IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.03.2022

PRONOUNCED ON : 06.05.2022

CORAM

THE HON'BLE MR.JUSTICE G.CHANDRASEKHARAN

CRL.O.P.NOS.17268 & 11172 OF 2015
AND
M.P.NOS.1 & 1 OF 2015

Crl.O.P.No.17268 of 2015

1.A. Mayur
2.A. Deepak

... Petitioners

Vs.

1. State Represented by,
The Inspector of Police,
Central Crime Branch,
Vepery, Chennai.
(Crime No.125/2015)

2. Ranjit Jacob

... Respondents

PRAYER:

Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records in Crime No.125 of 2015 pending investigation on the file of the respondent police.

For Petitioners : Mr. A. Natarajan, Senior Counsel
for Mrs. A. Madhumathi

For Respondents : Mr. R. Murthi, for R1
Government Advocate
Mr. R. Palaniandavan, for R2

Crl.O.P.No.11172 of 2015

1.Kamala Menon Cochran
2.Geetha Sridhar Marar

... Petitioners

Vs.

1. State Represented by,
The Inspector of Police,
Central Crime Branch,
Vepery, Chennai.
(C.C.B. 'X' - Crime No.125/2015).

2. Ranjit Jacob
... Respondents

PRAYER:

Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.B.'X' Crime No.125 of 2015 pending investigation on the file of the Central Crime Branch, Vepery, Chennai.

For Petitioners : Mr. S. Ashok Kumar, Senior Counsel for Mr. V. Krishnamoorthy

For Respondents : Mr. R. Murthi, for R1 Government Advocate
Mr. R. Palaniandavan, for R2

C O M M O N O R D E R

These petitions have been filed to call for the records in Crime No.125 of 2015, pending investigation on the file of the first respondent and to quash the same.

2. First Information Report in Crime No.125 of 2015, came to be registered on the basis of complaint filed under Section 156(3) Cr.P.C., for the offences under Sections 417, 418, 420, 427, 477 IPC r/w Section 120b and 34 IPC by the second respondent.

3. The allegations made in the complaint, in brief are as follows:

3(i). Second respondent is an entrepreneur and a member of several professional and social organizations. He was introduced to third and fourth accused/petitioners in Crl.O.P.No.11172/2015 through a common friend. They requested the second respondent to assist them in conducting OSA.No.185/2001 pending before the High Court of Madras in respect of property bearing No.8, Malony Road, T.Nagar, Chennai, to an extent of 6 grounds and 2200 square feet house site building. Second respondent followed up the matter through legal counsel and the case was allowed in favour of accused 3 and 4. Accused 3 and 4 desirous of disposing the property since they were permanently settled in Secunderabad. They executed two separate Power of Attorney Deeds on 23.09.2009 in favour of second respondent, including the power to enter into sale agreements and sell the property.

3(ii). Accused 1 and 2 are the petitioners in Crl.O.P.No.17268/2015. First accused approached the second respondent and expressed interest in purchasing the property for Rs.12,25,00,000/-. A sale agreement dated 07.11.2009 was entered into between the first accused and the second respondent. Meanwhile, the relatives of third and fourth accused filed SLP No.32635 of 2009, before the Hon'ble Supreme Court of India, challenging the order passed in OSA No.185/2001. The Hon'ble Supreme Court passed an interim order against the creation of any third party interest till final disposal. A supplemental sale agreement dated 14.10.2010 was entered into between second respondent and the first accused. Third and fourth accused directed the second respondent to get the legal/incidental expenses from first accused independent of the sale consideration. Upon direction of third and fourth accused, first accused agreed to pay money to the second respondent for expenses and remuneration for his services.

3(iii). In view of the change of circumstances, because of pendency of matter before the Hon'ble Supreme Court, a sale agreement dated 19.10.2010 was executed between the second respondent and the first accused, in continuation of the earlier sale agreement dated 07.11.2009. As per the agreement dated 19.10.2010, a sum of Rs.4 crores was independent of the sale consideration payable to the third and fourth accused. First accused paid a sum of Rs.1.25 crores to meet immediate legal expenses and agreed to pay Rs.2.75 crores at the time of registration of the sale deed. While so, with an ill motive of deceiving the second respondent and acting upon the instruction of the first and second accused, third and fourth accused revoked the Power of Attorney Deed executed in favour of second respondent and executed a sale deed in favour of the second accused on 01.10.2014. It was an act done only with an intention to deceive and cheat the second respondent. All the accused acting with common object of deceiving, cheating and defrauding the petitioners hatched a conspiracy to cause wrongful loss to the second respondent and gained at his expense. Second respondent suffered a wrongful loss to the extent of Rs.2.75 crores, whereas accused gained either monetarily or in nature or valuable property, the market value of which has increased manifold. Taking advantage of the increase in real estate market, accused 1 and 2 are now attempting to resell the property for a higher value. The sale deed in favour of second accused was executed without paying the money due to the second respondent. Therefore, this complaint.

4. On the basis of this complaint, First Information Report was registered by the Central Crime Branch in Crime No.125/2015 for the offences under Sections 417, 418, 420, 427 and 477 r/w 120b and 34 IPC. Challenging this FIR, the accused have filed these petitions for quashing the FIR.

5. Learned counsel for the petitioners 1 and 2 submitted that though Power of Attorney Deed was executed in favour of the second respondent, it was revoked after communication between the principal and the power agent. Only after the revocation of Power of Attorney Deed, sale deed had been executed in favour of second accused. The proceedings pending before the Hon'ble Supreme Court in Civil Appeal No.9282/2010, got disposed only after the revocation of Power of Attorney Deed. Only after the disposal of the civil appeal, the sale deed was executed in favor of the second accused. There is absolutely no intention on the part of the petitioners to cheat the second respondent. Even if there is an agreement for payment of legal expenses and remuneration and if that is violated, the only course open to the second respondent is to approach the civil Court and not to file a criminal case. In fact, the second respondent filed a suit in C.S.No.894/2017 against the accused in this case, for claiming the amount due in pursuance of the sale agreement. Giving a criminal colour to a civil dispute, is not correct and therefore, the criminal case has to be quashed.

5(i). In support of this submission, the learned counsel for the petitioners relied on the judgment reported in AIR 2003 SC 1069 in Ajay Mitra Vs. State of M.P. and Ors., for the proposition that unless the complaint showed that the accused had dishonest or fraudulent intention at the time the complainant parted with the money, it would not amount to an offence under Section 420 IPC and it may only amount to breach of contract. The intention to cheat should be in existence at the time when the inducement was offered.

5(ii). For the same proposition, the judgments reported in
(2016) 1 SCC 348 and 2022 LiveLaw (SC) 305 have been relied on
It is observed in (2016) 1 SCC 348 in International Advanced Research Centre for Powder Metallurgy and New Materials (ARCI) and Ors., as follows:-

> "13....The essential ingredients to attract Section 420 Indian Penal Code are: (i) cheating; (ii) dishonest inducement to deliver property or to

make, alter or destroy any valuable security or anything which is sealed or signed or is capable of being converted into a valuable security and (iii) mens rea of the accused at the time of making the inducement. The making of a false representation is one of the essential ingredients to constitute the offence of cheating Under Section 420 Indian Penal Code. In order to bring a case for the offence of cheating Under Section 420 Indian Penal Code. In order to bring a case for the offence of cheating, it is not merely sufficient to prove that a false representation had been made, but, it is further necessary to prove that the representation was false to the knowledge of the accused and was made in order to deceive the complainant.

14. Distinction between mere breach of contract and the cheating would depend upon the intention of the accused at the time of alleged inducement. If it is established that the intention of the accused was dishonest at the very time when he made a promise and entered into a transaction with the complainant to part with his property or money, then the liability is criminal and the accused is guilty of the offence of cheating. On the other hand, if all that is established that a representation made by the accused has subsequently not been kept, criminal liability cannot be foisted on the accused and the only right which the complainant acquires is the remedy for breach of contract in a civil court. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown at the beginning of the transaction."

It is observed in 2022 LiveLaw (SC) 305 in Vijay Kumar Ghai & Ors. Vs. The State of West Bengal & Ors., as follows:

"42....At the same time, in order to attract the ingredients of Section of 406 and 420 IPC it is imperative on the part of the complainant to prima facie establish that there was an intention on part of the petitioner and/or others to cheat and/or to defraud the complainant right from the inception. Furthermore it has to be prima facie established that due to such alleged act of cheating the complainant (Respondent No.2 herein) had suffered a wrongful loss and the same had resulted in wrongful gain for the accused(appellant herein). In absence of these elements, no proceeding is permissible in the eyes of law with regard to the commission of the offence punishable u/s 420 IPC."

5(iv). The order of the Hon'ble Supreme Court in Crl.A.No.295 of 2002 in Syed yaseer Ibrahim Vs. State of Uttar Pradesh & Another, is relied for the proposition that when neither the FIR nor the charge sheet contain any reference to the essential requirements underlying Section 420. Continuation of the prosecution against the accused would amount to abuse of the process, where a civil dispute is sought to be given the color of a criminal wrong doing.

5(v). The judgment reported in (2011) 13 SCC 412 in Thermax Ltd. and Ors., is pressed into service, for the proposition that for the proceedings under Section 156(3) of the Code, the complaint must disclose relevant material ingredients of Sections 405, 406, 420. If there is a flavour of civil nature, the same cannot be agitated in the form of criminal proceeding.

5(vi). The judgment reported in 2021 (4) Crime 343 (SC) is relied, for the proposition that when civil dispute is sought to be converted into criminal dispute, the proceedings are liable to be quashed. Citing the landmark judgment of the State of Haryana and Others Vs. Ch. Bhajan Lal and Others reported in (1992) SCC (Cri) 426, it was held that where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or the case against the accused or do not disclose the commission of any offence and make out a case against the accused or the criminal proceeding is manifestly filed with mala fide or instituted with an ulterior motive, the criminal proceeding can be quashed. Thus, the learned counsel for the petitioners prayed that the civil dispute is sought to be converted into criminal dispute, there is absolutely no case made out for criminal prosecution and thus, the proceedings are liable to be quashed.

6. Learned counsel for the petitioners in Crl.O.P.No.11172/2015 submitted that second respondent was engaged by the petitioners to take care of the case pending before the High Court of Madras. Since there was some disagreement between petitioners and the second respondent with regard to accounting of the expenses, petitioners had cancelled the General Power of Attorney of the second respondent. There is absolutely no dishonest intention on the part of the petitioners to cheat the second respondent. Neither the offence of cheating nor the other offences alleged in the complaint are made out in this case. The criminal case was filed only with a view to harass the petitioners and thus, the learned counsel for the petitioners prayed for quashing the criminal case.

7. Per contra, the learned counsel for the second respondent submitted that second respondent had been engaged by petitioners/A3 & A4 to take care of the case in OSA.No.185 of 2001. Second respondent engaged Senior Advocates and diligently conducted the case and the case ended in favour of the petitioners. Since petitioners/A3 & A4 wanted to sell the property, they gave General Power of Attorney Deed to the second respondent to enter into sale agreement and execute the sale deed. As per the sale agreement dated 19.10.2010, a sum of Rs.4 crores is to be paid to the second respondent, apart from the sale consideration. Rs.4 crores is to be exclusively paid to the second respondent. Only a sum of Rs.1.25 crores was paid to the second respondent, the remaining sum of Rs.2.75 crores was not paid. Only with an intention to cheat the second respondent, a sale deed was executed by petitioners/accused 3 and 4 in favour of second accused. Cancellation of Power of Attorney deed without notice is illegal. Though, third accused cancelled the Power of Attorney Deed on 04.08.2011, fourth accused cancelled the Power of Attorney Deed only on 20.01.2014. The intention must be gathered from the act of the parties. The act of the parties in this case shows that they conspired together in order to cheat the second respondent of the rightful amount of Rs.2.75 crores due to him. There is a prima facie case made out in this case for proceeding with an investigation. FIR cannot be quashed unless strong grounds are made out for quashing.

8. It is further submitted that in the case before hand, no strong grounds have been made out for quashing. On the other hand, the complaint allegations and other materials produced in support of the second respondent's case, make out a clear case of cheating and other offences mentioned in the complaint. Merely because the second respondent filed a civil suit for claiming the amount due to him, the criminal case cannot be quashed. The same cause of action will give rise to civil as well as criminal proceeding. This is exactly the case where civil and the criminal consequences followed because of the acts of the accused. Therefore, the learned counsel for the second respondent prayed for dismissal of this petition. He relied on the following judgments to buttress his submission.

In the judgment reported in 2019 SCC OnLine Mad 21377 in C. Ponnusamy Vs. Inspector of Police and Another, referring to the judgment reported in (2013) 10 SCC 581 in Vinod Raghuvanshi v. Ajay Arora, it is observed that

> "It is a settled legal proposition that while considering the case for quashing of the criminal proceedings, the Court should not "kill a

> stillborn child", and appropriate prosecution should not be stifled unless there are compelling circumstances do so. An investigation should be shut out at the threshold if the allegations have some substance. When a prosecution at the initial stage is to be quashed, the test to be applied by the Court is whether the uncontroverted allegations as made, prima facie establish the offence. At this stage neither can the Court embark upon an inquiry, whether the allegations in the complaint are likely to be established by evidence nor should the Court Judge, the probability, reliability or genuineness of the allegations made therein."

It was held that criminal proceedings are at the stage of FIR, and it should not be interfered and an investigation should not be shut out at the threshold if the allegations have some substance.

The judgment reported in (2020) 14 SCC 552 in K. Jagadish Vs. Udaya Kumar G.S. And Another, is relied for the proposition that if the allegation discloses a civil dispute, the same may itself cannot be a ground to hold that the criminal proceeding should not be allowed to continue, for the reason that the same set of facts may give rise to remedies in civil as well as in criminal proceeding. Even if a civil remedy is availed by a party, he is not precluded from setting in motion the proceedings in criminal law.

The judgments reported in 2018 SCC OnLine Mad 3386, (2019) 14 SCC 350, 2021 SCC OnLine SC 206, 2021 SCC OnLine SC 315 and 2021 SCC OnLine Mad 5151 are relied for the proposition that, to exercise powers under Section 482 Cr.P.C., the complaint in its entirety shall have to be examined on the basis of the allegation made in the complaint/FIR/Charge sheet and the High Court at that stage, is not under an obligation to go into the matter and examine its correctness. Whatever, appears on the face of the complaint/FIR/Charge sheet shall be taken into consideration without any critical examination of the same.

9. Learned Government Advocate appearing for R1 supported the submission of the learned counsel for the second respondent and submitted that the investigation should be allowed to continue to file final report.

10. Considered the rival submissions and perused the records.

11. From the complaint allegations and submissions of the

learned counsel appearing for the parties, it is clear that there is no disagreement with regard to execution of Power of Attorney Deed dated 23.09.2009 by accused 3 and 4 separately, in favour of the second respondent. Second respondent was given all the powers to take control and management of the property, to find purchaser for selling the property, to enter into agreement for sale and execute the sale etc. It is also not in dispute that a sale agreement between the second respondent and first accused was entered on 07.11.2009, followed by sale agreement dated 14.09.2010, supplemental sale agreement dated 14.10.2010 and finally a sale agreement on 19.10.2010. All the sale agreements had been executed between the second respondent and first accused and the second respondent had executed the sale agreement in his capacity as power agent of accused 3 and 4.

12. The terms of sale agreement dated 19.10.2010 reads that the consideration of sale price of Rs.12.25 crores is payable to the owners. That apart, a sum of Rs.4 crores is payable to the power agent namely the second respondent, for meeting the legal expenses and the other allied needs and to ensure conveyance of the property to the purchaser. This amount was determined by the vendors and the power agent. This was accepted by the first accused by signing in agreement. Thus, it is clear from the sale agreement dated 19.10.2010, first accused is liable to pay a sum of Rs.4 crores to the second respondent apart from the sale consideration payable to accused 3 and 4. It is an admitted case of the second respondent that first accused paid a sum of Rs.1.25 crores out of Rs.4 crores and he is liable to pay a remaining sum of Rs.2.75 crores. It is the case of the second respondent that without paying a sum of Rs.2.75 crores and without giving a previous notice of cancellation of Power of Attorney Deeds, the accused 3 and 4, sold the property to the second accused, with an intention to cheat him. It is not the case of the accused that second respondent was paid Rs.4 crores as per the terms of the agreement dated 19.10.2010. It appears that a sum of Rs.2.75 crores is not paid till date. That is the reason why second respondent filed a suit in C.S.No.894 of 2017 for recovery of the amount with interest.

13. The question now arises for consideration is whether the failure to pay a sum of Rs.2.75 crores can be termed as mere breach of contract or it attracts any criminal offence.

14. Section 415 IPC reads as follows:-

> 415.Cheating-Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any

property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

15. This Section makes it clear that whoever, by deceiving any person, fraudulently or dishonestly, induces the person so deceived to do or omit to do which he would not do or omit if he were not so deceived, and if the said act or omission causes damage or harm to that person, then he is said to have cheated that person.

16. In the case before hand, the second respondent was helping the accused 3 and 4 in conducting the OSA No.185/2001 by engaging Senior Advocates and ultimately, the case ended in favour of third and fourth accused. The communications between the third accused and second respondent dated 16.06.2011, 30.06.2011, 04.07.2011, 05.08.2011, 26.09.2011 indicate that there are differences of opinion with regard to the expenses incurred in conducting proceedings and submission of accounts. Not satisfied with the second respondent, third accused cancelled the Power of Attorney Deed executed in his favour. Before cancelling the Power of Attorney deed on 04.08.2011, the sale agreements dated 07.11.2009, 14.09.2010, 14.10.2010 and 19.10.2010 had been executed between the second respondent and first accused. Second accused intimated about the sale agreement dated 07.11.2009 to the third accused through the letter dated 26.09.2011. It also has the reference about the payment of advance amount. As the principal, accused 3 and 4 are bound by the aforesaid sale agreements executed between the first accused and second respondent, as per Section 226 of Indian Contract Act, which reads as follows:-

> "Contracts entered into through an agent, and obligations arising from acts done by an agent, may be enforced in the same manner, and will have the same legal consequences as if the contracts had been entered into and the acts done by the principal in person."

17. The accused 3 and 4 are expected to settle the amount due to the second respondent as per the sale agreement dated 19.10.2010 and then cancell the Power of Attorney Deed and execute the sale deed in favour of second accused or for that matter to any one else. All the sale agreements had been executed by the second respondent in his capacity as the power of attorney agent of accused 3 and 4. First accused agreed to pay Rs.4 crores to the second respondent in terms of the sale

agreement dated 19.10.2010 for the legal and other expenses. Second accused is the brother of the first accused. Therefore, first accused cannot say that he is not aware of the sale in favour of the second respondent. The fact that he has not instituted any civil suit on the basis of sale agreement in his favour, supports the case of the second respondent that he is also the part of the scheme to get the sale deed executed in favour of the second accused by third and fourth accused.

18. When the accused knew the existence of sale agreement dated 19.10.2010 and the contractual obligation to pay a sum of Rs.4 crores to the second respondent by the first accused executing the sale in favour of second accused without paying the money as agreed in the sale agreement dated 19.10.2010, certainly attracts the definition of cheating under 415 IPC. Only on the basis of Power of Attorney Deed executed by accused 3 and 4, second respondent had spent money in prosecuting the litigation and other incidental expenses mentioned in his letter and in the complaint. Otherwise, he would not have ventured into spending the amount. He was fraudulently and dishonestly induced by accused 3 and 4 to spend money and pursue the litigation. Then he was dumped without paying the money due to him. The conduct of the parties shows that the intention to cheat is present from the inception of execution of Power of Attorney by accused 3 and 4 in favour of second respondent and the execution of sale deed by accused 3 and 4 in favour of second accused. Complaint allegations make out a prima facie cognizable case for prosecuting the petitioners for the offence of cheating and fraudulent cancellation of Power of Attorney Deed.

19. Thus, this Court is of the considered view that there is a prima-facie case made out to proceed further with the investigation and file a final report by the first respondent. When there are rival claims, this Court cannot conduct a roving enquiry as to the truth or falsity of allegations and counter allegations made by the parties.

20. The legal position with regard to quashing the FIR is well settled. From the judgments pressed into service by both the parties, it emerges that FIR cannot be quashed at the threshold if a cognizable offence is made out. At the risk of repetition, some of the principles settled by Hon'ble Supreme Court with regard to quashing of FIR are extracted hereunder:-

i) High Court cannot conduct a mini trial or roving enquiry in a petition filed under Section 482 Cr.P.C.

ii) When a perusal of the complaint discloses prima facie, offences that are alleged against the respondent, the correctness or otherwise of the said allegations are to be decided only in the trial. At the initial stage of issuance of process it is not open to the Court to stifle the proceedings by entering into the merits of the contentions. Criminal complaints cannot be quashed only on the ground that allegations made therein appeared to be of civil nature. If the ingredients of the offence alleged against the accused are prima facie made out in the complaint, the criminal proceedings shall not be interdicted.

iii) When a prayer for quashing the FIR is made, by the accused and the Court when it exercises the power under Section 482 Cr.P.C., only has to consider whether the allegations in the FIR disclose commission of cognizable offence or not.

iv) The power of quashing should be exercised sparingly with circumspection. Quashing of a complaint / FIR should be an exception rather than an ordinary rule.

v) The First Information Report is not an encyclopedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in process, the Court should not go into the merits of the allegations in the FIR.

vi) The Court has to consider only whether the allegations in the FIR disclose commission of cognizable offence or not and it is not required to consider on merits whether or not the merits of the allegations make out the cognizable offence.

21. Thus, this Court concludes that prima-facie case made out against the petitioners / accused in this case, for investigation into the allegations of cheating, fraudulent cancellation of Power of Attorney Deed. Thus, both the criminal original petitions are dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

AT

To

1 The Inspector of Police,
Central Crime Branch,
Vepery, Chennai.

2 The Public Prosecutor,
High Court, Madras.

+4ccs to Mr.R.Palaniandavan, Advocate, S.R.No.31240, 31239

CRL.O.P.Nos.17268 & 11172 of 2015 and
M.P.Nos.1 & 1 of 2015

JP(CO)
PM/14/06/2022