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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.02.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.NOS.5791 OF 2021 & 2512 OF 2022

&

CRL.MP.NOS.3753 OF 2021, 161 OF 2022,
1141 & 1143 OF 2022

CRL.O.P.NO.5791 OF 2021

1. R.Nagaraj

2. Srinath Balaji

... Petitioners

.Vs.

1. The State Rep. by
The Inspector of Police,
District Crime Branch,
Kanchipuram.

2. Akshay
[R2 suo motu added as per
order dated 25.03.2021]

... Respondents

PRAYER:-

Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code to set aside the impugned order passed in Crl.M.P.No.248 of 2021 in Crime No.18 of 2020 dated 04.03.2021 on the file of the Judicial Magistrate-I Kanchipuram and to extend the time to comply the conditional order passed in Crl.M.P.No.1345 of 2020 dated 03.11.2020.

For Petitioners : Mr.R.Sankarasubbu

For Respondents

R1 : Mr.E.Raj Thilak
Additional Public Prosecutor

R2 : Mr.R.Bhagawat Krishna



CRL.O.P.NO.2512 OF 2022

1. R.Nagaraj

2. Jeyanthi @ Mahalakshmi

3. Srinath Balaji

... Petitioners

.Vs.

1. The State Rep. by
The Inspector of Police,
District Crime Branch,
Kanchipuram District.
Crime No.18/2020

2. Akshay

... Respondents

PRAYER:-

Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code to call for the records relating to C.C.No.135 of 2021 on the file of the Judicial Magistrate-I, Kanchipuram District and quash the same as devoid of merits.

For Petitioners : Mr.R.Sankarasubbu

For Respondents

R1 : Mr.E.Raj Thilak
Additional Public Prosecutor

R2 : Mr.R.Bhagawat Krishna

COMMON ORDER

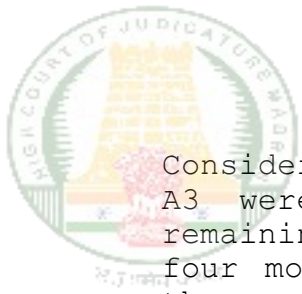
Crl.O.P.No.5791 of 2021 is filed by A1 and A3 to set aside the impugned order passed in Crl.M.P.No.248 of 2021 in Crime No.18 of 2020 dated 04.03.2021 on the file of the learned Judicial Magistrate-I, Kanchipuram.

2. Crl.O.P.No.2512 of 2022 is filed by A1 to A3 to call for the records relating to C.C.No.135 of 2021 on the file of the learned Judicial Magistrate No.1, Kanchipuram and quash the same.



3. The gist of the case is that the defacto complainant/second respondent and his father approached the first petitioner/A1 on coming to know about the sale of his land to the extent of 1 acre 74 cents comprised in S.Nos.264/7, 264/2A1, 265/1B, 265/1C, 265/2B1 and 274/1A in Thiruppukuzhi Village, Kanchipuram District. The purchase price was fixed at Rs.1,39,20,000/-. The defacto complainant and his father entered into an unregistered sale agreement on 13.03.2019, A1 and A2 signed the agreement and following the same, the defacto complainant and his father paid a sum of Rs.79,70,000/- by way of RTGS, Cheque and cash. The major portion of the amount was paid by way of RTGS through ICICI Bank and IDBI Bank and cheques of ICICI Bank. A2, who is the wife of A1 and mother of A3 received some amount in cash. After payment of the specified portion of the sale amount, whenever the defacto complainant called the petitioners to execute the sale deed, they were giving one reason or other and delayed the execution of sale deed. The defacto complainant got suspicion over the same, made an enquiry and found that the accused had already entered into an unregistered sale agreement with the brother of A1, namely, Kannan, on 21.04.2004 and on the same day, they received Rs.32 lakhs and thereafter, the sale deed was not executed. Hence, the said Kannan filed a civil suit in C.S.No.63 of 2010 before the District Sessions Court, Kanchipuram. The said Civil Suit was decreed in favour of the said Kannan by judgment dated 31.10.2014 to execute the sale deed along with expenses. Thereafter, the petitioners failed to comply with the order. In the meanwhile, A1 and A2 settled some property in favour of A3 on 29.10.2018 by Document Nos.1147/2018 and 1148/2018 at Sub Registrar Office, Damal. Suppressing these facts, they entered into a sale agreement with the defacto complainant, received huge sums of money and hence, complaint lodged and case was registered. A1 and A3 were arrested and later, let out on bail. A2 was granted anticipatory bail.

4. The contention of the petitioners in CrI.O.P.No.5791 of 2021 is that initially a case was registered under Section 420 r/w. 34 IPC, A1 and A3 were arrested on 19.10.2020. A1 and A3 filed a petition seeking bail in C.M.P.No.1345 of 2020 on the file of the learned Judicial Magistrate No.1, Kanchipuram, the defacto complainant as intervener filed a petition in C.M.P.No.1375 of 2020 in the bail application filed by A1 and A3. On considering the submissions of the accused and the defacto complainant, the learned Judicial Magistrate No.1, Kanchipuram by order dated 03.11.2020 granted bail to A1 and A2 on the submission of the petitioners/A1 and A3 that they are willing to settle a sum of Rs.79,70,000/- so far received from the defacto complainant. It was further submitted that even prior to the registration of FIR, a sum of Rs.4 lakhs paid and they were ready to deposit a sum of Rs.15 lakhs immediately.



Considering the same, bail was granted on condition that A1 and A3 were directed to pay Rs.15 lakhs and further pay the remaining amount to the defacto complainant within a period of four months, failing which, the bail would be cancelled. In the meanwhile, A2 filed a petition seeking anticipatory bail before the District and Sessions Court No.II, Kanchipuram in Crl.M.P.No.1628/2010, the defacto complainant filed intervening petition in C.M.P.No.1704/2020. The learned District and Sessions Judge granted anticipatory bail by directing A2 to deposit a sum of Rs.15 lakhs to the credit of Crime No.18/2020 and the same was complied with. The accused in this case had paid Rs.34 lakhs and since the petitioners/A1 and A3 were unable to pay the balance amount of Rs.45,70,000/- within a period of four months, they filed C.M.P.No.248 of 2021 before the learned Judicial Magistrate No.1, Kanchipuram on 01.02.2021 seeking extension of time for a period of four months. The said petition was dismissed by the learned Judicial Magistrate No.1, Kanchipuram for the reason that the accused had not taken any steps to serve notice on the other side. Aggrieved against the same, Crl.O.P.No.5791 of 2021 was filed.

5. This Court on 25.03.2021 considering the submissions made, directed the petitioners to deposit 50% out of Rs.45,75,000/- on or before 07.04.2021 and posted the case under the caption "for reporting compliance". Thereafter, C.M.P.No.3753 of 2021 was filed seeking stay of cancellation of bail petition in C.M.P.No.805 of 2021 moved by the prosecution in Crime No.18 of 2020. At that time, the petitioners submitted that some more payments were made, as on 02.12.2021, amount of Rs.56,87,000/- was paid and to pay the balance amount of Rs.22,83,000/-, sought some more time. On 28.01.2022, it was submitted that a sum of Rs.22,83,000/- now deposited by the petitioners before the Trial Court vide Demand Draft No.001617 dated 10.01.2022 drawn on Bandhan Bank, Kanchipuram Branch. The defacto complainant admitted the receipt of payment so far paid except for the deposited Demand Draft for Rs.22,83,000/- which is deposited before the learned Judicial Magistrate No.1, Kanchipuram and further submitted that already petition for handing over of Demand Draft filed before the learned Judicial Magistrate, so that it can be encashed and the amount can be settled. It is further submitted that now the entire amount received by the defacto complainant and the issue almost resolved settled between them.

6. The second respondent/defacto complainant filed an affidavit, wherein the receipt of payments made through cheques and Demand Drafts on various dates by the petitioners/accused were given, which are as follows:



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Sl.No.	Date	Payment Mode	Amount
01.	28.01.2020	Cheque No.000609 dt. 28.01.2020 ICICI Bank, S.N.Odai Branch	Rs. 2,00,000/-
02.	11.02.2020	Cheque No.000615 dt 11.02.2020 ICICI Bank, S.N.Odai Branch	Rs. 2,00,000/-
03.	04.11.2020	DD No.504191 dt 04.11.2020 ICICI Bank, Kancheepuram Branch [as per order passed in CMP.No.1345 and 1375 of 2020 on the file of JM-I, Kancheepuram]	Rs.15,00,000/-
4.	07.12.2020	DD No.504219 dt 05.12.2020 ICICI Bank, Kancheepuram Branch [as per order passed in CMP.No.1628 of 2020 on the file of District Sessions Judge, Kancheepuram]	Rs.15,00,000/-
05.	09.04.2021	DD No.00088 dt 03.04.2021 Bandhan Bank, Kancheepuram Branch [as per order passed by this Hon'ble Court on 25.03.2021]	Rs.15,00,000/-
06.	02.07.2021	DD No.504451 dt 02.07.2021 ICICI Bank, Kancheepuram Branch [as per order passed by this Hon'ble Court on 25.03.2021]	Rs. 2,50,000/-
07.	29.07.2021	DD No.504485 dt 28.07.2021 ICICI Bank, Kancheepuram Branch [as per order passed by this Hon'ble Court on 25.03.2021]	Rs. 2,00,000/-
08.	25.08.2021	DD No.504508 dt 24.08.2021 ICICI Bank, Kancheepuram Branch [as per order passed by this Hon'ble Court on 25.03.2021]	Rs. 3,40,000/-
09.	10.01.2022	Deposited before JM-1, Kancheepuram [as per order passed by this Hon'ble Court on 02.12.2021]	Rs.22,83,000/-



7. In view of the above, it is seen that now the entire amount repaid and the conditional order passed in C.M.P.No.1345 of 2020 complied with. Hence, the order passed in C.M.P.No.248 of 2021 is of no consequence and the same is hereby set aside. Accordingly, the learned Judicial Magistrate No.1, Kanchipuram is hereby directed to hand over the Demand Draft No.001617 dated 10.01.2022 drawn on Bandhan Bank, Kanchipuram Branch for a sum of Rs.22,83,000/-, to the defacto complainant/second respondent, if not already handed over.

8. With the above observations, CrI.O.P.No.5791 of 2021 stands allowed.

9. The petitioners/A1 to A3 in Crime No.18 of 2020 filed CrI.O.P.No.2512 of 2022 to quash C.C.No.135 of 2021 on the file of the learned Judicial Magistrate No.1, Kanchipuram.

10.As detailed above, it is seen that the entire amount of Rs.79,70,000/- now repaid, acknowledged by the second respondent/defacto complainant.

11.The first respondent /Inspector of Police, D.C.B., Kanchipuram District was aware or payments made periodically, who participated in all the proceedings before the learned Judicial Magistrate No.1, Kanchipuram, District and Sessions Court, Kanchipuram as well as before this Court and for the reason best known to him, in a overzealous manner completed the investigation on 20.12.2020, filed the charge sheet before the learned Judicial Magistrate No.1, Kanchipuram on 26.06.2021 which was taken on file on 26.07.2021 and C.C.No.135 of 2021 was assigned. After completion of the investigation on 20.12.2020, further development took place wherein the petitioner filed C.M.P.No.248 of 2021 on 29.01.2021 seeking extension of time for a further period of four months to repay the balance amount. After several hearings, finally on 04.03.2021 extension of time petition got dismissed. Thereafter, the petitioner approached this Court in CrI.O.P.No.5791 of 2021, in which on 25.03.2021, thereafter on 02.12.2021 and finally on 28.01.2022 orders were passed and following the same, payments were also made, which are recorded. In a haste, final report filed and now, taken on file. In view of the fact that the entire amount settled and the defacto complainant received the entire amount, the present petition was filed to quash the case.

12. The learned Additional Public Prosecutor submitted that on the complaint of the defacto complainant, a case was registered against A1 to A3, A1 and A3 were arrested and thereafter, bail was granted. A2 was granted anticipatory bail. Since the conditional order passed while granting bail was not complied with by the petitioners, a petition for cancellation of



bail was filed. In the meanwhile, investigation continued, statement of witnesses recorded, documents collected and final report was filed. In the charge sheet, L.W.1 to L.W.9 were listed and documents annexed. The Trial Court perused the final report, found prima facie offence made out and hence, taken cognizance of the case, C.C.No.135 of 2021 was assigned. The subsequent developments now put forth by the petitioners and the points raised are to be decided during trial and not in the quash petition. The defacto complainant admitted the receipt of the entire amount. He further submitted that initially FIR was registered only for offence of cheating, during investigation found out the forgery committed by the accused by creating settlement documents and thereby projecting that the property is without any encumbrance despite suffering a Court order against them by producing the Encumbrance Certificate and deceived the defacto complainant and received part of sale consideration of Rs.79,70,000/-. He further submitted that the payment of amount will not absolve the petitioners from their offences.

13. Considering the submissions made and on perusal of the materials, it is seen that all nine witnesses were examined. L.W.1 is the defacto complainant, L.W.2 is the father of the defacto complainant, L.W.3 is the Manager of L.W.2, who had taken part in the negotiation of sale, L.W.4 is the brother of A1, who states about the civil dispute between them, who obtained a judgment and decree in his favour. L.W.5 is the Manager of ICICI Bank, L.W.6 is the Manager of IDBI Bank, who state about the payments made through RTGS and cheques. L.W.7 and L.W.8 are the Women Police Constable and Head Constable attached to the respondent police, who are the witnesses for the arrest and confession. L.W.9 is the Investigating Officer. On going through the statement of witnesses and materials, it is seen that the complaint was for cheating a sum of Rs.79,70,000/-, which was repaid to the defacto complainant and the same was admitted. The witnesses L.W.1 to L.W.3 states that they running a Construction Company in the name and style of Ravi Homes and they were scouting for land for their projects, at that time A1 approached, who made false representations, entered into sale agreement parted with money and now the money returned back. With regard to the L.W.4, who is the brother of A1 still seems to have venom against his brother for family dispute and partition of the land and dispute over the same. L.W.5 and L.W.6 are the formal Bank witnesses who state about the bank transaction which are not denied. L.W.7 and L.W.8 are the Police Personnels, who state about the arrest and confession and from the confession, there was no recovery of material and facts. The confession is of no consequence. Though charge was made for forgery, there is nothing to show that any forgery of documents committed, the only grievance seems to be settlement deed made in favour of A3 by A1 and A2 which is a private



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document and the issue now largely resolved. The only apprehension of the defacto complainant is that his right for proceeding against the petitioners for other grievances and relief not to be impaired due to the quashing of the charge sheet.

14. In view of the above, this Court is of the opinion that the Criminal Court cannot be made as a hand tool for consequential relief and further, continuation of proceedings against the petitioner in C.C.No.135 of 2021 would amount to abuse of process of law. Hence, the proceedings against the petitioner in C.C.No.135 of 2021 pending on the file of the learned Judicial Magistrate No.1, Kanchipuram is hereby quashed giving liberty to the second respondent/defacto complainant to seek civil remedies if he has got any other grievances. The Criminal Original Petition is allowed accordingly.

15. In the result, both the Criminal Original Petitions stand allowed. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

cse

To

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

+1cc to Mr.R.Sankarasubbu, Advocate, S.R.No.7996
+1cc to Mr.R.Bhagawat Krishna, Advocate, S.R.No.7979

CRL.O.P.NOS.5791 OF 2021
& 2512 OF 2022

SPD(CO)
PBS/23/02/2022