IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :01.11.2022

Pronounced on :08.11.2022

Coram:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Crl.O.P.No.15879 of 2019
and
Crl.M.P.No.7924 of 2019

Laavanya P.Bobby .. Petitioner/Accused No.4

/versus/

1.State Rep.by
Inspector of Police,
Central Crime Branch,
Forgery Wing, Team V,
Chennai. .. Respondent/Complainant

2.T.Kumar .. Respondent/Defacto Complainant

Prayer: Criminal Original Petition has been filed under Section 482 of Cr.P.C., to call for the records in FIR No.141 of 2019 on the file of the 1st respondent and quash the same.

For Petitioners :Mr.R.Rajarathinam for
Mr.A.M.Venkatakrishnan

For Respondents :Mr.N.S.Suganthan,
Government Advocate (Crl.Side)for R1

Mr.C.Iyyaparaj for
Mr.K.G.Senthil Kumar for R2

ORDER

The petitioner herein is shown as 4th accused in the complaint registered in Crime No.141/2019 on the file of the first respondent for alleged offences under Sections 420,465,467,468,471 and 120B IPC.

2. As per the First Information Report, the defacto complainant T.Kumar, S/o Thiyagarajan and his brother T.Jayakumar got the property bearing Flat No:F-2, Shri Sarojan Apartments, Rajaji Nagar Main Road, Thiruvanmaiyur, Chennai, by way of a settlement deed dated 21/06/2012 executed by their father. The petitioner (A-4) and her husband (A-3), through a broker by name, Chinnapparaj @ Annachi (A-5), approached the

defacto complainant and his brother to purchase the said flat for a consideration of Rs.1,05,00,000/- (Rupees One crore and five lakhs only). They promised to arrange finance from M/s Lodha Finance Limited and for that purpose, they requested to execute a sale agreement for Rs.63 laksh with M/s Lodha Finance and promised to pay the sale consideration within 3 months. Believing their words, they executed a document captioned 'sale agreement with delivery of possession' as security in favour of one Rameshkumar (A-2) and a general power of attorney in favour of Rajesh (A-1) the brother of Ramesh Kumar, Managing Partner of M/s Lodha Estates. In these two documents, Mr.Prabukumar, the husband of the petitioner and Chinnapparaj are signatories as witnesses. Thereafter, from M/s Lodha Finance, the complainant and his brother received Rs.25 lakhs each through RTGS and Rs.1 lakh each through cheque. From that amount, A-3 and A-4 got back Rs.35 lakhs through RTGS and by cash. Thereafter without paying the balance sale consideration, the sale agreement and power of attorney deed executed for the security purpose were misused and fraudulently the sale deed was registered on 11/5/2016, by forging the life certificate of the defacto complainant and his brother. When this fraud came to their knowledge, the complaint lodged on 15/04/2019.

3. According to the petitioner, she is not connected with the sale deed dated 11/05/2016 alleged to have been registered based on the forged life certificate. She is neither party to the said sale deed. It is true that she and her husband approached the defacto complainant for purchase of the flat owned by the defacto complainant and his brother. She entered into an unregistered Memorandum of Agreement with them on 03/09/2014 to purchase the flat for a consideration of Rs.1,05,00,000/-. A sum of Rs.52 lakhs was given to the defacto complainant and his brother availing loan from M/s Lodha Housing Development Limited with specific understanding that the loan amount to be repaid with interest by the petitioner and on discharge of the loan, the registered sale agreement and power of attorney has to be cancelled. As per the Memorandum of

Understanding, three post-dated cheques were given to the defacto complainant and his brother. However, due to financial constraint she and her husband were not able to fulfil the terms of Memorandum of Understanding. The vendors (defacto complaiant and his brother) also not presented the post-dated cheques for collection on the date of the respective cheques knowing well that those cheques were not given for any legally enforceable debt. The defacto complainant remitted Rs.15 lakhs and Rs.5 lakhs on 05/09/2014 and 11/09/2014 respectively to her in connection with some other financial transaction with her and her husband. She did not receive any money from A-1 or A-2. As far the sale deed executed and registered in favour of the first respondent by the second respondent as power of attorney of the defacto complainant and his brother, neither she nor her husband have any role. They never conspired with A-1 and A-2 to get the alleged fraudulent sale deed registered. The said forged life certificate of the principals (defacto complainant and his brother) is attested by a Group A Officer. The complaint given belatedly, after four years from the date of Memorandum of Understanding entered on 02/09/2014 between the petitioner and the defacto complainant and after receiving the notice dated 11/02/2015 from A-1 for specific performance of the sale agreement with possession.

4. The Learned Senior Counsel for the petitioner submitted that, being a dispute arising out of contract and when the Memorandum of Understanding provides for arbitration, the criminal complaint is given belatedly, without resorting to the Civil Court or arbitration. The defacto complainant did not even present the cheques given towards sale consideration. They having knowingly entered into sale agreement and got it registered in favour of M/s Lodha Estates and giving power of attorney in favour of the second accused, there is nothing to link this petitioner or her husband in respect of the sale deed registered in favour of A-1.

5. Per contra, the learned counsel for the second respondent/defacto complainant submitted that the registered documents namely, Sale agreement and the power of attorney dated 02/09/2014 along with the unregistered documents dated 03/09/2014 if read together, the link between the petitioner, her husband and the other accused A-1 and A-2 will be clearly found. The sale agreement in favour of A-1 and Power of attorney in favour of A-2 were executed only on the promise made by this petitioner and her husband. In the recital of Memorandum of Understanding, it is clearly stated that the property is valued at Rs.1.05 crores and for which loan will be availed from M/s Lodha Housing Development Private Ltd by executing necessary documents with M/s Lodha Finance for security purpose. The purchaser (petitioner herein) will pay first instalment of Rs.30 lakhs at the time of availing loan, the second and third instalments of Rs.30 lakhs each within 30 days and 60 days from the date of availing the loan. To ensure the said payment, the post-dated cheques drawn from PNB, Adyar dated 03/10/2014 and 03/11/2014 handed over to the seller

(defacto complainant and his brother). 60 days and given to the defacto complainant. She has given an undertaking that the loan will be discharged by her and she will arrange for the cancellation of the documents (sale agreement and power of attorney). Contrary to the promise, the power of attorney deed misused by producing forged life certificate and sale deed got registered fraudulently.

6. From reading of the recitals in the documents namely, (i) Sale agreement with possession between the defacto complainant, his brother and Mr.G.Rameshkumar (A-1) of M/s Lodha Estates, (ii) General Power of Attorney between the defacto complainant, his brother and Rajesh (brother of Ramesh Kumar), (iii) the MoU entered between the defacto complainant, his brother and the petitioner; (iv)the undertaking affidavit of the petitioner; and the notice sent by M/s Lodha Estates for specific performance besides the opinion of the expert that the life certificate produced at the time of registering the sale deed executed by A-2 as power agent of the defacto

complainant T.Kumar and his brother T.Jayakumar all cumulatively provides enough *prima facie* material to conclude that this is not a dispute purely civil in nature given criminal colour.

7. On applying the parameters laid by the Hon'ble Supreme Court in *State of Haryana and others v. Bajan Lal and others reported in 1992 Supp (1) SCC 335*, the facts placed before this Court indicates this is not a fit case to quash the complaint in FIR No.141/2019. Hence, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petition is closed.

08.11.2022

Index:yes/no
speaking order/non speaking order
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To :
1.The Inspector of Police,Central Crime Branch,
Forgery Wing, Team V, Chennai.
2.The Public Prosecutor, High Court, Madras.

DR.G.JAYACHANDRAN,J.

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Delivery order made in
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