



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 30.09.2021

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

Crl.OP.No.26465/2017 & Crl.MP.No.15230/2017

[Video Conferencing]

P.Thamizh

... Petitioner

Versus

1. State Rep., by
Sub-Inspector of Police,
District Crime Branch,
Chengalpat District,
Chengalpat.

2. Aplona Arogkya Merry

... Respondents

(Amended as per Order in
Crl.O.P.No.26465/2017 dated 07.09.2021)

Prayer : - Criminal Original Petition filed under Section 482 of Cr.P.C., to call for records in FIR in DCB Chengalpat Cr.No.42/2017 pending investigation on the file of the respondent Police and quash the same.

For Petitioner	:	Mr.M.Shreedhar
For R1	:	Mr.E.Raj Thilak Govt.Advocate (Crl.Side)
For R2	:	Mr.G.Vijayakumar

ORDER

- (1) Heard Mr.M.Shreedhar, learned counsel for the petitioner ; Mr.E.Raj Thilak, learned Additional Public Prosecutor for the 1st respondent and Mr.G.Vijayakumar, learned counsel for the 2nd respondent/defacto complainant.
- (2) The petitioner before this Court is the 2nd accused in Crime No.42/2017 on the file of the 1st respondent police.



The said FIR had been registered on the basis of a complaint given by the 2nd respondent/defacto complainant on 21.10.2017.

- (3) My attention had been drawn to the said complaint by Mr.M.Shreedhar, learned counsel for the petitioner. A reading of the said complaint reflects that the 2nd respondent/defacto complainant had given as advance money on 04.03.2014, a sum of Rs.1 lakh ; on 17.03.2015, a sum of Rs.1 lakh ; on 23.04.2014, another sum of Rs.2 lakhs by way of a cheque ; on 19.06.2014, a sum of Rs.1 lakh by way of cheque ; on 02.02.2015, a sum of Rs.1 lakh by way of cash ; on 06.05.2015, another cheque for a sum of Rs.1 lakh. Further, the 2nd respondent/defacto complainant was also induced to obtain loan from LIC with a fond hope that the accused persons would honour their commitment to sell and convey either plots of land or constructed flats. Later, it came to the knowledge of the 2nd respondent/defacto complainant that there was no approval for the land. It also came to the knowledge of the 2nd respondent/defacto complainant that the ownership was also not with the accused persons. They had no right to deal either with the land or any right to project that they had permission to construct flats over the said lands. All these transactions took place in the year 2014-2015 and it is now nearly six to seven years from that particular date and the 2nd respondent/defacto complainant has, neither received back her money which had been paid both by way of cash and by way of cheque nor she had been able to move to the new flat which she must have hoped would have been a fait accompli within a period of one year. There is only a skeleton which has been built. Nobody knows who is the owner of the land. Nobody knows when the building will be constructed.
- (4) The learned counsel for the petitioner stated that now approvals had been applied for and that the accused persons are hopeful of getting necessary approval. But that would not wipe away the fact that 6-7 years back, they had received substantial sums of money from the 2nd respondent/defacto complainant and one can only visualize the hardship and agony the 2nd respondent/defacto complainant would have gone through in mobilizing the funds to be paid. The fact is that the land was non existing, the plots do not have any approval, the flats have not come up and there was actually no idea of constructing any flat.
- (5) On the basis of such complaint, originally, the District Crime Branch, Kancheepuram, had registered a FIR in Crime No.42/2017 against three accused persons, viz., father and



WEB COPY

two sons. The present petitioner is the first son/A2. The father and the other son have taken a conscious decision to abide with due process of facing criminal investigation. It would only be advisable that the petitioner herein/A2 also follow suit and faces such investigation into the allegations made by the 2nd respondent/defacto complainant herein.

- (6) The FIR had been registered under Section 420 IPC read with 34 IPC. It is also brought to my knowledge that this is not the sole complaint as against the accused persons. There are also several other complaints which had been filed.
- (7) In the instant complaint, an application had been filed seeking police custody of the accused persons. The Investigating Officer had very clearly stated that the documents will have to be collected and enquiries will have to be made and for that purpose, police custody is required.
- (8) Taking into consideration, the seriousness of the matter, I would only direct that the investigation has to proceed and there cannot be any short-circuiting or scuttling of such investigation process.
- (9) It has been held by the Hon'ble Supreme Court of India in Neeharika Infrastructure Private Limited Vs. State of Maharashtra and Others reported in 2021 SCC Online 315 that the Court should only examine whether a cognizable offence had been made out in a complaint and if a cognizable offence had been made out, then the Court should not thwart investigation into such offence. It is not for the Court to examine the genuinity or veracity of the allegations. That is an issue which is the prerogative of the Investigating Officer.
- (10) In the instant case, specifically the amounts paid have been mentioned. The fact that though amounts have been paid, there had been no handing over of constructed flats have also been mentioned. It is for the accused to answer why they collected amounts in the first place and whether, when they collected, they had necessary authority over the land and permission to put up construction over the said land and whether the said land itself had approval for flats to be constructed. These are issues which the Investigating Officer will necessarily have to investigate. It is clear that the accused persons have made unlawful gain by inducing innocent persons like the 2nd respondent/defacto complainant from parting with substantial sums of money. Let the investigation go on.



(11) In the result, the Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petition is closed.

WEB COPY

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

AP

To

1. The Sub-Inspector of Police,
District Crime Branch,
Chengalpat District,
Chengalpat.
2. The Public Prosecutor
High Court, Madras.

Crl.OP.No.26465/2017

SPD (CO)
CT(12/10/2021)