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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2022

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CRL.O.P.NO.4944 OF 2019

AND

CRL.M.P.NO.2894 OF 2019

1. Manoj Nambauru

2. Muralidharan

3. A.R.P.Raman

4. Krishnakumar

... Petitioners

.Vs.

1. The State Rep. by
The Inspector of Police,
Central Crime of Branch Team-1,
Entrustment Document Fraud Wing-1,
Chennai - 8.

... Respondent/Complainant

2. S.Xavier felix

... 2nd Respondent/Defacto
Complainant

PRAYER:-

Criminal Original Petition filed under Section 482 Cr.P.C.
praying to call for the records and consequently quash the
C.C.No.3026 of 2017 pending before the learned CCB and CBCID
Metropolitan Magistrate, Egmore, Chennai - 8.

For Petitioners : Mr.Venkataraman
Senior counsel
For Mr.A.Joseph Dorairaj

For R1 : Mr.N.S.Suganthan
Government Advocate
(Criminal Side)

For R2 : No appearance



O R D E R

This Criminal Original Petition is filed by the accused to quash the criminal proceedings in Crime.No.143 of 2010 initiated pursuant to the complaint given by one Xavier Felix on 22.03.2010, alleging that the petitioners herein, who are the persons dealing with the affairs of the Company by name Allianza Project had placed an advertisement offering flats in the name of 'Orchid Springs' and had collected Rs.8,00,000/- from him on various dates from 13.12.2008 till March 2010, but has not commenced the project on the pretext that they are not obtained CMDA approval. When the defacto complainant demanded the repayment of Rs.8,00,000/-, they have refused to return the same and cheated him.

2. The said complaint was registered for the alleged offence under Section 420 r/w.34 of IPC. Similar complaints were received from 13 others and thereafter, on completion of investigation the respondent police has filed the final report before the XI Metropolitan Magistrate, Saidapet, Chennai, which was later transferred to the file of the Special Court for CCB and CBCID Cases, Egmore, Chennai and renumbered as C.C.No.3026 of 2017.

3. The short point canvassed by the learned senior counsel appearing for the petitioner is that after registration of the complaint on 22.03.2010, the petitioners 2 to 4 were arrested, taking note of the fact that the defacto complainant / Xavier Felix and few other persons, who have advanced the amount for the project were repaid and given receipt for the full satisfaction, bail was granted. This fact was also brought to the notice of the Investigating Officer immediately, without taking into consideration the subsequent events the final report filed and cognizance has been taken by the trial Court.

4. The learned Senior counsel for the petitioners submitted the documents, which indicates that out of 14 intended purchasers, the defacto complainant is shown as LW.1 in the final report. He had received a sum of Rs.8 lakhs with interest towards final settlement on 25.03.2010. The defacto complainant has given a letter to the Inspector of Police that he withdraw his complaint. Similarly, LWs.2 to 8, 10, 11, 13 and 14 also given withdrawal of their complaints before the respondent police much before filing of the final report which is dated 31.01.2012. Out of 14 intended purchasers, 11 had agreed to purchase the flats and sale deeds executed in their favour. LWs.9 and 12 have received money advanced by them and given receipt for full settlement and satisfaction. All these facts though brought to the notice of the Investigating Officer,



without any reference of the above documents final report has been filed. The entire complaint arising out of civil transaction viz., agreement for construction came to be filed due to the delay in obtaining CMDA sanction. Later, the intended purchasers have either purchased the flats on completion of construction or received back the money advanced.

5. In such circumstances, when there is no element to prosecute the petition for the alleged offence under Section 420 r/w.34 of IPC, the final report has been filed without taking note of the subsequent developments after the complaint. The final report dated 31.01.2012 and the documents relied by the prosecution would go to show that the statement of the prosecution witnesses were recorded during the month of March 2010 and there is no reference about the subsequent development, which has mitigated the gravity of the complaint and infact has nullified the very ingredient to attract Section 420 of IPC. The completion of the project though belatedly would go to show that when the petitioners received advance money, they never had any intention of cheating and their subsequent conduct also indicates that they have completed the project those who wants to continue with them and they have returned the money to those of whom were not interested in the project. These facts were not taken note by the Investigating Officer before filing the final report.

6. For the aforesaid reasons, the final report on the file of the Special Court for CCB and CBCID Cases, Egmore, Chennai, in C.C.No.3026 of 2017 is hereby quashed.

7. It is open to the respondent police to make further investigation taking note of the developments in this case and proceed in accordance with law.

8. In the result, the Criminal Original Petition is allowed. Consequently, the connected Criminal Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

rpl



To

1. The CCB and CBCID Metropolitan Magistrate,
Egmore, Chennai - 8.
2. The Inspector of Police,
Central Crime of Branch Team-1,
Entrustment Document Fraud Wing-1,
Chennai - 8.
3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.A.Joseph Dorairaj, Advocate, S.R.No.35277

CRL.O.P.NO.4944 OF 2019 AND
CRL.M.P.NO.2894 OF 2019

SV(CO)
PBS/23/06/2022