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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.04.2022

CORAM:

THE HON'BLE Dr. JUSTICE G.JAYACHANDRAN

Crl.O.P.No.4520 of 2020
and
Crl.MP.No.2594 of 2020

M.Jayachandran

.. Petitioner

Vs.

1. The State Rep.by
The Inspector of Police,
District Crime Branch-Villupuram,
Tamil Nadu.
2. J.Anitha
3. State Bank of India,
Retail Assets Central Processing Centre,
(RACPC) 41952 and 41952-A,
Old Mahabalipuram Road, Nehru Nagar,
Perungudi, Chennai-600 096.
Represented by its
Assistant General Manager
Mr.Guru Swamy

(R3 impleaded as per Order in
Crl.MP.No.3018 of 2022 in
Crl.OP.No.4520 of 2020
dated 17.03.2022)

.. Respondent

PRAYER: Criminal Original Petition has been filed under Section 482 of Cr.P.C praying to call for the records in Cr.No.1 of 2020 pending on the file of the Inspector of Police, District Crime Branch, Villupuram and quash the same.

For Petitioner : Mr.V.S.Senthil Kumar

For Respondents :



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For R1 : Mr.Santhosh,
Government Advocate (Crl.Side)
For R2 : Ms.J.Anitha (Party-in-Person)
For R3 : Mr.R.Paramasivam

ORDER

This is the petition filed for quash in respect of the complaint given by the second respondent alleging that she has been cheated by the petitioner herein in-respect of agreement to sell a Villa. The petitioner/accused is before this Court to quash the FIR registered based on the above complaint in Crime No.1 of 2020 on the ground that it is purely a civil transaction wherein the defacto complainant initially booked two villas with the petitioner herein and thereafter, she made a loan arrangement with the State Bank of India, Perungudi Branch, Chennai for a sum of Rs.57,00,000/- as against the total consideration of nearly a sum of Rs.79,00,000/- for two villas. Based on the arrangement between the defacto complainant and the State Bank of India, an initial payment of Rs.39,26,650/- was released by the bank in favour of the petitioner. The defacto complainant on her part paid a sum of Rs.3,00,000/-. Thereafter, neither she could pay further money nor the Bank released any further money. In such circumstances, she gave a request letter to cancel the booking of the Villa No.3 and retain Villa No.12 and sought execution of the sale deed for the consideration already passed to the petitioner herein. Accepting her requests, the petitioner returned the excess amount of Rs.3,25,000/- to the petitioner and prepared to execute the sale deed for the Villa No.12, all of sudden, the defacto complainant turn back and refused to get the sale deed for Villa No.12 registered in her name and has given a complaint.

2. Quash petition filed contending that the complaint lack merits, suffers non-application of mind and this is a second complaint for the same cause of action. The earlier complaint preferred by the defacto complainant on 21.07.2019 with the Muthaiyalpet Police, Puducherry was closed as " Mistake of Fact" . When the petition for quash was pending, this Court found that the State Bank of India is necessary Party to verify this case whether pure civil in nature or to attracts criminal action. Hence, State Bank of India was impleaded as third respondent.

3. The learned Counsel for the third respondent/State Bank of India appeared and submitted that the petitioner as well as the defacto complainant in collusion cheated the Nationalized



Banks by misappropriation after availing the loan. Initially the petitioner and the defacto complainant had projected as if they are going to be transaction of two villas namely Villa Nos.3 and 12 total value of around Rs.80,00,000/-. For the said transaction the Bank agreed to advance 80% of the value as loan and released the first installment of Rs.39,26,640/- directly to petitioner herein who is the builder.

4. Without notice and the knowledge of the Bank, the defacto complainant and the petitioner had colluded among themselves and has sold the Villa No.3 to a third party. It was not intimated to the Bank or obtained any prior permission from the Bank.

5. To cheat the Bank, a fake complainant has been lodged by the defacto complainant against the petitioner herein as if the petitioner has cheated her and she has not consented for the release or alienation of Villa No.3 to the third party.

6. After hearing the counsel for the petitioner, the defacto complainant-in- person and the learned counsel appearing for the State Bank of India/third respondent, this Court finds that a thorough probe in the case is required and it cannot be taken as civil dispute as contended for the petitioner herein.

7. Prima facie there are materials to show that the defacto complainant has approached the State Bank of India for loan to purchase two Villas but has not shown any interest to buy the Villas and paying the value for the Villa's as agreed with the petitioner. As on date, admittedly Rs.39,26,640/- has been released by the Bank to the petitioner. Now, the defacto complainant expresses she is not interested in buying property. Only, based on her request the Bank has disbursed of Rs.39,26,640/- on 05.01.2019 to the petitioner. The petitioner is ready to execute sale deed for villa No.12. But, till date the defacto complainant has not paid interest or principal for her borrowing with SBI. The Nationalized Banks has already parted away money on the undertaking of the defacto complainant. The Bank cannot be left without remedy.

8. In the given factual scenario, this Court is of the view that this is not a case to be quashed at FIR stage. Hence, the first respondent police is directed to complete the investigation and after collecting evidence from the Bank and other witnesses file final report in accordance with law within a period of three months from the date of receipt of a copy of this Order.



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9. Accordingly, this Criminal Original Petition is disposed of. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

pbl/vv

1. The Inspector of Police,
District Crime Branch-Villupuram,
Tamil Nadu.
2. The Public Prosecutor,
High Court, Madras.

COPY TO:

1.The Assistant General Manager,
State Bank of India,
Retail Assets Central Processing Centre,
(RACPC) 41952 and 41952-A,
Old Mahabalipuram Road, Nehru Nagar,
Perungudi, Chennai-600 096.

2.The Section Officer,
Criminal Section,
High Court, Madras.

+1 cc to Mr.R.Paramasivam, Advocate Sr.NO. 27726
Cr1.OP.No.4520 of 2020
and
Cr1.MP.No.2594 of 2020

SJ(CO)
A.SK(05/05/2022)