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Crl.O.P.No.18007 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 15.07.2022

Delivered On : 25.11.2022

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl.O.P.No.18007 of 2021

and

Crl.M.P.Nos.9913 & 9914 of 2021

1. A.Mallika
2. G.Elangovan .. Petitioners/Accused 4 & 5

Vs.

1. The Sub Inspector of Police,
CCB, Egmore,
Chennai – 600 008.
Crime No.525/2009 .. 1st Respondent/Complainant
2. Mr.C.Sabesan (Died on 03.08.2010)
S/o. Dr.M.Chidambaram
Now represented by his son
Dr Parameswaran Sabesan .. 2nd Respondent/List Witness-1

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C.,
to call for the records in C.C.No.3758 of 2021 on the file of the learned



Crl.O.P.No.18007 of 2021

Metropolitan Magistrate, CCB & CBCID Special Court, Egmore,
Chennai – 600 008 and quash the above case against the Petitioners.

For Petitioners : Mr.G.Ravi Kumar

For Respondents : Mr.L.Baskaran
Government Advocate (Crl. Side) for R1

Mr.B.Harikrishnan for R2

ORDER

This Petition has been filed to quash the case in C.C.No.3758 of 2021 on the file of the learned Metropolitan Magistrate, CCB & CBCID Special Court, Egmore, Chennai.

2. The Learned Counsel for the Petitioners submitted his arguments. As per his submission, the origin of the case is with regard to the sale agreement entered into with legal heirs of one Padmavathy. The origin of the property is with one C.Sabesan. The said C.Sabesan had part with a sum of Rs.97,00,000/- with the legal heirs of Padmavathy for a sale agreement of 2 grounds and 1650 sq.ft. lands. The persons, who are arrayed as Accused 1 & 2 were staying in the same house.



CrI.O.P.No.18007 of 2021

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Subsequently, the said C.Sabesan entered into supplementary agreement thereby he agreed to pay Rs.2.15 Crores. The Accused Nos.1 & 2 were the parties to the supplementary agreement with the said C.Sabesan, the Accused 3 to 5 were kept in the dark about the supplementary agreement. Necessity arose due to the mortgage of the property with the Indian Bank, for which, the Indian Bank had proceeded with before the Debt Recovery Tribunal-II, Chennai.

2.1. In the meanwhile, the said C.Sabesan had not paid the balance of the sale consideration within the stipulated time. Therefore, the Accused Nos.1 & 2 arrayed in this case had proceeded with the sale with T.Ganapathy to register the same for a sum of Rs.1.85 Crores. The said T.Ganapathy had deposited the amount towards the mortgage with the Indian Bank and the balance of Rs.5,00,000/- was disbursed to the five of legal heirs of Padmavathy.

2.2. In the meanwhile, the said C.Sabesan died on 03.08.2010. The legal heirs of Padmavathy filed a suit in C.S.No.933 of 2010 before the Original Side of this High Court. Also the legal heirs of C.Sabesan



Crl.O.P.No.18007 of 2021

filed a suit for recovery of the sale agreement advance amount from the persons, who are arrayed herein as Accused.

2.3. This Court on the Original Side had taken up the suit in C.S.No.933 of 2009 and another C.S.No.1027 of 2010 for disposal and by a common judgment, dated 18.01.2016, disposed of the same.

2.4. The Learned Counsel for the Petitioners/Accused Nos.4 & 5 invited the attention of this Court to Para Nos.7 & 8 of the Judgment wherein, it is specifically answered by the Learned Single Judge that the said C.Sabesan failed to perform his part of the contract. The issue therein was answered against C.Sabesan and the legal heirs of C.Sabesan. Anyhow, in the final part of the Judgment, the Learned Single Judge directed the legal heirs of Padmavathy to refund amount of Rs.98,00,000/- to the legal heirs of C.Sabesan.

2.5. It is pertinent to note that in the final report of the investigation, the Investigation Officer had enclosed a copy of the said Judgment which itself is against the guidelines issued in the reported



Crl.O.P.No.18007 of 2021

WEB COPY

ruling of the Hon'ble Supreme Court in *State of Haryana and Ors. Vs. Ch.Bhajan Lal and Ors*, reported in *1992 Supp (1) SCC 335: 1992 SCC (Cri) 426*, that a civil dispute cannot be converted into a Criminal case. The Investigation Officer had annexed the said Civil Court's Judgment along with the final report. Further, the Learned Counsel for the Petitioners invited the attention of this Court to the conduct of the Learned Metropolitan Magistrate in not having considered the materials filed by the Investigation Officer before the Court concerned. He had mechanically without applying judicial mind had taken cognizance of the case for the offences under Sections 420 r/w 34 of IPC and issued summons to the Accused. Therefore, the Learned Counsel for the Petitioners seek to quash the final report which was taken cognizance and numbered as C.C.No.3758 of 2021.

2.6. The Learned Counsel for the Petitioners also relied on the following Judgments:-

1. *Satishchandra Ratanlal Shah Vs. State of Gujarat and another*, reported in *(2019) 9 SCC 148*.



Crl.O.P.No.18007 of 2021

WEB COPY

“11..... A mere breach of a promise, agreement or contract does not, ipso facto, constitute the offence of the criminal breach of trust contained in Section 405 IPC without there being a clear case of entrustment.

13. Now coming to the charge under Section 415 punishable under Section 420 IPC. In the context of contracts, the distinction between mere breach of contract and cheating would depend upon the fraudulent inducement and mens rea. (See Hridaya Ranjan Prasad Verma v. State of Bihar [Hridaya Ranjan Prasad Verma v. State of Bihar, (2000) 4 SCC 168 : 2000 SCC (Cri) 786] .) In the case before us, admittedly the appellant was trapped in economic crisis and therefore, he had approached Respondent 2 to ameliorate the situation of crisis. Further, in order to recover the aforesaid amount, Respondent 2 had instituted a summary civil suit seeking recovery of the loan amount which is still pending adjudication. The mere inability of the appellant to return the loan amount cannot give rise to a criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, as it is this mens rea which is the crux of the offence. Even if all the facts in the complaint and material are taken on their face value, no such dishonest representation or inducement could be found or inferred.

14. Moreover, this Court in a number of cases has usually cautioned against criminalising civil disputes, such as breach of contractual obligations (refer to Gian Singh v. State



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Crl.O.P.No.18007 of 2021

of Punjab [Gian Singh v. State of Punjab, (2012) 10 SCC 303 : (2012) 4 SCC (Civ) 1188 : (2013) 1 SCC (Cri) 160 : (2012) 2 SCC (L&S) 988]). The legislature intended to criminalise only those breaches which are accompanied by fraudulent, dishonest or deceptive inducements, which resulted in involuntary and inefficient transfers, under Section 415 IPC.”



Crl.O.P.No.18007 of 2021

2. **Mitesh Kumar Vs. State of Karnataka and others** reported in 2021

SCC Online SC 976

“38. The dispute between the parties, could at best be termed as one involving a mere breach of contract. Now, whether and what, is the difference between a mere breach of contract and an offence of cheating has been discussed in the ensuing paragraphs. Whether sale of excess flats even if made amounts to a mere breach of contract?”

39. This Court in the case of Hridaya Ranjan Prasad Verma v. State of Bihar , has observed:— “15.that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time to inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise...”

40. Applying this dictum to the instant factual matrix where the key ingredient of having a dishonest or fraudulent intent under sections 405, 419 and 420 is not made out, the case at



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Crl.O.P.No.18007 of 2021

hand, in our considered opinion is a suitable case necessitating intervention of this Court. Whether the dispute is one of entirely civil nature and therefore liable to be quashed?

41. Having considered the relevant arguments of the parties and decisions of this court we are of the considered view that existence of dishonest or fraudulent intention has not been made out against the Appellants. Though the instant dispute certainly involves determination of issues which are of civil nature, pursuant to which Respondent No. 2 has even instituted multiple civil suits, one can by no means stretch the dispute to an extent, so as to impart it a criminal colour. As has been rightly emphasised upon by this court, by way of an observation rendered in the case of Indian Oil Corporation v. NEPC India Ltd. , as under:— “14. While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law.”

42. It was also observed:— “13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect



Crl.O.P.No.18007 of 2021

the interests of lenders/creditors....There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure though criminal prosecution should be deprecated and discouraged.”

3. *B.Vijay Kumar Reddy Vs. State of Telangana, Rep PP 4 others, in CRLP.No.3821 of 2015 dated 04.02.2022.*

3. The learned Counsel for the second Respondent submitted that as per the sale agreement dated 03.10.2007 and 06.10.2007 entered between the Accused 1 to 5 in this case and the late Sabesan. It was for Rs.5 Crores for a period of 6 months. On the date of execution of sale agreement, the late Sabesan had entered part with Rs.97,00,000/-. Subsequently, the late Sabesan had entered into with sole party by parting Rs.20,00,000/- On 02.12.2008, the sale agreement for a period of one year and further it was extended to six months. Whereas the Accused in this case had executed sale deed in favour of Ganapathy on 28.05.2009 which is in violation of the agreement for the sale. Also, it is to be noted that the property that was agreed to be sold to late Sabesan for



Crl.O.P.No.18007 of 2021

WEB COPY

Rs.5,00,00,000/- whereas the sale executed in favour of Ganesan was for a sum of Rs.1,85,00,000/- paid towards Bank. Rs.5,00,00,000/- was disputed by five Accused, the legal heirs of late Padmavathy. Therefore, the conduct of the Accused speaks volume regarding the criminal culpability of cheat of the Accused is made out. The conduct of the Petitioner and other Accused in keeping the late Sabesan in the dark and entering in executing the sale deed amounts to cheating the late Sabesan which he had parted with the help of the Petitioner and other Accused while executing sale deed. Also, late Sabesan had entered into the sale agreement with the help of the Petitioner and other Accused to prevent the property to be sold in the public auction. Therefore, he had parted with the amount to the Petitioners and other Accused, utilized it to clear the mortgage deed for which the Indian Bank already ensured by approaching the Debt Recovery Tribunal, Chennai.

3.1. Also, the learned Counsel for the second Respondent submitted that the Petitioner herein had already filed Crl.O.P.No.26345 of 2009 seeking to quash the FIR which was dismissed by this Court on 30.09.2016 wherein para 7, he had observed as follows:



CrI.O.P.No.18007 of 2021

WEB COPY

“7. It is true that for maintaining a prosecution for an offence of cheating, there should be deception at inception and therefore, this Court should carefully examine if this element is present in a given case. In Lalmuni Devi vs. State of Bihar and others [2001 AIR SCW 2504] and Rajesh Bajaj vs. State NCT of Delhi and others [(1999) 3 SCC 259], the Supreme Court has held that many a cheating are committed in the course of commercial and money transactions and therefore, complaints should not be quashed easily. The relevant passages from the said judgments are as under:

Lalmuni Devi vs. State of Bihar and others:

“8. There could be no dispute to the proposition that if the complaint does not make out an offence it can be quashed. However, it is also settled law that facts may give rise to a civil claim and also amount to an offence. Merely because a civil claim is maintainable does not mean that the criminal complaint cannot be maintained. In this case, on the facts, it cannot be stated, at this prima facie stage, that this is a frivolous complaint. The High Court does not state that on facts no offence is made out. If that be so, then merely on the ground that it was a civil wrong the criminal prosecution could not have been quashed.”

Rajesh Bajaj vs. State NCT of Delhi and others:

“10. It may be that the facts narrated in the present complaint would as well reveal a commercial transaction or



Crl.O.P.No.18007 of 2021

money transaction. But that is hardly a reason for holding that the offence of cheating would elude from such a transaction. In fact, many a cheating were committed in the course of commercial and also money transactions. One of the illustrations set out under [Section 415](#) of the Indian Penal Code [Illustration f] is worthy of notice now:

“(f) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and thereby dishonestly induces Z to lend him money, A not intending to repay it. A cheats.”

3.2. The learned Counsel for the Respondent relied on the following rulings:

(I) 2021 SCC Online SC 206 in the case of ***Priti Saraf & Another Vs. State of NCT of Delhi and another.***

9. It reveals from the record that after this fact was brought to the notice of the learned Judge of the High Court that the charge-sheet has been filed, the learned Judge directed the Public Prosecutor by Order dated 9th October, 2018 to place the charge-sheet on record. Even after the charge-sheet came to be filed by the Public Prosecutor in compliance of the Order of the Court, the learned Judge of the High Court while noticing the facts has only taken note of the agreement to sell



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Crl.O.P.No.18007 of 2021

dated 24th December, 2011, notice of termination dated 30th January, 2013 and without examining the bare facts on record, what being transpired in the complaint and so also during the investigation reflected from the charge-sheet filed before the trial Court and which was part of the record still proceeded on the premise and observed that the case is of a simple breach of contract, which gives rise to purely civil dispute and cannot be converted into a criminal offence, more so, when the arbitral proceedings have been initiated, in the given circumstances, held that if such civil disputes as alleged are being permitted to be prosecuted in the criminal proceedings, this according to the learned Judge, would be a sheer abuse of the process of the Court. In consequence thereof, quashed all the criminal proceedings and the orders under challenge therein dated 15th November, 2016 and 24th April, 2017 and further observed that the observations made shall not be construed to be expression on merits, in the arbitration proceedings by impugned judgment dated 15th March, 2019.

23. It being a settled principle of law that to exercise powers under Section 482 CrPC, the complaint in its entirety shall have to be examined on the basis of the allegation made in the complaint/FIR/charge-sheet and the High Court at that stage was not under an obligation to go into the matter or examine its correctness. Whatever appears on the face of the complaint/FIR/charge-sheet shall be taken into consideration without any critical examination of the same. The offence ought



WEB COPY



CrI.O.P.No.18007 of 2021

to appear ex facie on the complaint/FIR/charge-sheet and other documentary evidence, if any, on record.

32. In the instant case, on a careful reading of the complaint/FIR/charge-sheet, in our view, it cannot be said that the complaint does not disclose the commission of an offence. The ingredients of the offences under Sections 406 and 420 IPC cannot be said to be absent on the basis of the allegations in the complaint/FIR/charge-sheet. We would like to add that whether the allegations in the complaint are otherwise correct or not, has to be decided on the basis of the evidence to be led during the course of trial. Simply because there is a remedy provided for breach of contract or arbitral proceedings initiated at the instance of the appellants, that does not by itself clothe the court to come to a conclusion that civil remedy is the only remedy, and the initiation of criminal proceedings, in any manner, will be an abuse of the process of the court for exercising inherent powers of the High Court under Section 482 CrPC for quashing such proceedings.

33. We have perused the pleadings of the parties, the complaint/FIR/charge-sheet and orders of the Courts below and have taken into consideration the material on record. After hearing learned counsel for the parties, we are satisfied that the issue involved in the matter under consideration is not a case in which the criminal trial should have been short-circuited. The High Court was not justified in quashing the criminal proceedings in exercise of its inherent jurisdiction.



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CrI.O.P.No.18007 of 2021

*The High Court has primarily adverted on two circumstances, (i) that it was a case of termination of agreement to sell on account of an alleged breach of the contract and (ii) the fact that the arbitral proceedings have been initiated at the instance of the appellants. Both the alleged circumstances noticed by the High Court, in our view, are unsustainable in law. The facts narrated in the present complaint/FIR/charge-sheet indeed reveal the commercial transaction but that is hardly a reason for holding that the offence of cheating would elude from such transaction. In fact, many a times, offence of cheating is committed in the course of commercial transactions and the illustrations have been set out under Sections 415, 418 and 420 IPC. Similar observations have been made by this Court in *Trisuns Chemical Industry v. Rajesh Agarwal* (supra):*

—

“9. We are unable to appreciate the reasoning that the provision incorporated in the agreement for referring the disputes to arbitration is an effective substitute for a criminal prosecution when the disputed act is an offence. Arbitration is a remedy for affording reliefs to the party affected by breach of the agreement but the arbitrator cannot conduct a trial of any act which amounted to an offence albeit the same act may be connected with the discharge of any function under the agreement. Hence, those are not good reasons for the High Court to axe down the complaint at the threshold



Crl.O.P.No.18007 of 2021

itself. The investigating agency should have had the freedom to go into the whole gamut of the allegations and to reach a conclusion of its own. Pre-emption of such investigation would be justified only in very extreme cases as indicated in State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335]”

(II) 2022 Livelaw (SC) 396 in the case of **Ramveer Upadhyay and another Vs. State of U.P and another.**

30. The fact that the complaint may have been initiated by reason of political vendetta is not in itself ground for quashing the criminal proceedings, as observed by Bhagwati, CJ in Sheonandan Paswan v. State of Bihar⁴. It is a well established proposition of law that a criminal prosecution, if otherwise justified and based upon adequate evidence, does not become vitiated on account of mala fides or political vendetta of the first informant or complainant. Though the view of Bhagawti, CJ in Sheonandan Paswan (supra) was the minority view, there was no difference of opinion with regard to this finding. To quote Krishna Iyer, J., in State of Punjab v. Gurdial Singh⁵, “if the use of power is of fulfilment of a legitimate object the actuation or catalysation by malice is not legicidal.”

(III) Crl.A.No.1535/2021 in the case of **the Suvarna Co-operative Bank Ltd Vs. State of Karnataka and another.**



Crl.O.P.No.18007 of 2021

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“...While quashing the criminal proceedings the High Court has observed in para 8 as under:

“8. In the light of the complainant keeping quite in not taking any action against incomplete charge sheet, which is filed by the first respondent police in arraigning only accused nos. 1 and 6 as accused in CC. No. 22308/2012, the prosecution against two of them without the presence of other persons, who are said to have involved in the same, would not be complete charge sheet and the alleged offence would not be complete against two of them without there being the accomplice to the said act also being arraigned as the accused. In that view of the matter, this Court feel that prosecuting accused nos. 1 and 6 in the instant case, in the absence of accused 2 and 3, would be of no avail and would not take this matter to the logical end. Hence, the same is required to be quashed.”

4.1. The aforesaid cannot be a ground to quash the criminal proceedings against the accused who was charge-sheeted by the Investigating Officer after thorough investigation. Merely because some other persons who might have committed the offences, but were not arrayed as accused and were not charge-sheeted cannot be a ground to quash the criminal proceedings against the accused who is charge-sheeted after a thorough investigation. During the trial if it is found that other accused persons who committed the offence are not charge-sheeted, the Court may array those persons as accused in exercise of powers



Crl.O.P.No.18007 of 2021

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under Section 319 Cr.P.C. Merely because some of the persons who might have committed the offences are not charge-sheeted, cannot be a ground to quash the proceedings against the accused charge-sheeted after having found prima facie case against him after investigation. Nothing has been further observed by the High Court on merits and/or on the allegations against the private respondent herein - original accused no. 1.

4.2. Under the circumstances the impugned judgment and order passed by the High Court quashing the criminal proceedings against the respondent no. 2 herein - original accused no. 1 deserves to be quashed and set aside.”

4. On consideration of the rival submissions, the submission of the learned Counsel for the Petitioner is found acceptable and reasonable on the following grounds:

4.1. The late Sabesan had entered into the sale agreement with the Petitioners and other Accused. Subsequently, without the knowledge of the Accused 3 to 5, he had entered into a sale agreement for purchase of the property agreeing to pay a sum of Rs.20,00,000/- to A1 and A2 alone who were residing in the same property. This was done behind the back of the Accused 3 to 5 and he got an endorsement on the same sale



Crl.O.P.No.18007 of 2021

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agreement. After the prescribed time of six months, the said Sabesan did not come forward to purchase the property. Therefore, they had caused notice on the said Sabesan. But he failed to perform his part of the contract, they will be forced to sell the property to third parties. The legal heirs of Late Sabesan had filed a Suit in C.S.No.1027/2010 against the Petitioners and other Accused. In the Suit, the Plaintiff had stated the following facts:

“(7) When matters stood thus, in or about 2007, the second Defendant represented to C.Sabesan that the said Bank has agreed to settle its entire claim in full quit for 1 Crore plus interest and other charges. The second Defendant further represented to C.Sabesan that the Defendants 1 to 5 desired to sell the Schedule property to pay up the amounts due and payable to the said Bank as per the terms of one time settlement, to avoid auction sale and other unpleasant situation and also to apportion the remaining sale proceeds among themselves. The Defendants 2 & 4 further represented to C.Sabesan that a sum of Rs.66 lakhs needs to be paid to Indian Bank immediately or else the schedule property will be sold in auction. C.Sabesan believing the assurances and representations of the Defendants 2 & 4 entered into an agreement of sale on 03/10/2007 with Defendants 1 to 5. On signing the agreement of sale, C.Sabesan paid a sum of Rs.66 lakhs to Indian Bank during the hearing of T.A.No.28/2001 and



Crl.O.P.No.18007 of 2021

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S.A.No.66/2005 before the Debt Recovery Tribunal, Chennai by way of a demand draft. The said sum of Rs.66 lakhs was paid to the account of Defendants 1 to 5. On signing the agreement on 03.10.2007, the 4th Defendant had addressed a letter to the Assistant General Manager, Indian Bank, authorising his counsel and that of C.Sabesan to jointly receive the original title deeds pertaining to the suit schedule mentioned property. This apart C.Sabesan paid Rs.11,00,000/- to the Defendants 2 & 4 during the period between 28/09/2007 to 06/10/2007. Thus C.Sabesan paid a total sum of Rs.77,00,000/- to Defendants 2 & 4 in 2007.

(8) The Plaintiffs state that a supplementary agreement was also entered into between the Defendants 2 & 4 and C.Sabesan on 06/10/2007. This supplementary agreement is in respect of Rs.215 Lakhs, which is the cost of the improvements which the Defendants 2 & 4 have allegedly made to the said property. It is pertinent to mention here that the Defendants 2 & 4 are alone signatories to this supplementary agreement while the Defendants 1,3 and 5 are not parties. The amount of Rs.215 Lakhs covered under the supplementary agreement is to be paid by C.Sabesan secretly to the Defendants 2 & 4 only without the knowledge of Defendants 1,3 & 5.”

4.2. When the Suit instituted by A.G.Sampath and G.Anbalagan in C.S.No.933 of 2009 for recovery of money against C.Sabesan in which



Crl.O.P.No.18007 of 2021

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the Original Side of the Hon'ble High Court had delivered the Judgment, common Judgment in C.S.No.933 of 2009 and C.S.No.1027 of 2010 by judgment dated 18.01.2016.

4.3. The learned Counsel for the Petitioners invited the attention of this Court to the Judgment of the original side of this Court wherein Issue No.3 was decided in favour of the Petitioners herein. The Suit in C.S.No.933 of 2009 was filed by the brother of the Petitioners herein viz., A.G.Sampath and G.Anbazhagan against C.Sabesan and his legal heirs seeking for damages of Rs.1.50 Crore towards mental agony sustained by the Plaintiff by the non-cooperation on the part of the Defendant viz., Sabesan. The Suit in C.S.No.1027 of 2010 was filed by the legal heirs of Sabesan seeking refund of Rs.97 Lakhs with 18% interest which was paid by the Sabesan to the family of the Petitioners. Both Suits were taken up for trial and disposed on 18.01.2016.

4.4. It is the contention of the learned Counsel for the Petitioner that in the charge sheet filed by the first Respondent, the copy of the judgment is also enclosed. Therefore, after agitating their rights through



Crl.O.P.No.18007 of 2021

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the Civil Court for the same cause of action, the non-performance by one of the parties to the sale agreement, the Suit for damages filed. Another Suit for refund of money filed by legal heirs of Sabesan. The FIR in Cr.No.525 of 2009 filed by Sabesan on 24.10.2009 and final report of the investigation filed and numbered as C.C.No.3758 of 2020. When the parties to the sale agreement had agitated their valuable rights through the Civil Court, the laying of the final report by the Investigation Officer before the Court concerned (Special Court, learned Metropolitan Magistrate for CCB and CCBCID cases arising of Metropolitan areas). The learned Magistrate had taken cognizance of the same is found to be against the Provisions of Cr.P.C., Particularly, Chapter – XII of Cr.P.C., Also, he relied on the ruling of the Hon'ble Supreme Court reported in ***1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426*** in the case of ***State of Haryana and others Vs. Bhajanlal and others*** wherein the guidelines issued to the High Courts while quashing of the charge sheet which reads as follows:

“(a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any



Crl.O.P.No.18007 of 2021

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offence or make out a case against the accused;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under [Section 156\(1\)](#) of the Code except under an order of a Magistrate within the purview of [Section 155\(2\)](#) of the Code;

(c) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under [Section 155\(2\)](#) of the Code;

(e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(f) where there is an express legal bar engrafted in any of the provisions [of the Code](#) or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in [the Code](#) or the concerned Act, providing efficacious



Crl.O.P.No.18007 of 2021

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redress for the grievance of the aggrieved party;

(g) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge. [305D-H; 306A-E] 8.2. In the instant case, the allegations made in the complaint, do clearly constitute a cognizable offence justifying on and this case does not call for the exercise of extraordinary or inherent powers of the High Court to quash the F.I.R. itself. [307B] State of West Bengal v. S.N. Basak, [1963] 2 SCR 52; distinguished.”

4.5. The Complainant/legal heirs of Sabesan as Plaintiffs in C.S.No.1027 of 2010 and the brothers of the Petitioners herein had filed a Suit in C.S.No.933 of 2010. When both the Suits were taken up for trial by this High Court on the Original Side and disposed of, the Investigation Officer of the case is aware of the outcome of the judgment. Instead Judgment having been delivered ignoring the Provisions of Chapter XII of Cr.P.C., dealt with registration of the case up to the laying of the final report and the powers of Investigation Officer in the Criminal cases, he proceeded with the the investigation, he ought to have closed the



CrI.O.P.No.18007 of 2021

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investigation as a civil dispute. Here, the cases where the Investigation Officer ignored those powers and laid the final report of the investigation before the Court of the learned Metropolitan Magistrate, Special Court for CCB, CBCID cases arising out of Metropolitan area. The learned Magistrate had also taken cognizance of the offence alleged in the final report without applying his/her mind and numbering the case as C.C. Therefore, the learned Counsel for the Petitioners submitted that it is nothing but to cause harassment on the Petitioners through the abuse of process of Court. This is a glaring example of the said principle which is condemnable and cannot be condoned.

4.6. The learned Counsel for the Petitioners relied on the ruling reported in

1. Satishchandra Ratanlal Shah Vs. State of Gujarat and another, reported in ***(2019) 9 SCC 148***

2. Mitesh Kumar Vs. State of Karnataka and others reported in ***2021 SCC Online SC 976***

3. B.Vijay Kumar Reddy Vs. State of Telangana, Rep PP 4



CrI.O.P.No.18007 of 2021

others, in CRLP.No.3821 of 2015 dated 04.02.2022.

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4.7. Issue 3 is decided in favour of the Plaintiffs in C.S.No.1027 of 2010. Therefore, the Complainant has a decree in their favour regarding refund of the sale agreement amount. While so, only to cause harassment on the Petitioners, the Complaint had been filed. Based on the Complaint, the investigation had been completed in the year 2021 which is nothing but exercise to harass the Petitioners herein. Ignoring the guidelines of the Hon'ble Supreme Court regarding the sterling qualities of the documents. (the decree granted in favour of Legal heirs of C.Sabesan, the original defacto complainant by the original side of this very same High Court)

4.8. The competent Civil Court particularly Original Side of this Court had considered the dispute between the parties and had granted a decree in favour of the Plaintiff in C.S.No.1027 of 2010 who are the legal heirs of the defacto Complainant in Cr.No.525 of 2009 on the file of the first Respondent. Further, the learned Counsel for the Petitioner submitted that when the trial was proceeded in the said final report, the



Crl.O.P.No.18007 of 2021

person who enjoyed the property only could be considered by the Court.

On the date of filing of the final report, originally Sabesan was not alive, the legal heirs of Sabesan cannot subject the parties to the sale agreement to the criminal case. Therefore, only avenue available to the legal heirs to proceed with the civil case and not with the criminal complaint.

4.9. The submission of the learned Counsel for the second Respondent regarding the maintainability of the final report and the objection regarding quashing of the criminal complaint in C.C pending before the Court of the learned Metropolitan Magistrate, Special Court for CCB, CBCID cases arising out of Metropolitan area is found unacceptable particularly in the light of the ruling of the Hon'ble Supreme Court reported in **1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426** in the case of **State of Haryana and others Vs. Bhajanlal and others** and the rulings cited by the learned Counsel for the Petitioners.

4.10. Also, as rightly pointed out by the learned Counsel for the Petitioners that the Defendants in C.S.No.1027 of 2010 are the Plaintiffs in C.S.No.933 of 2009 along with the Petitioners herein and the



Crl.O.P.No.18007 of 2021

purchaser of the property, who is P.Ganapathy, who is the sixth Defendant. Therefore, C.S.No.1027 of 2010 is a comprehensive Suit which had considered all the rival claims and on assessment of the evidence in C.S.No.933 of 2009 filed against the said Sabesan, during his life time and C.S.No.1027 of 2010 filed by the Legal Heirs of C.Sabesan as Plaintiffs against the Plaintiffs in C.S.No.933 of 2009 and four others including the purchaser of the property P.Ganesan, who is impleaded as sixth Defendant. After conclusion of the trial, on appreciation of evidence and on materials available before the Original Side of this Court, the Suit in C.S.No.933 of 2009 was dismissed and C.S.No.1027 of 2010 was decreed. Before filing the Suit in C.S.No.1027 of 2010 by the Legal Heirs of Sabesan, the said Sabesan had himself filed criminal complaint during his life time in Cr.No.525 of 2009, in which he had converted the civil dispute into a criminal complaint for seeking early relief instead of approaching the Civil Court. After the death of C.Sabesan, the Legal Heirs had instituted the Suit in C.S.No.1027 of 2010 in which there was a decree in their favour. In the light of the comprehensive decree by the competent Civil Court, the highest Court of the State, Original Side of the very same High Court, it is a sterling document in favour of the



Crl.O.P.No.18007 of 2021

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Complainant's family, the Prosecution of the party to the sale agreement in the very same sale agreement which is the cause of action in C.S.Nos.1027 of 2010 and 933 of 2009 very same party are arrayed as Accused before the Criminal Court which is nothing but attracting the guidelines of the Hon'ble Supreme Court reported in **1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426 in the case of State of Haryana and others Vs. Bhajanlal and others**, it is an abuse of process of Court. Therefore, the contention of the learned Counsel for the second Respondent who is a List Witness-1 in C.C.No.3758 of 2021 is rejected. The rulings relied on by the learned Counsel for the Respondent is also rejected on the same reasonings.

4.11. The observation of the Hon'ble Supreme Court in **Crl.A.No.1535/2021** in the case of the **Suvarna Co-operative Bank Ltd Vs. State of Karnataka and another** relied by the learned Counsel for the Respondent/Complainant will not hold good in this case. As already discussed, the Complainant in this case had filed C.S.No.1027/2010 and the Accused in this case had filed C.S.No.933/2009 before the very same



Crl.O.P.No.18007 of 2021

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original side of Hon'ble High Court. Both the Suits were taken up together for trial and disposed of. Thereby dismissing the Suit filed by the Accused herein and decreeing the Suit filed by the Complainant/Legal Heirs of Sabesan which was also relied by the Investigation Officer in this case. Therefore, the relief already been granted in favour of the Complainant. While so, when there is a decree in favour of the Complainant, the Complainant giving the criminal complaint on the very same set of facts attracting the guidelines issued by the Hon'ble Supreme Court reported in ***1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426 in the case of State of Haryana and others Vs. Bhajanlal and others.*** Therefore, the reliance placed by the learned Counsel for the Respondent herein in the case of ***Suvarna Co-operative Bank Ltd Vs. State of Karnataka and another,*** is rejected.



Crl.O.P.No.18007 of 2021

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4.12. In the rulings reported in **2021 SCC Online SC 976** in the case of **Mitesh Kumar.J Vs. State of Karnataka** cited by the learned Counsel for the Petitioners, the **State of Haryana Vs. Bhajanlal** is discussed which is considered and already discussed by this Court in this case. Both the parties had agitated their valuable rights in Civil Suits and got decree in favour of the Complainant Party/legal heirs of Sabesan. Therefore, the decree of the Civil Court particularly original side of this Court is having the quality of sterling document in favour of the Complainant. While so, for the very same dispute giving a criminal colour attracts the guidelines of **State of Haryana Vs. Bhajanlal**.

4.13. In the reported ruling of **Satishchandra Ratanlal Shah Vs. State of Gujarat and another ((2019) 9 SCC 148)**, the Hon'ble Supreme Court had observed that a mere breach of a promise, agreement or contract does not, ipso facto, constitute the offence of the criminal breach of trust contained in Section 405 of IPC without there being a clear case of entrustment. The distinction between mere breach of contract and



Crl.O.P.No.18007 of 2021

cheating would depend upon the fraudulent inducement and mens rea.

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4.14. Also in the very same Judgment, it was observed that the Hon'ble Supreme Court had cautioned against criminalising civil disputes, such as breach of contractual obligations. Here, in this case before this Court, the legal heirs of Sabesan had already filed Civil Suit and obtained a decree in their favour. When Sabesan was alive, he had filed criminal complaint based on which the Investigation Officer had proceeded with the investigation and laid the final report incriminating the Petitioner herein as Accused. Therefore, it is nothing but attracting the observation of the Hon'ble Supreme Court cautioned against criminalising civil disputes which is relied by this Court.

In the light of the above discussions, this ***Criminal Original Petition is allowed.*** Consequently, connected Miscellaneous Petitions are closed.

The case in C.C.No.3758 of 2021 on the file of the learned Metropolitan Magistrate, CCB & CBCID Special Court, Egmore, Chennai is quashed.

.11.2022

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Crl.O.P.No.18007 of 2021

Index: Yes/No

Internet: Yes/No

Speaking Order/Non-speaking Order

To

1. The learned Metropolitan Magistrate,
CCB & CBCID Special Court,
Egmore, Chennai.
2. The Sub Inspector of Police,
CCB, Egmore,
Chennai – 600 008.
3. The Section Officer,
V.R.Section,
High Court, Madras.



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Crl.O.P.No.18007 of 2021

SATHI KUMAR SUKUMARA KURUP, J.

dh

Pre-delivery Order made in
Crl.O.P.No.18007 of 2021

25.11.2022