,320 sq.ft. and also mentioned the 10% of the built-up area should be LIG Housing based on the approval and the flats and square feet with the 2nd respondent intend to select were also enlisted as well as the salable area statement and also the cost details.

12. Thereafter, nearly a year latter, the 2nd respondent had sent a letter with regard to questioning the cost and for the expenses in obtaining TNEB, water, registration, impact, car park, service tax and other clarifications. In the said letter, there is no objection or mention with regard to allocation of built up area as per revised plan of CMDA for Multi-storied building. Thereafter, a legal notice dated 29.12.2011 by the 2nd respondent, followed by a letter to the Member Secretary, CMDA, on 05.04.2011, sent by the 2nd respondent wherein, the 2nd respondent inform that they intent to revoke the authority given to the petitioner for development of the property and also called upon the CMD to withdraw the planning permission granted to the petitioner.

13. Thereafter, on 12.05.2012 a civil Suit was filed by the 2nd respondent in O.S.No.171 of 2012, before the Sub Court, Tambaram, against the petitioners and others, totally arraying 84 persons as defendants, including the buyers of the Flats, Financial Institutions and the Banks, which had given Housing Loan. In the declaration suit, there is an admission that the petitioner had applied and obtained CMDA for Multi-Storied building as a single unit.

14. Further, in the said declaration suit, there is no mention that the revised master plan was obtained without the knowledge of the 2nd respondent and the 2nd respondent had not signed the application for revised plan. It also moved an I.A., seeking declaration and injunction in I.A.Nos.610 & 611 of 2012. The civil Court had given a detailed order perusing agreements, letters, communication, plans and thereafter, given a detailed finding that the agreement viz., Memorandum of Understanding, dated 01.09.2006, Allocation

Agreement, dated 07.04.2007, Supplementary Allocation Agreement, dated 24.04.2007 cannot be looked in a declaration Suit and to be looked in detail only in a suit for specific performance and hence, dismissed the I.A. filed by the 2nd respondent. Thus, the only grievance of the 2nd respondent in lodging the complaint is that the revised master plan was obtained without knowledge and the 2nd respondent had not signed the application.

15. The case came to be registered on 29.03.2017. It is pertinent to note that the petitioner had earlier on 23.11.2011 had sent a letter to the 2nd respondent, which was received and acknowledged. In the said letter, the approval received as per the Master Plan II and the total built up area and the proportionate built up area to the 2nd respondent have been clearly mentioned. Thereafter, the 2nd respondent was made well aware about all these facts. The 2nd respondent was given the option to select the Flats in Block-IV-A and also the details of the area available in the block and other particulars. Having received the same, the 2nd respondent had sent a reply on 23.11.2011, had not objected and shown any protest. In the civil suit in O.S.No.171 of 2012, which was filed on 12.05.2012 also there is no objection. The 2nd respondent himself is a reputed construction company, well versed with the guidelines and procedures. Thus, a commercial transaction is being now attempted to give a criminal colour. The Hon'ble Apex Court in the Judgment reported in (2019) (16) SCC 739, (cited supra) time and again had deprecated the same. The relevant portion of the Judgment reads as follows:-

"27. Learned Senior Counsel for the appellant contended that the actions of the first respondent constitute an abuse of process of the court. It is contended that the present dispute is of a civil nature and the first respondent has attempted to cloak it with a criminal flavor to harass the aged appellants. It is also contended that there is an undue delay in filing the complaint from which the present appeal arises, and this demonstrates the mala fide intention of the first respondent in filing the complaint against the appellants. Learned Senior Counsel for the appellants relied on the decision of this Court in State of Karnataka v L Muniswamy⁹. In that case, the prosecution alleged that eight of the accused had 9 (1977) 2 SCC 699 conspired to kill the complainant. The Karnataka High Court quashed the proceedings on the ground that no sufficient ground was made out against the accused. A three judge Bench of this Court dismissed the appeal

by the State with the following observations:

"7...In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice.

23 The jurisdiction under Section 482 of the Code of Criminal Procedure has to be exercised with care. In the exercise of its jurisdiction, a High Court can examine whether a matter which is essentially of a civil nature has been given a cloak of a criminal offence. Where the ingredients required to constitute a criminal offence are not made out from a bare reading of the complaint, the continuation of the criminal proceeding will constitute an abuse of the process of the court."

16. In this case, the petitioner had informed about the approval of the Multi Storied building, as per Master Plan II, as early as 23.11.2011, thereafter, the petitioner had sent communication on 29.12.2011, following with a civil suit filed on 12.05.2012. In none of these, there is any mention about the 2nd respondent was not informed. Now, the 2nd respondent / complainant submission that he was not informed and had any knowledge of the revised master plan and the signature is not of the 2nd respondent is clearly an after thought. The petitioner had earlier lodged a complaint before the Additional Commissioner of Police, CCB. The Additional Commissioner of Police in his report dated 12.09.2016, after conducting the preliminary investigation, examination of the petitioner and the 2nd respondent, had given a finding that it is a commercial transactions between the two entities.

17. In view of the same and on the dictum laid down by the Hon'ble Apex Court in the Judgment reported in (2019) (16) SCC 739, (cited supra), this Court finds that this complaint is completely commercial dispute civil in nature, which has been given a clog of a criminal offence and further, the

averments in the complaint does not disclose the ingredients necessary to constitute the offence under the penal code. In view of the same, this Court finds that the continuation of the above case is nothing but an abuse of process law and the same is liable to be quashed.

18. In the result, this Criminal Original Petition stands allowed and the proceedings in Crime No.13 of 2017, on the file of the 1st respondent stands quashed. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

MPK

To

1.The The Inspector of Police,
CCB-II Central Crime Branch,
Office of the Commissioner of Police,
Vepery, Chennai - 600 007.

2.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.S.ASHOKKUMAR, Advocate, S.R.No.15729

NR(CO)
KKN 15.04.2021

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