



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.09.2021
PRONOUNCED ON : 07.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CrI.R.C.No.917 of 2017
and
CrI.M.P.No.8667 of 2017

R.Stephenraj ... Petitioner/Accused

Vs.

1. The State represented by,
The Inspector of Police,
V-5 Thirumangalam Police Station,
Annanagar, Chennai. ... 1st Respondent/Complainant

2. V.S.Usha ... 2nd Respondent

Prayer: This Criminal Revision Case has been filed under Section 397 read with Section 401 of Cr.P.C., to set aside the order made in CrI.M.P.No.106/2014 in C.C.No.1250 of 2014, dated 17.06.2017 on the file of the learned X Metropolitan Magistrate, Egmore at Allikulam, Chennai.

For Petitioner : Mr.R.Dhinesh Kumar

For R1 : Mr.R.Vinoth Raja

For R2 : Mr.R.Tholkappian

JUDGMENT

(The case has been heard through Video Conference)

This Criminal Revision Case has been filed by the accused against the order passed in CrI.M.P.No.106/2014 in C.C.No.1250 of 2014, dated 17.06.2017 on the file of the learned X Metropolitan Magistrate, Egmore at Allikulam, Chennai.

2(a).The first respondent herein/Inspector of police, have



filed a charge sheet, alleging that the revision petitioner herein/accused viz., Stephenraj has promised to purchase a land in question and has received a sum of Rs.22,50,000/- from the defacto complainant viz., Usha and two others viz., Bhuvana and Shivakumar have received a sum of Rs.10,00,000/- each from the defacto complainant and the total transaction is Rs.42,50,000/-.

2(b).The said Bhuvana and Shivakumar have paid Rs.10,00,000/- each to the defacto complainant and thereby Rs.20,00,000/- has been received by her. The accused/revision petitioner has also paid the said amount Rs.22,50,000/- by way of cheque and the same was bounced and thereafter, the defacto complainant has filed a civil suit before City Civil Court in C.S.No.531 of 2013 and the same is pending.

2(c).On verification, it is found that the land in question was acquired by the Government and knowing the fact fully well that the land was acquired by the Government, the accused have committed fraudulent act upon the defacto complainant.

2(d).Hence, a case was registered in FIR No.644 of 2013 for the alleged offence under Sections 406 and 420 of IPC, against the accused, which was taken on file in C.C.No.1250 of 2014, on the file of the learned X Metropolitan Magistrate, Egmore, Allikulam, Chennai.

3.When the matter was posted for hearing, the accused has filed a petition in Crl.M.P.No.106 of 2014, under Section 239 of Cr.P.C, to discharge him from the charges and the learned judge has dismissed the same. Hence, the Criminal Revision Case.

4.Heard the respective counsels and perused the materials placed on record.

5.The learned counsel for the revision petitioner would contend that instead of filing a cheque case under Negotiable Instruments Act, he has approached this Court and present Criminal Revision Case has been filed and relied upon a decisions of this Court in Crl.O.P.No.37232/2003 dated 13.01.2004 and Crl.O.P.No.32004/2013 dated 18.09.2014.

6.The learned counsel for the respondent/defaco complainant would contend that the revision petitioner herein/accused viz., Stephenraj, knowing the fact fully that the land property was acquired by the Government, he had promised to purchase a land in question and has received a sum of Rs.22,50,000/- from the defacto complainant viz., Usha and two others viz., Bhuvana and Shivakumar have received a sum of Rs.10,00,000/- each from the defacto complainant. The said Bhuvana and Shivakumar have re-paid the amount to the defacto complainant and the



accused/revision petitioner has also paid the said amount Rs.22,50,000/- by way of cheque and the same was bounced and thereafter, the defacto complainant has filed a civil suit before City Civil Court in C.S.No.531 of 2013 and the same is pending.

7.The petitioner herein is the sole accused, who knowing fully that the land was acquired by the Government, has represented fraudulently with an intention to cheat the defacto complainant as if he is a private party. On perusal of the exhibits as well as typed set, the sale was cancelled and subsequently, there was negotiation.

8.The learned counsel for the respondent relied upon a decision reported in AIR 2004 SC 1734 - Jagdish Ram Vs. State of Rajasthan

9(a).After hearing rival submissions and also perusing the records, the case of the defacto complainant is that the revision petitioner herein/accused has negotiated a deal as the owner of the property for a sale consideration of Rs.52,00,000/- and the first respondent/defacto complainant started paying various sums on various dates from the month of November 2011 till March 2012 totalling to Rs.22,50,000/- towards part payment of the sale consideration to the revision petitioner herein/accused. Only then the revision petitioner herein/accused told this respondent that the property was owned by one Mr.Sivakumar and Mrs.Bhuvana and instructed this respondent to pay a sum of Rs.10,00,000/- each to them. Thereafter, the first respondent/defacto complainant had paid the said amount to them and they informed to the first respondent herein/defacto complainant that the registration would be done by the first week of April, 2012. Thereafter, the complainant/respondent came to know through known sources that the property was acquired by the Government and therefore, the above mentioned owners, viz., Mr.Sivakumar and Mrs.Bhuvana, could not sell or alienate the property.

9(b).Thus, the question that has to be decided in his discharge petition it is not that whether the cheque was issued from the account of the accused, which was closed and whether there is insufficiency of funds is not the matter to be adjudicated in this case. The question is when the accused has known fully well that the land (subject matter of the transaction) is acquired by the Government and is the Government land, not the private land and knowing the above fact, the accused has misrepresented as if the same is private land of one V.S.Usha and Govindarajan and they have obtained Rs.10,00,000/- each have returned the same while the amount



received by the accused was not returned. For which, the accused has issued a cheque which was dishonoured as stated supra. Thus, the other two alleged owners introduced by the accused has returned the amount of Rs.20,00,000/- paid to them but the petitioner/accused was deliberately has not paid Rs.22,50,000/- to the complainant.

10.The Civil Suit has been filed by the other party is only for recovery of money, which has to be paid by the present accused, while the present complaint was filed for criminality. The revision petitioner herein/accused was well aware of the fact that the land was Government acquired property and deliberately with an intention of cheating, he had represented that it is his own land and subsequently issued two cheques and made transaction as stated supra. Hence, all the contentions raised by the learned counsel for the revision petitioner herein/accused is hereby rejected.

11.The Trial Court has rightly taken note of the decision in the case of Jagdish Ram Vs. State of Rajasthan, reported in AIR 2004 S.C.1734, wherein, the Hon'ble Apex Court has held that

"(a).the principles required to be kept in mind at the stage of taking cognizance and reaching a prima-facie view and held that at the stage the magistrate had only to decide whether sufficient ground exists or not for further proceeding in the matter.

(b).While framing charge notwithstanding opinion of the police, the learned Magistrate is empowered to take cognizance if the material on record makes out a case for the said purpose.

(c).While investigation is exclusive domain of the police, whereas taking of cognizance of offence is an area exclusively within the domain of the Magistrate.

(d).At the time of framing of charge, the learned Magistrate has to be satisfied whether there is sufficient ground for proceeding further and it is not to test whether there is sufficient grounds for conviction."

12.Mere pendency of the Civil Suit between the parties cannot be a ground for discharging any Criminal proceedings against the accused. In the case of M.Krishnan Vs. Vijay Singh and another, the Hon'ble Supreme Court held that "if mere pendency of a suit is made a ground for quashing the criminal proceedings, the unscrupulous litigants, apprehending criminal action against them, would be encouraged to frustrate the course of justice and law by filing suit with respect to the documents intended to be used against them after the initiation of criminal proceedings or in anticipation of such proceedings and such a course cannot be the mandate of law. The Apex Court further held that in a criminal court, the allegations made in the complaint have to be established independently,



notwithstanding the adjudication by a Civil Court".

13.Hence, the order passed by the learned Judicial Magistrate cannot be found fault and hence, this Criminal Revision Case is devoid of merits and stands dismissed. Consequently, connected Miscellaneous Petition stands closed. The learned X Metropolitan Magistrate, Egmore at Allikulam, Chennai, is directed to dispose of the case within a period of 12 weeks from the date of receipt of a copy of this order. The observations made in the preceding paragraphs are only for the purpose of determination of this Court and the Trial Court shall not be influenced by the above said findings.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To:

1. The X Metropolitan Magistrate,
Egmore at Allikulam, Chennai.
2. The Inspector of Police,
V-5 Thirumangalam Police Station,
Annanagar, Chennai.
3. The Public Prosecutor,
High Court, Chennai.

+2ccs to M/s.T.Mathi, Advocate, S.R.No.44398

+1cc to M/s.R.Dinesh Kumar, Advocate, S.R.No.45341

Pre-delivery judgment made in
Crl.R.C.No.917 of 2017
and Crl.M.P.No.8667 of 2017

RR(CO)
SU(08/10/2021)