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CrI.O.P.No.16397 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.11.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.O.P.No.16397 of 2018

Anjana Vasanthakumar,
W/o.Vasanthakumar,
Director,
M/s.Karthikeya Ancillaries Private Limited,
Door No.37, Race Course,
Coimbatore.

... Petitioner

Vs.

1.State Rep. by Inspector of Police,
District Crime Branch,
Coimbatore District.
(Crime No.14 of 2013).

2.P.Somasundaram

... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the C.C.No.827 of 2017 on the file of the learned Judicial Magistrate No.I, Coimbatore herein and quash the same.

For Petitioner : Mr.A.Nagarajan for Mr.A.Saranraj

For R1 : Mr.L.Baskaran,
Government Advocate (CrI. Side)

For R2 : Mr.Aravind Subramanian



CrI.O.P.No.16397 of 2018

WEB COPY

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.827 of 2017, on the file of the Judicial Magistrate Court No.I, Coimbatore.

2.During the pendency of this petition, the case in C.C.No.827 of 2017 has been transferred from the file of the Judicial Magistrate Court No.I, Coimbatore to the file of the Judicial Magistrate Court No.VI, Coimbatore and renumbered as C.C.No.513 of 2020.

3.The case of the prosecution is that there are totally three accused in C.C.No.513 of 2020. A1 is the Managing Director of M/s.Karthikeya Ancillaries Private Limited, Coimbatore, A2 and the petitioner/A3 are its Directors. A1 and A2 are husband and wife and the petitioner/A3 is the sister of A2. The 2nd respondent was doing real estate business. During the course of business, one Chandrasekar informed the 2nd respondent, forty acres of agriculture land available in single block with A1 and he wants to sell the same. The 2nd respondent being a real estate broker, for the purpose of developing the plot into layout, on 15.06.2011 approached



CrI.O.P.No.16397 of 2018

WEB COPY

A1 in his farm house at Perur Village, Coimbatore along with the said Chandrasekar. At that time, all the three accused were present. A1 informed that 33.35 acres of land devolved to him by way of settlement by his wife/A2 in S.F.No.52/2 and another piece of land to the extent of 8.14 acres of land is situated in the same village in S.F.No.56/2 stands in the name of M/s.Karthikeya Ancillaries Private Limited by virtue of Will executed by Neelaveni Ramasamy, the mother-in-law of A1. A1 further informed the 2nd respondent that by way of Board Resolution, A1 was given authority to deal with the property of M/s.Karthikeya Ancillaries Private Limited, which was acknowledged by A2 and the petitioner/A3. Believing the same, the 2nd respondent agreed to purchase the said lands by fixing Rs.39,00,000/- (Rupees thirty nine lakhs only) per acre. On 22.06.2011, A1 received a sum of Rs.1,00,00,000/- (Rupees one crore only) towards 33.35 acres of lands and remaining sum of Rs.10,00,000/- (Rupees ten lakhs only) towards the sale of 8.14 acres of land as advance. Later, the 2nd respondent came to know that prior to the above transaction, one of the Director of M/s.Karthikeya Ancillaries Private Limited Savithiri Vasanthkumar filed a Company Petition in C.P.No.93 of 2010 before the Company Law Board, Chennai and obtained stay



CrI.O.P.No.16397 of 2018

WEB COPY

order, dated 30.11.2010 restraining the company from creating any encumbrance to the said property. This fact was completely suppressed by all the accused before the above transaction.

4.Hence, the accused knowing very well about the status of the property belonged to the company, entered into an agreement and received the said huge amount of Rs.10,00,000/- (Rupees ten lakhs only) as advance towards 8.14 acres of lands. Initially, the complaint was lodged by the 2nd respondent on 01.07.2013 to the Inspector of Police, Perur Police Station, Coimbatore. Since no action taken, the 2nd respondent sent a representation to the Deputy Superintendent of Police, Perur on 17.07.2013, thereafter to, no action was taken. Hence, he filed a petition in C.M.P.No.3600 of 2013 before the Judicial Magistrate No.I, Coimbatore seeking direction to register an FIR on his complaint. The learned Judicial Magistrate No.I, Coimbatore forwarded the same under Section 156(3) Cr.P.C., to the 1st respondent Police, who registered a case in Crime No.14 of 2013, for offence under Sections 120-B and 420 of IPC.

5.Learned counsel for the petitioner/A3 submitted that initially, the



CrI.O.P.No.16397 of 2018

WEB COPY

FIR was registered against four persons viz., A1-M/s.Karthikeya Ancillaries Private Limited, A2-Katragadda Bhavani Shankar, A3-Aparna Katragadda and A4, the petitioner herein. On completion of investigation, charge sheet filed against three persons including the petitioner/A3, dropping M/s.Karthikeya Ancillaries Private Limited. Learned counsel further submitted that the petitioner being the sister of A2, she has been implicated in this case. The petitioner had nothing to do with the transaction between A1 and the 2nd respondent with regard to the company property of 8.14 acres of land. Admittedly, in this case, no document was seized from the petitioner during investigation. The alleged advance amount of Rs.10,00,000/- (Rupees ten lakhs only) is said to have been received by A1, for which, receipt was issued. In none of the negotiations or any agreement, the petitioner had taken part and made any false representation. The only allegation against the petitioner, as per the complaint and statement of LW1/2nd respondent and LW2, is that the petitioner was present along with her sister/A2, brother-in-law/A1 when the 2nd respondent met A1 in his farm house. A1 negotiated with the 2nd respondent and the petitioner and A2 acknowledged the representation made by A1. Other than that, there is no overtact against



CrI.O.P.No.16397 of 2018

WEB COPY

her. Learned counsel further submitted that the other witness/LW3 in this case is an employee of A1, his statement is in the nature of hearsay. On going through the entire complaint and the statement of witnesses examined by the prosecution, no case would be made against the petitioner. There is nothing even remotely infer to show that the petitioner had conspired with the alleged transaction between the prime accused/A1 and the 2nd respondent.

6.Learned counsel further submitted that admittedly, the petitioner never made any promise to the 2nd respondent and also she never received any amount from him. While this being so, the offence of conspiracy and cheating would not arise. He further submitted that initially, the 2nd respondent has filed petition under Section 156(3) Cr.P.C., on 19.07.2013 prior to civil suit in O.S.No.1330 of 2012 before the learned Additional District Munsif, Coimbatore seeking bare injunction filed. In the suit, the schedule B property is 8.14 acres of agriculture land of M/s.Karthikeya Ancillaries Private Limited. In the suit, the 2nd respondent never pleaded against the petitioner and she was



CrI.O.P.No.16397 of 2018

WEB COPY

added on the capacity of the director of the company. Though the suit has been filed as early as on 17.07.2012 prior to lodging of the complaint, the dispute in civil suit is the genesis of this case. He further submitted that in the suit, in paragraph No.9, the 2nd respondent mentioned about the pendency of the Company Petition in C.P.No.93 of 2010 before the Company Law Board, Chennai from 30.11.2010. The 2nd respondent, a realtor, is now making allegation with certain vital aspects suppressed in respect of filing of company petition. He further submitted that the suit in O.S.No.1330 of 2012 was dismissed on 11.01.2018 by the learned Additional District Munsif, Coimbatore. A1 in this case filed a suit in O.S.No.588 of 2012 against the 2nd respondent before the learned V Additional District Judge, Coimbatore for cancellation of sale deed, dated 09.07.2012. The learned V Additional District Judge, decreed the suit in favour of A1, vide judgment, dated 17.04.2017 directing the 2nd respondent to pay a sum of Rs.4,76,79,500/- with interest at the rate of 12% to A1 with regard to schedule A and B property, which pertains to 33.35 acres of agriculture land in the name of A1. Though the transaction pertaining to M/s.Karthikeya Ancillaries Private Limited is not mentioned in the suit, the 2nd respondent's



Crl.O.P.No.16397 of 2018

WEB COPY

character, motive, attitude, his conduct and creation of forged documents and using the forged one as genuine making claim, have been discussed and finding rendered against him by the learned V Additional District Judge, Coimbatore. As regards M/s.Karthikeya Ancillaries Private Limited property (8.14 acres of land) is concerned, admittedly, it is only between A1 and the 2nd respondent and only Rs.10,00,000/- has been paid to A1 as advance.

7.Learned counsel further submitted that the 2nd respondent, in the suit filed by him in O.S.No.1330 of 2012, not whispered anything against the petitioner despite she is shown as defendant. The suit in O.S.No.1330 of 2012 was dismissed on 11.01.2018 by the learned III Additional District Munisf, Coimbatore, against which no appeal filed till date. In the meanwhile, the 2nd respondent lodged the complaint with the Inspector of Police, Perur Police Station, projecting no action taken, sent representation to the Deputy Superintendent of Police, Perur, again no action taken and thereafter, he filed a petition under Section 156(3) Cr.P.C., in Crl.M.P.No.3600 of 2013 before the learned Judicial Magistrate No.I, Coimbatore and thereafter, getting FIR registered in



CrI.O.P.No.16397 of 2018

Crime No.14 of 2013 by the 1st respondent Police in the year 2013, thereafter, put FIR in cold storage. After the judgment rendered in O.S.No.588 of 2012 on 17.04.2017, in a haste manner, the investigation, which was kept pending for four years gained momentum, investigation completed and charge sheet filed on 31.10.2017. Thus, the 2nd respondent used the criminal case to his convenience as an arm-twisting method, extorting pressure to somehow curb the property of M/s.Karthikeya Ancillaries Private Limited and also A1. Hence, he prayed for quashing the proceedings against the petitioner.

8.Learned counsel for the 2nd respondent filed counter and made his submissions that the petitioner and other accused influenced the jurisdictional Police, due to which, despite cognizable offence disclosed in the complaint, no action taken. Thereafter, complaint was made to the Deputy Superintendent of Police, Perur, which was also not acted upon. Having no other option, the 2nd respondent approached the learned Judicial Magistrate No.I, Coimbatore by filing a petition under Section 156(3) Cr.P.C., in C.M.P.No.3600 of 2013. On the direction of the



CrI.O.P.No.16397 of 2018

WEB COPY

learned Magistrate, the FIR registered against the accused in Crime No.14 of 2013, for offence under Sections 120(B) and 420 of IPC. The case is that the 2nd respondent doing real estate business for the past twenty years and he was informed that A1 wants to sell the property comprising 33.35 acres of land at Perur Village, Coimbatore and he intends to sell 8.14 acres of land in the name of M/s.Karthikeya Ancillaries Private Limited. Since the 2nd respondent scouting for forty acres of land in single block to develop layout and township, the 2nd respondent approached A1 on 15.06.2011 in his farm house. At that time, all the accused A1 to A3 were present. A1 claimed that forty acres of land in single block can be sold to 2nd respondent, for which, he received advance amount for both the lands and also entered into agreement to that effect, issued receipt for payment. Thereafter, on negotiation, the agreement was modified and the amounts paid periodically through bank and in cash. A1 claimed that 8.14 acres of company property is without encumbrance and he is authorized by the Board of Directors to execute sale deed on behalf of the company, which was affirmed by the other accused including the petitioner, who were



CrI.O.P.No.16397 of 2018

present in the farm house of A1. In fact, one of the Director Savithri Vasanthakumar filed Company Petition in C.P.No.93 of 2010 before the Company Law Board, Chennai and obtained order of injunction not to create any encumbrance to the company property. Had the details of company petitioner is disclosed earlier, the 2nd respondent would not have ventured into property, not only for 8.14 acres of company property, also for 33.35 acres of land of A1. Due to the false representation and wrong projection, the 2nd respondent was cheated and made to suffer huge financial loss. Added to it, the accused hired muscle men to chase away the 2nd respondent from the property when he attempted to develop the property as plots, which forced the 2nd respondent to file suit in O.S.No.1330 of 2012 before the learned III Additional District Munsif, Coimbatore seeking bare injunction. As a counterblast, A1 filed civil suit against the 2nd respondent in O.S.No.588 of 2012 before the learned V Additional District Judge, Coimbatore. After protracting the proceedings, finally the judgment was passed in the year 2017, against which, the 2nd respondent filed an appeal. The civil suit in O.S.No.588 of 2012 has nothing to do with the company property of M/s.Karthikeya Ancillaries Private Limited. The petitioner citing the same in her



CrI.O.P.No.16397 of 2018

defence, is not proper and acceptable.

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9.He further submitted that during negotiation, 33.35 acres of land in the name of A1 was shown as A schedule property and 8.14 acres of land in the name of M/s.Karthikeya Ancillaries Private Limited were shown as B schedule property. Initially, A1 received the amount of Rs.1,10,000,00/- (Rupees one crore and ten lakhs only) as token advance from the 2nd respondent and issued two separate receipts for both the scheduled properties as Director of M/s.Karthikeya Ancillaries Private Limited. The accused informed that they had issued the receipts as per the Board Resolution of the company only. On 09.07.2012, the sale deed was executed in respect of A schedule property, at that time, it was informed that the Board Resolution for the B schedule company property is yet to be passed. A1 to A3 assured that anti-dated Board Resolution will be prepared. A1 to A3 received the token advance of Rs.10,00,000/- on 22.06.2011 in respect of B schedule company property suppressing the Board Resolution facts. He further submitted that as regards that A schedule property, the accused received two cheques from the 2nd respondent for sum of Rs.1,71,53,500/-, vide cheque Nos.657763 and



CrI.O.P.No.16397 of 2018

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657764. At the time of receiving the cash in respect of A schedule property, the accused promised that soon the Board Resolution would be passed for B schedule company property.

10.Learned counsel further submitted that at the time negotiation, the pendency of the company petition in C.P.No.93 of 2010 before the Company Law Board, Chennai and obtaining restraining order by one of the Director of M/s.Karthikeya Ancillaries Private Limited was suppressed. After ful-fledged trial in O.S.No.588 of 2012, the learned V Additional District Judge, Coimbatore, on the evidence and materials, had given a finding that A1 in this case is not entitled for relief for declaration and recovery of possession in respect of the A schedule property, on the alternate, A1 is entitled for recovery of unpaid purchase money of Rs.4,76,79,500/- with interest, which is now challenged by the 2nd respondent. He further submitted that the petitioner and other accused have deliberately failed to execute the sale agreement with regard to B schedule property despite receipt of the advance amount of Rs.10,00,000/-. Added to it, the Board has not authorized the accused to deal with M/s.Karthikeya Ancillaries Private Limited. Suppressing all



Crl.O.P.No.16397 of 2018

these facts, the accused received the advance amount from the 2nd respondent and promised to execute sale deed, which amounts to the offence of deception and cheating.

11.He further submitted that making false representation is one of the ingredients for offence of cheating under Section 420 of IPC, which is held by the Hon'ble Apex Court in the case of “**Devender Kumar Singla Versus Baldev Krishnan Singla reported in (2005) 9 SCC 15**” and in the case of “**Bashirbhai Mahamedbhai Versus State of Bombay reported in 1960 Crl.LJ 1383**”. Further, dishonestly inducing any property by any person and converting for security to its own use, would amount to offence of cheating as held by the Hon'ble Apex Court in the case of “**Md.Ibrahim Versus State of Bihar reported in (2009) 8 SCC 751**”. in this case, the petitioner having conspiracy with the other accused, received the sum of Rs.10,00,000/- for B schedule company property and thereby, cheated the 2nd respondent. To prove the charge of conspiracy, it would be difficult to establish by direct evidence. In this case, all the accused closely related and there is meeting of minds



Crl.O.P.No.16397 of 2018

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between them. Despite the petitioner aware of these facts and status of the property, made false representation in conspiracy with the other accused and committed the offence of cheating and breach of trust. He further submitted that on the disputed facts, quash petition cannot be entertained and it would be appropriate that the same to be decided during trial. Hence, he prayed for dismissal of this petition.

12.The learned Government Advocate (Crl. Side) appearing for the 1st respondent submitted that in this case, as per direction of the learned Judicial Magistrate No.I, under Section 156(3) Cr.P.C., the 1st respondent Police registered the FIR against four persons, after completion of investigation, charge sheet filed against three persons. The crux of the case is that in this case, the 2nd respondent entered into an agreement with A1 for sale of 33.35 acres of land in Perur Village, Coimbatore and 8.14 acres of adjacent land in the same place belongs to M/s.Karthikeya Ancillaries Private Limited, in which, A1 was the Managing Director. The 2nd respondent, who is in the real estate business for the past twenty years and had experience in developing the



CrI.O.P.No.16397 of 2018

layouts, was searching for single block land of forty acres. At that time, the 2nd respondent was informed that A1 intended to sell the above said lands situated at Perur Village, Coimbatore. Hence, he approached A1 and negotiated for purchase of the said lands and to develop the same as layout. Finally, on 15.06.2011, the 2nd respondent went to the farm house of A1, where A2 and A3/petitioner were sitting together, at that time, A1 claimed that he has got forty acres of land in single block without any encumbrance, of which 33.35 acres of land settled by his wife and 8.14 acres of land belongs to M/s.Karthikeya Ancillaries Private Limited, in which, A1 is the Managing Director. A2 and A3, who were the present along with A1, affirmed the same. Believing their representation, the 2nd respondent entered into agreement with A1 for both the properties as schedule A and B and paid the advance amount. During the transaction, there was some modification, which lead to filing of civil suit in O.S.No.588 of 2012 in respect of A schedule property. Now, the issue is with regard to the B schedule property, which is a subject matter in company petition in C.P.No.93 of 2010 filed by one of the Director Savithiri Vasanthkumar of M/s.Karthikeya Ancillaries Private Limited, who obtained order of injunction not to create any encumbrance over the



CrI.O.P.No.16397 of 2018

company property. Suppressing the same, the accused projected that the company property is without any encumbrance and he was authorized by the Board to alienate the company property and thereby, cheated the 2nd respondent to pay the advance amount of Rs.10,00,000/- and issued receipts.

13.It is further submitted that whenever the 2nd respondent asked for the Board Resolution and execution of sale deed in respect of company property, the accused conveniently avoiding the same by citing one reason or other. Thus, the accused successfully evaded execution of sale deed in respect of company property and thereafter, created some legal embargo. Taking advantage of the same, the accused employed muscle men and attempted to chase away the 2nd respondent, who resisted the same and lodged the above complaint. On the complaint, the FIR was registered, statement of the witnesses recorded, documents collected and charge sheet filed. Immediately, after filing of charge sheet, the accused approached this Court, by way of quash petition. Hence, he prayed for dismissal of the same.



Crl.O.P.No.16397 of 2018

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14.This Court considered the rival submissions and perused the materials available on record.

15.A1 and the 2nd respondent entered into sale agreement with regard to the property of 33.35 acres of land in Perur Village. The 2nd respondent is a realtor, who was scouting for forty acres of land in single block for developing the same into layouts and township. At that time, he was informed that A1 was holding such vast track of land and he intended to sell the same. The 2nd respondent approached A1 for negotiation in his farm house on 15.06.2011, at that time, the other accused A2 and the petitioner/A3 herein were present. A1 claimed that 33.35 acres of land belongs to him in his individual, which was come to him by way of settlement through his wife and 8.14 acres of land belongs to M/s.Karthikeya Ancillaries Private Limited, which is the adjacent land, which is also for sale. A2 and A3, who were present with A1, affirmed the claim of A1 with regard to 8.14 acres of company land as though it was without any encumbrance. Believing the representation of A1, the 2nd respondent entered into the sale agreement with regard to 33.35 acres of land and received the advance. As regards the company



CrI.O.P.No.16397 of 2018

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property, he paid Rs.10,00,000/- and receipt was issued by the accused to that effect. The sale agreement consists of schedule A and B property. As regards, schedule A property, there have been some modification in the sale agreement and later, some dispute arouse, which leads to legal embargo of filing of suit in O.S.No.588 of 2012 by A1. Thereafter, A1 deployed the muscle men, obstructed the 2nd respondent from entering into the property. Hence, the 2nd respondent filed O.S.No.1330 of 2012 before the learned III Additional District Munsif, Coimbatore and obtained the order of injunction.

16.A1 filed the civil suit in O.S.No.588 of 2012 before the learned V Additional District Judge, Coimbatore seeking for delivery of vacant possession and recovery of money and cancellation of sale deed, dated 09.07.2012. The learned V Additional District Judge, Coimbatore, rendered judgment in favour of A1 declaring that A1 is entitled for recovery of unpaid purchase money of Rs.4,76,79,500/- with interest in respect of A schedule property alone. The injunction suit in O.S.No.1330 of 2012 filed by the 2nd respondent is with regard to both A and B schedule property. In the suit in O.S.No.1330 of 2012, there is no



CrI.O.P.No.16397 of 2018

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avermment or any reference made against the petitioner as now projected in the criminal case. Added to it, it is seen that the only averment against the petitioner is that she was present along with A1, when A1 made claim about the status of company property. The negotiation in sale of the property was between A1 and the 2nd respondent.

17. Admittedly, the petitioner not made any false representation or received any cash from the 2nd respondent at any point of time. The only allegation is that she was present with her sister/A2 and brother-in-law/A1 when the 2nd respondent met her brother-in-law/A1 and made negotiation for sale of property. The petitioner made as accused on the strength that she is one of the Director of M/s.Karthikeya Ancillaries Private Limited. Admittedly, in this case, M/s.Karthikeya Ancillaries Private Limited not made as accused. In the absence of statutory vicarious liability and specific overtact and alter ego, making the petitioner as accused is improper. Hence, the petitioner cannot be prosecuted.

18. The admitted case is that the petitioner not received any amount



CrI.O.P.No.16397 of 2018

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from the 2nd respondent at any point of time and the negotiation were between A1 and the 2nd respondent. The petitioner cannot be fasten with any criminality just for the reason that she was present along with her sister/A2 and brother-in-law/A1 and that to only on one occasion.

19.In view of the above discussion, this Court comes to the conclusion that the complaint itself is an abuse of process of Court and no useful purpose will be served by making the petitioner to undergo the ordeal of facing a trial below the trial Court.

20.In the result, the proceedings in C.C.No.513 of 2020, on the file of the Judicial Magistrate Court No.VI, Coimbatore is quashed as against the petitioner/A3 alone. This Criminal Original Petition is, accordingly, allowed.

16.11.2022

Index: Yes/No
Internet: Yes/No
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M.NIRMAL KUMAR, J.



Crl.O.P.No.16397 of 2018

vv2

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To

- 1.The Judicial Magistrate Court No.VI,
Coimbatore.
- 2.The Inspector of Police,
District Crime Branch,
Coimbatore District.
- 3.The Public Prosecutor,
High Court, Madras.

Crl.O.P.No.16397 of 2018

16.11.2022