IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On: 05.07.2022

Delivered On: 14.10.2022

CORAM:

THE HON'BLE **MR.JUSTICE SATHI KUMAR SUKUMARA KURUP**

Crl.O.P.Nos.1759 and 3234 of 2021
and
Crl.M.P.Nos.3466, 1021, 1022 and 1834 of 2021

Crl.O.P.No.1759 of 2021

S.Devan ... Petitioners/Accused No.2

Vs.

1.The State Rep. by
The Inspector of Police,
CCB 1/PS Chennai,
CCB District,
EDF-II, Team – 4,
Central Crime Branch,
Vepery, Chennai.
(Crime No.289 of 2019) ... 1st Respondent/Complainant

2.Raja Ravi Shekhar ... 2nd Respondent/De-facto Complainant

PRAYER: Criminal Revision Petition had been filed under Section 482 of Criminal Procedure Code, seeking to call for the records and quash the proceedings pending against the Petitioners in C.C.No.3129 of 2020 on the file of the learned CCB, CB-CID Metropolitan Magistrate at Egmore, Chennai.

For Petitioners : Mr.P.K.Ganesh
For Respondent 1 : Mr.L.Baskaran
Government Advocate (Crl. Side)
For Respondent 2 : Mr.M.Anandaraj

Crl.O.P.No.3234 of 2021

N.Krishnappa ... Petitioners/Accused No.1

Vs.

1.The State Rep. by
The Inspector of Police,
CCB 1/PS Chennai,
CCB District,
EDF-II, Team – 4,
Central Crime Branch,
Vepery, Chennai.
(Crime No.289 of 2019) ... 1st Respondent/Complainant

2.Raja Ravi Shekhar ... 2nd Respondent/Defacto Complainant

PRAYER: Criminal Revision Petition had been filed under Section 482 of Criminal Procedure Code, seeking to call for the records and quash the proceedings pending in C.C.No.3129 of 2020 on the file of the learned CCB, CB-CID Metropolitan Magistrate at Egmore, Chennai as far as this Petitioners is concerned.

For Petitioners : Mr.G.Mohanakrishnan

For Respondent 1 : Mr.L.Baskaran
Government Advocate (Crl. Side)

For Respondent 2 : Mr.M.Anandaraj

COMMON ORDER

In view of the fact that the issue involved in both the Criminal Original Petitions are one and the same, both the Criminal Original Petitions are taken up together and disposed of by a common order.

2.Both the Criminal Revision Petitions had been filed seeking to quash the proceedings pending against the Petitioners/Accused Nos.1 and 2 in C.C.No.3129 of 2020 on the file of the learned Metropolitan Magistrate, Special Court for CCB, CB-CID Cases, Egmore, Chennai.

3.It is the contention of the Petitioners that the Petitioner in Crl.O.P.No.1759 of 2021/Accused No.2 is the purchaser of the property in Plot No.19, Bhuvaneswari Nagar, Velacherry Village, Chennai, to an extent of 8400 Sq. Ft. which belonged to one Mrs.Akilandam, W/o.Ganapathy. She having purchased the property through registered sale deed registered as Doc.No.2153 of 1970, dated 12.11.1970 on the file of Sub Registrar Office, Saidapet. It is the allegation of the prosecution that the Petitioner/A2 had committed an offence of cheating, criminal breach of trust and fabricating documents consequentially usurping the late mother of the second Respondent/De-facto Complainant. The said Akilandam died intestate and the property devolved on her legal heirs viz., 1) Lakshmi Ramanathan, Daughter, 2) G.Nagarajan – Son, 3) Ganapathi Santha Roche – De-facto Complainant mother. It is the submission of the learned Counsel for the Petitioners that the second Respondent was introduced to the first Accused in this case by one Chennai Land Broker. The second Respondent and his late mother suggested to give a Power of Attorney to the first Accused – Krishnappa/Petitioner in Crl.O.P.No.3234 of 2021 to sell the above said property. Since there is a rival claim for the said property by several other persons and the said property was partly encroached by one Mrs.Kala Jayachandran, the Second Respondent's mother had appointed the first Accused/Krishnappa as a Power of Attorney Agent for the properties of the second Respondent's mother bearing Plot No.19 to an extent of 8400 sq. ft. and given a Registered General Power of Attorney to and in favour of first Accused dated 09.08.2016 vide Doc. No.322 of 2016-2017 before the Sub Registrar Office, Shivaji Nagara, Bengaluru. Earlier to that, a General Power of Attorney was given to the second Respondent by his mother. The said General Power of Attorney in favour of the second Respondent was cancelled by his mother by way of Registered cancellation deed dated 09.08.2016 vide Doc.No.321 of 2016-2017 before the Sub Registrar Office, Shivaji Nagar, Bengaluru. After that, the second Respondent's mother had appointed the first Accused/Krishnappa as a Power of Attorney of the property of the mother of the second Respondent in Plot No.19 to an extent of 8400 Sq. Ft. and given a registered General Power of Attorney dated 09.08.2016 vide Doc. No.322 of 2016-2017 before Sub Registrar Office, Shivaji Nagar, Bengaluru. In that Power of Attorney in favour of the first Accused/Krishnappa, this Petitioner stood as a witness. The first Accused had conveyed the said property bearing Plot No.19 vide pending Doc. No.143 of 2017, dated 22.11.2017 to and in favour of this Petitioners. The said document was kept pending by Sub Registrar Office, Velacherry and the Sub Registrar Office, Velacherry after obtaining the verification letter on 28.11.2017 from Sub Registrar Officer, Indira Nagar, Karnataka and further that the said sale deed document released by Sub Registrar Officer, Velacherry and given absolute sale deed vide Doc.No.1843 of 2019 dated 21.03.2019 to the Petitioner/Accused No.2 and the property stands in the name of the Petitioner/Accused No.2. Subsequent to that the De-facto Complainant had lodged the complaint against Petitioners and others. The complaint was later transferred to Deputy Commissioner of Police, St. Thomas Mount, Chennai. Subsequently, the De-facto Complainant approached the learned Metropolitan Magistrate, Special Court for Central Crime Branch, CB-CID Cases, Egmore, Chennai by filing Crl.M.P.No.4963 of 2019. Based on the direction of the learned Metropolitan Magistrate, Special Court for Central Crime Branch, CB-CID Cases, Egmore, Chennai, FIR was registered against the Petitioners by the Inspector of Police, Central Crime Branch, EDF-II, Team IV, Vepery, Chennai in Crime No.289 of 2019. The first Accused/Krishnappa had executed the sale deed to and in favour of the Petitioner/Accused No.2 on 22.11.2017 on the file of Sub Registrar Office, Velacherry before the death of the De-facto Complainant's mother on 27.12.2017. The entire prosecution case against the Petitioners and others are on erroneous and extraneous material. There is absolutely no material before the learned Trial Court to proceed with the case against the Petitioners herein. The charges against the Petitioners and others are frivolous and not maintainable either on facts or on law. Therefore, the learned Counsel for the Petitioners seek to quash the charge sheet/final report laid against the Petitioners herein in C.C.No.3129 of 2020 on the file of the learned Metropolitan Magistrate, Special Court for Central Crime Branch, CB-CID Cases, Egmore, Chennai.

4.It is the submission of the learned Counsel for the Petitioners that the ingredients of the offence under Section 409 of I.P.C. is not at all attracted. It is attracted in case where the property is under the custody of a Public Servant/Government Servant. Here it is the case of the Petitioners that none of the Accused are Government servants attracting the ingredients of offence under Section 409 of I.P.C. Accused No.3 is a Private Doctor and not a Government Doctor who had issued the Life Certificate regarding the Principal, the mother of the De-facto Complainant to attract the provisions of Section 34 of I.P.C. Apart from the fact that there should be two or more accused, two factors must be established viz., (i) common intention and (ii) participation of the Accused in the commission of an offence. If common intention is proved but no overt act is attributed to the individual accused, Section 34 of IPC will be attracted as essentially it involves vicarious liability but if participation of the accused in the crime is proved and a common intention is absent, Section 34 of IPC cannot be invoked. In this case, as per the first factor, the common intention has to be proved. The third Accused is a Doctor and there is no connection with the Petitioners/Accused Nos.1 and 2 and the common intention has not been proved by the Prosecution. The statement of L.W-1, who is none other than the second Respondent/De-facto Complainant, that the Petitioner and the first Accused/Krishnappa forged the signature of the second Respondent's mother which is absolutely false, after fixing the sale consideration and receiving part of the sale consideration from Accused No.2 then the mother of the second Respondent and the second Respondent had given all the parent documents to Accused No.1 on 09.08.2016, when the Power of Attorney Deed was given by the mother of the second Respondent. The statement of L.W-1, the second Respondent/De-facto Complainant that her mother was hospitalised at Spandara Nursing Home at Bangalore during the period from 2007 to 12.12.2017 and she was in bed ridden condition not able to walk. For this statement, the second Respondent or the Prosecution have not filed any document in support of such contention in the final report. The sale deed was executed by Accused No.1 in favour of the Accused No.2 before the death of the mother of the second Respondent/De-facto Complainant on 22.11.2017. The mother of the second Respondent/De-facto Complainant died on 27.12.2017. The second Respondent/De-facto Complainant had not sent any demand or legal notice to the first Accused regarding balance payment if really there had been any balance amount outstanding by first Accused. The De-facto Complainant before lodging the Complaint against the Petitioners/Accused 1 and 2 on 23.08.2018 after two years from the date of execution of the Power of Attorney by the mother of the second Respondent/De-facto Complainant and subsequently, the first Accused conveyed the property in favour of the second Accused. There was no notice for the two years period from the second Respondent/De-facto Complainant. The FIR was registered on 03.10.2019 after three years from the date of execution of the Power of Attorney by the mother of the second Respondent/De-facto Complainant in favour of the first Accused. At the time of hearing bail application, the second Respondent/De-facto Complainant had filed blank cheques bearing Nos.000004 and 000005 along with cheque book, first page with address and cheque book requisition slip of the second Accused in the typed set which was supposed to have been seized by the first Respondent Police. It clearly shows the influence of the second Respondent/De-facto Complainant in filing the FIR. Before Registering the FIR, the first Respondent had not obtained Forensic Certificate from the Forensic Authorities to disprove the signature of the mother of the second Respondent. The second Respondent and her mother had orally entered agreement with various persons for he said property for making money for their livelihood. The case of the Prosecution is purely civil in nature and the second Respondent had lodged the false complaint against the first and Second Respondent/Petitioners herein and another. The mother of the second Respondent had earlier given a registered Power of Attorney dated 21.09.2010 to one Mr. Ravichandran, Proprietor of M/s. S.V.R. Builders and Promoters, Velacherry vide C.S.No.760 of 2010 filed before this Court and the said case has now been transferred to the learned XV Additional

City Civil Court, Chennai vide O.S.No.2317 of 2020 and the said case is pending for trial. The second Respondent/De-facto Complainant and his mother entered into sale agreement dated 10.11.2014 with one A.Sudesh Anand. The second Respondent and his mother received Rs.20,00,000/- from A.Sudesh Anand and the said Sudesh Anand had filed a case before the learned I Assistant City Civil Court vide O.S.No.6866 of 2015 in which the second Respondent and his mother were set ex parte. The second Respondent/De-facto Complainant entered into sale agreement with one Anil Kumar Daga and two others dated 22.11.2012 and the second Respondent/De-facto Complainant received Rs.10,00,000/- from Anil Kumar Doga and two others. The second Respondent/De-facto Complainant and his mother suppressed all the details about the said property and entered with various persons by way of Agreement of sale and Power of Attorney for the said property and grabbed the money from various persons. Earlier one Kala Jayahandran lodged a police complaint against the second Respondent/De-facto Complainant on 20.06.2016 before the J-7, Velacherry Police Station, Chennai and the Police officials had issued CSR No.301 of 2016 dated 20.06.2016. Suppressing all these details, the second Respondent had lodged criminal complaint. It is the further submission of the learned Counsel for the Petitioners that L.W-10 in the final report is a Forensic Expert who had issued certificate and given statement that on the basis of the present standard material, it is not possible to offer any reliable opinion on the signatures found on the stamped and marked Q1 to 3 on comparison with the signatures enclosed similarly stamped and marked as A-11, A-12 and A-13, A-14 to A-16, A-17 to A-19, A-20, A-21, A-22 and A-23, A-24 to A-25, A-67 and S-1 to S-50. The Petitioner/A2 after having registered the said property, after proper sale deed, had obtained RTI reply regarding the cheque No.000003, it was wrongly mentioned in the sale deed as Cheque No.000003 instead of Cheque No.000006. Immediately the Petitioner/A2 had given representation to the Sub Registrar, Velacherry on 13.08.2018 to change the Cheque No.000006 which was acknowledged by Sub Registrar, Velacherry on 13.08.2018. There is no specific allegation against the Petitioner/A2 and there is no ground to proceed against him. Therefore, the learned Counsel for the Petitioner/Accused No.2 sought to quash the charge sheet in C.C.No.3129 of 2020 on the file of the learned Metropolitan Magistrate, Special Court for Central Crime Branch, CBCID Cases arising out of Metropolitan Area, Egmore, Chennai.

5.The learned Counsel for the Petitioner in Crl.O.P.No.3234 of 2021/Accused No.1 submit that as per the final report in C.C.No.3129 of 2020 the Petitioner herein/A1 was introduced to the owner by a Land Broker in Chennai. The second Respondent and his mother suggested to give a Power of Attorney in favour of the Petitioner/A1 to sell the said property since there is rival claim with several other persons and the said property was partly encroached by one Kala Jayachandran. The Petitioner/A1 is only a Power of Attorney which was executed by the mother of the second Respondent/De-facto Complainant in favour of the Petitioner/A2. Therefore, there is no specific allegation against the Petitioner/A1 and there is no ground to proceed against him. Therefore, the learned Counsel for the Petitioner/Accused No.1 sought to quash the charge sheet in C.C.No.3129 of 2020 on the file of the learned Metropolitan Magistrate, Special Court for Central Crime Branch, CBCID Cases arising out of Metropolitan Area, Egmore, Chennai.

6.The learned Counsel for the second Respondent/De-facto Complainant vehemently objected to the submission of the learned Counsel for the Petitioners by inviting the attention of this Court to the FIR in which it is clearly stated that after fixing the sale price as Rs.1.5 Crore initial payment was made by the Power of Attorney/Krishnappa/Accused No.1. On the advice of the mother of the second Respondent, the Memorandum of Understanding was entered into with Krishnappa/Accused No.1. The second Respondent was ready to sell the property and the mother of the second Respondent executed a Will in favour of the second Respondent. The other daughter and son of the late Ganapathy, viz., Tmt.Lakshmi Ramanathan and Thiru.G.Nagarajan had executed release deed in respect of their 1/3 share in favour of the second Respondent. The release deed was registered as Doc.No.856 of 1993 dated 30.04.1983 before the Joint Sub Registrar, Saidapet. Since there was a rival claim over the property when the second Respondent was taking steps to obtain patta. At that stage, Krishnappa/Accused No.1 approached them at Bengaluru and introduced himself that he is engaged in real estate business and promised to purchase the property and also promised them that he will take all steps to get patta. In this circumstances, believing the words of Krishnappa/Accused No.1, the mother of the second Respondent appointed Krishnappa/Accused No.1 as her Power of Attorney under registered power of attorney deed vide document No.322/2016-2017, Dated 09.08.2016 Book IV, Sub Registrar Office, Sivaji Nagar, Bangaluru. The second Accused stood as witness to the said deed. On the very same day, soon after appointing Krishnappa/Accused No.1 as Power of Attorney Agent, the mother of the second Respondent instructed the second Respondent to enter into Memorandum of Understanding wherein sale consideration of the land was fixed at Rs.1,05,00,000/-. The initial payments made by him were recorded in the Memorandum of Understanding and for the balance sale consideration, he issued a post-dated cheque bearing No.950832, dated 20.09.2016 drawn on Indian Overseas Bank, Anna Nagar Branch. The condition precedent for the sale is that the cheque will be cleared by Krishnappa/first Accused as on 20.09.2016 or else the General Power of Attorney shall stand cancelled. The particulars of the payment made under the Memorandum of Understanding:

Sl. No.	Mode of Payment Cash/Cheque Amount and Date	Whether Cheque Realised
1	Rs.14,00,000/- DD Nos.510929 and 510930, dated 07.08.2016 IOB, Anna Nagar	Realised
2	Rs.6,00,000/- (Cash)	Received
3	Cheque No.950832, Dated 20.09.2016 for Rs.85,00,000/- Drawn on IOB, Anna Nagar Branch.	The PoA took back the cheque and issued two cheques in its place- Both the cheques not realised for want of funds. Cheque No.522279, Undated for Rs.45,00,000/- (Rupees Forty Five Lakhs only). Cheque No.522280, Undated for Rs.40,00,000/- (Rupees Forty Lakhs only)

The first Accused/Krishnappa failed to honour his commitment. On the other hand, he approached us and pleaded that he could not arrange the balance sale consideration of Rs.85,00,000/- and in place of Cheque No.950832, dated 20.09.2016 drawn on Indian Overseas Bank, Anna Nagar Branch, he issued two cheques and sent the same by post. He requested us not to present the cheque as he could not arrange the payments and also assured that he will not transact with the General Power of Attorney. The first Accused/Krishnappa kept on seeking time for honouring his payment. When about two years rolled by, the second Respondent was constrained to give a complaint with the local police stating that as per the Memorandum of Understanding, the Powers stands canceled and wanted to get back the title documents which was given to Krishnappa/Accused No.1 t the time of entering into the Memorandum of Understanding. The first Accused/Krishanappa appeared before the local Police and assured that he will not act as the Power of Attorney. In the meantime, the De-facto Complainant came to know that Kala Jayachandran has filed a suit before the High Court of Judicature claiming a portion of the De-facto Complainant's mother's property in dispute. Through these development, the De-facto Complainant learnt that the second Accused along with the first Accused had presented a sale deed for registration and the same had been received by the Sub Registrar Office, Velacherry and kept as pending Doc. No.147 of 2017. On coming to know about the same, the second Respondent had preferred a complaint stating that the first Accused with the criminal intention of usurping the property had planned well and have approached the second Respondent and his mother at Bangaluru and induced them with his sweet sales talk. He had made advance payment of Rs.20,00,000/- and promised to pay the balance amount and cunningly received the original title documents and with those documents, he had executed the sale deed in favour of the second Accused. The first Accused knowing fully well that the Power of Attorney had been cancelled on 20.09.2016. He was liable to honour the Cheque for Rs.85,00,000/- instead he issued alternate cheque and thereafter took time requesting the second Respondent and his mother. The mother of the second Respondent was critically bed-ridden from October, 2017 and she passed away on 27.12.2017. The mother of the second Respondent never came down to Chennai. Whereas the first Accused had on the strength of the Power of Attorney deed executed sale deed in favour of the second Accused on 22.11.2017. That being so, it is obvious that Life Certificate has to be fraudulently fabricated by the Power of Attorney Agent. The second Respondent/De-facto Complainant secured photostate copy of the sale deed through her counsel and to his utter shock, he came to know that signature of the mother of the second Respondent was forged. The Doctor who issued the Life Certificate is liable to be brought before the law for issuing such certificate. Therefore, the Accused had committed offence of breach of trust, cheating and fabricated false documents. The second Accused claims to be the purchaser of the sale deed. He was the witness to the Power of Attorney Deed as well as Memorandum of Understanding, both dated 09.08.2016 at Bangaluru. The second Accused knows fully well that the Power of Attorney Deed stands cancelled when the first Accused failed to honour the balance sale consideration. Both the Accused have by their conduct registered pending sale deed bearing Doc. No.147 of 2017 before the Sub Registrar of Velacherry and committed breach of trust, cheating and fabricating false documents to claim title by fraudulent means. Therefore, the ingredients of the offence had been made. What had been argued by the learned Counsel for the Petitioner in both the Criminal Revision Petitions regarding the ingredients of offence under Sections 409 and 34 of IPC are attracted or not and the Doctor who issued Life Certificate was not a Government Doctor, are all to be considered only during trial and this Court exercising discretion/extraordinary power under Section 482 of Cr.P.C. cannot consider the defence that is available to the Accused before the trial Court to consider to quash the complaint, FIR or Final Report. Those are to be considered only by the learned Trial Judge at the conclusion of the trial on the basis of the evidence available before the trial Court. This Court cannot invoke the jurisdiction under Section 482 of Cr.P.C. to quash the same on the ground of valuable defence available to the Accused before the learned trial Judge. Therefore, the learned Counsel for the second Respondent sough to dismiss this Criminal Original Petition as having no merits.

7.The learned Government Advocate (Crl.Side) Mr.L.Baskaran appearing for the first Respondent invited the attention of this Court to the contents of FIR and to the contents of Final Report and submitted that as submitted by the learned Counsel for the second Respondent, the first Accused had executed a Power of Attorney Deed on payment of a token amount of Rs.20,00,000/- and promised to pay Rs.85,00,000/-. Instead of paying Rs.85,00,000/-, he had taken back the cheque already issued and instead, issued two fresh cheques – one for Rs.45,00,000/- and another for Rs.40,00,000/- and sought time for arranging the money. Accused No.1 knowing fully well that he had entered into a Memorandum of

Understanding with the mother of the second Respondent and if the balance of money is not paid, automatically, the Power of Attorney Deed will be cancelled, had sold the property and registered the same in favour of the second Accused. The second Accused is none other than the accomplice of the first Accused/Krishnappa. The second Accused is a attesting witness to the Power of Attorney Deed and also the Memorandum of Understanding. Therefore, he is aware of the details of the agreement to the sale, Memorandum of Understanding and the condition that the entire amount has to be paid and till such time, the Power of Attorney shall not be utilized, exploited to enter into the sale deed, had violated the condition. Therefore, the second Accused cannot claim any ignorance. More than that, the first and second Accused with a common intention to usurp the property knowing fully well that the mother of the second Respondent is ill and bed ridden at Bangaluru, had fabricated the Life Certificate as though the mother of second Respondent is alive and come down to Chennai. The fact being that, she had not come down to her residence in Bangaluru from the hospital till her death. Therefore, the Life Certificate issued by the Doctor is also a fraudulent document. The first and second Accused had connived and usurped the valuable property, which is worth about Rs.1.5 Crores, for Rs.20,00,000/-. Therefore, it amounts to criminal breach of trust. The mother of the second Respondent had parted with the parent deeds. Their request to return the deed and cancelling the Power of Attorney Deed was not acted upon by the Petitioner herein which shows their connivance, their criminal intention to cheat from the inception of entering into a sale deed and Memorandum of Understanding and Power of Attorney Deed. Therefore, what are all argued by the learned Counsel for the Petitioner cannot be considered by this Court exercising the extraordinary power under Section 482 of Cr.P.C., as per the reported ruling of the Hon’ble Supreme Court in the case of ***State of Haryana -vs- Bhajan Lal*** reported in ***1992 SCC (Cri.) 426*** where the Hon'ble Supreme Court had issued guidelines to the High Courts regarding exercise of the extraordinary powers under Section 482 of Cr.P.C. Therefore, the learned Government Advocate (Crl. Side) appearing for the first Respondent sought to dismiss the Criminal Original Petition with a direction to the learned Trial Judge to proceed with the trial and dispose of the same within a reasonable time. Also, the learned Government Advocate (Crl. Side) submitted that there are only 12 witnesses including the Investigation Officer. Therefore, within a short period of one or two months, the learned Trial Judge will be able to dispose of the case.

8.On consideration of the rival submissions and on perusal of the First Information Report, the Statements of the Witnesses, the final report filed before the Court of the learned Metropolitan Magistrate, Special Court for CCB-CBCID, Egmore, Chennai, the submission of the learned Counsel for the Petitioners cannot at all be accepted. *Prima facie* case as pointed out by the learned Counsel for the second Respondent/De-facto Complainant and the learned Government Advocate (Crl. Side) for the first Respondent is found for the offence attracting breach of criminal trust under Section 409 of IPC. The ingredients states the criminal breach of trust by public servant or by banker, merchant or agent. Here, as per the complaint by the second Respondent/De-facto Complainant and as per the ingredients of the complaint, the Accused No.1 Krishnappa/Petitioner in Crl.O.P.No.3234 of 2012 had entered into Power of Attorney deed which is registered before the Sub Registrar at Bangaluru where the Principal was the mother of the second Respondent. Therefore, the breach of trust is committed against the Principal by the agent. It need not be a Government servant or public official. The other ingredients mentioned in the offences are attracted viz., cheating, forgery under Sections 420 and 423 of IPC are attracted. Whether the offences under Sections 409, 420, 465, 468, 120(b) and 34 of IPC are attracted or not is to be considered only by the trial Court. What are all argued by the learned Counsel for the Petitioners is to be treated as valuable defence available to him shall be considered by the trial Court and not by this Court exercising the extraordinary power under Section 482 of Cr.P.C. As rightly pointed out by the learned Government Advocate (Crl. Side) for the first Respondent and the learned Counsel for the second Respondent/De-facto Complainant, the argument of the learned Counsel for the Petitioners is to be treated as valuable defence that should be considered only by the trial Court in the light of the ruling in ***State of Haryana -vs- Bhajan Lal*** reported in ***1992 Suppl.(1) SCC 335*** wherein guidelines had been issued to the High Courts to exercise the extraordinary power available to the High Courts under Section 482 of Cr.P.C. can be used sparingly and not leniently and only from the materials available in the prosecution, the Court shall quash the Charge sheet or FIR.

9.Before parting with the case, it is to be pointed out that when the case came up for hearing on 22.06.2022 this court had observed as under:

> *"When the case came up for hearing, the learned Counsel for the Petitioner in Crl.O.P.No.1759 of 2021 refused to proceed with arguments stating that the second Respondent/De-facto Complainant has to furnish the copies. The said line of argument is found unacceptable. Considering the Petitioner being the party, who has to advance the arguments and it is for him to furnish the copy and not otherwise. Similarly, in Crl.O.P.No.3234 of 2021, the learned Counsel for the Petitioner submitted that his name has not been printed.*
>
> *2. The learned Counsel appearing for the second Respondent/De-facto Complainant objects to the same stating that the Petitioner in Crl.O.P.No.3234 of 2021 indulges in similar practices quite often with an intention to drag on the proceedings.*
>
> *3. The Registry is directed to print the name of the present Counsel on Record for Crl.O.P.No.3234 of 2021and also to file a Report to this Court regarding the earlier Counsels.*
>
> *4.Post the matter on 29.06.2022."*

10.In the light of the above discussion, both the Criminal Original Petitions are liable to be dismissed as having no merits.

In the result, both the **Criminal Original Petitions are dismissed.**

On perusal of the records, it is found that at the time of admission, the personal appearance of the Petitioners before the trial Court was dispensed with by order dated 05.02.2021 by this Court. Now this Criminal Original Petition having been dismissed, the Petitioners as Accused 1 and 2 are directed to appear before the learned Metropolitan Magistrate, Special Court for CCB-CBCID arising out of Metropolitan area, Egmore, Chennai.

The learned Metropolitan Magistrate, Special Court for CCB-CBCID arising out of Metropolitan area, Egmore, Chennai is directed to proceed with the trial and dispose of the case within a reasonable period of three months without granting any adjournments on day-to-day basis. If the accused failed to appear, warrant may be issued and if the Accused is produced on execution of the warrant by the officers of the Investigation Team, the Accused need not be granted bail. Instead they may be detained in Prison till the trial is concluded. The methods adopted by the Accused for delaying the trial by invoking the powers under Section 482 of Cr.P.C.

and then absconding from the trial Court is to be curtailed. It is for the trial Judge and the Prosecuting Agency to proceed promptly with the trial. The Prosecuting Agency is directed to produce the witnesses promptly so that the trial Judge will be able to dispose of the case within the reasonable period of three months from the date of receipt of a copy of this order. Consequently, the connected miscellaneous petitions are closed.

14.10.2022

SRM
Index : Yes / No
Internet : Yes / No

To

1.The Metropolitan Magistrate,
Special Court for CCB-CBCID,
Egmore, Chennai.

2.The Public Prosecutor,
Madras High Court,
Chennai.

SATHI KUMAR SUKUMARA KURUP., J.

SRM

Common Order made in
Crl.O.P.Nos.1759 and 3234 of 2021

14.10.2022