



WEB COPY



Criminal Revision Case No. 903 of 20__

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.12.2022

CORAM

THE HONOURABLE Mr. JUSTICE V.SIVAGNANAM

Criminal Revision Case No. 903 of 2021

T.S.Baskar

.. Petitioner /Complainant

Vs.

State Rep. By

The Inspector of Police

J-6, Thiruvanmiyur Police Station

Sannadi St, Lalitha Nagar

Thiruvanmiyur, Chennai – 600 041.

.. Respondent /Respondent

Criminal Revision Case filed under Section 397 read with 401 of the Code of Criminal Procedure, 1973 to set aside the order of the lower court in Criminal M.P. No. 9804 of 2021 dated 01.10.2021 on the file of XVII Metropolitan Magistrate, Saidapet, Chennai and direct the respondent to register the FIR complaint dated 09.09.2021.

For Appellant : Mr. L.Infant Dinesh

For Respondent : Mr. V.Meganathan
Govt. Advocate (Criminal Side)



WEB COPY



Criminal Revision Case No. 903 of 20__

ORDER

The Revision Petition has been filed challenging the impugned order passed in Criminal Miscellaneous Petition No. 9804 of 2021 dated 01.10.2021 on the file of the XVIII Metropolitan Magistrate, Saidapet, Chennai-600 015.

2. The fact of the case :-

The petitioner filed a complaint under section 156(3) of Code of Criminal Procedure before the XVIII Metropolitan Magistrate, Saidapet, Chennai-600 015. The allegation in the complaint is that the petitioner and his neighbour N.Srinivasan entered into a joint venture agreement on 12.04.2014 with one K.Ganesh Pandi, who introduced himself to be a Proprietor of M/s. Sakthi Constructions, towards the property situated at Old Nos. 5 and 6, North Mada Street, Thiruvanmiyur, Chennai - 600 041. As per the agreement the petitioner agreed for a share of 55% and the rest 45% to the builder and agreed to develop eight(8) flats of which four flats for the builder and four flats for the petitioner and his neighbour [each



WEB COPY



two flats] and agreed to complete the project within 24 months. The builder Ganesh Pandi (the alleged accused) accepted to pay the monthly rent till the completion of construction and hand over the possession of vacant building. Further, the petitioner received non-refundable advance amount of Rs.25,00,000/- for handing over of vacant land for construction. Thereafter, in the month of November 2014, Ganesh Pandi introduced one Saairam as nominee of M/s. Sakthi Constructions and requested to execute a power of attorney in order to register 45% of the land share as per the joint venture agreement. Thereupon they insisted to handover the original documents (house patta, his settlement deed and other related documents) for the purpose of obtaining loan. The Srinivasan (neighbour) died due to his health issues and his legal heirs viz., Vanaja Srinivasan and his daughter viz., Bhuvana continued that joint venture agreement. The construction work was done for 1 ½ years and thereafter, they stopped. On verification, the petitioner found that the Ganesh Pandi without their knowledge pledged the original documents to Saairam and obtained an interim loan of Rs.20,00,000/- and there dispute started between them and they demanded 1.2 crores as outstanding dues, but the cost of



WEB COPY



construction is less than the amount paid by them. Thus, when the petitioner questioned about this and asking to return the original documents, the Ganesh Pandi (the alleged accused) threatened the petitioner with rowdy elements. Hence, he filed a complaint to the Commissioner of Police, Vepery, Chennai – 600 007 and before the Judicial Magistrate, who has dismissed by passing the impugned order dated 01.10.2021, which is now challenged.

3. The learned counsel for the Petitioner submitted that the petitioner, viz., T.S.Baskar in order to develop his property, has entered into an agreement with the accused one K.Ganesh Pandi, Proprietor of M/s. Sakthi Constructions and after entering into an agreement for construction, the accused insisted to hand over the original documents. In pursuance of that request, the petitioner gave the original documents.

4. To the shock of the petitioner, he came to know that the original documents were pledged by one V.Saairam and obtained an interim loan of Rs.20,00,000/- to whom the power of attorney had been given by the petitioner and when the petitioner accosted the said Saairam for return of the original documents, he denied stating that he can return only when the said



Ganesh Pandi settle his outstanding due to the tune of Rs.1.2 crores. The value of the construction is less than the amount as claimed by the said Saairam.

5. Under these circumstances, the petitioner is cheated by the accused persons and also misappropriated his properties and money and misused the original documents. Hence, the petitioner has lodged a complaint for the offences under Sections 120B, 383, 406, 420, 425 and 506 (i) IPC and filed a complaint under Section 156(3) Code of Criminal Procedure before the XVIII Metropolitan Magistrate Court, Saidapet, Chennai. The Magistrate, without considering the allegations made in the complaint, has dismissed it as civil in nature, which is contrary to the fact cognizable offence are made out. Since a cognizable case is made out, it ought to be forwarded to the respondent -Police for registering an FIR and further investigation. The learned Judicial simply dismissed the same. Hence aggrieved by that, the petitioner has filed this criminal revision.

6. When the matter is taken up, the learned Government Advocate (Criminal Side) submitted that no case has been registered so far on receiving the complaint from the defacto complainant.



WEB COPY



7. Heard both sides.

8. On a perusal of the records, it reveals that the petitioner entered into a joint venture agreement on 12.04.2014 with one K.Ganesh Pandi, Proprietor of M/s. Sakthi Constructions towards the property situated at Old Nos. 5 and 6, North Mada Street, Thiruvanmiyur, Chennai -600 041. The Builder viz., Ganesh Pandi agreed and accepted to pay monthly rent to be paid by the complainant to their landlords and house owners till the construction of building is completed and handing over the vacant building and thereafter, the construction work started and the Ganesh Pandi introduced one Saairam and gave a power of attorney to him, they insisted to handover the original documents of the properties. They handed over the original documents to Saairam, who by pledging the original documents obtained an interim loan of Rs.20,00,000/- and also created encumbrance. He denied to return the original documents further stating that he can return only when the said Ganesh Pandi settle his outstanding due to the tune of Rs.1.2 crores.

9. The construction valued by the petitioner is less than that the



WEB COPY

amount as claimed by the accused persons. Under these circumstances, the accused threatened them. Hence, he filed a complaint. Even though there is a joint venture agreement for construction, there is an allegation that the original documents were unauthorisedly pledged and obtained loan, without the knowledge of the petitioner and further they threaten and refused to return the original documents. Since there is a criminal elements and cognizable offence is made in the allegation, therefore the dismissal of the complaint as it is a civil nature, is unsustainable. Therefore, the impugned order is hereby set aside. The learned Judicial Magistrate is hereby directed to forward the complaint under Section 156(3) of the Code of Criminal Procedure to the jurisdictional police for registering the case and to investigate and get final report and to take action in accordance with law.

10. Accordingly, the Criminal Revision Case is allowed and the order dated 01.10.2021 passed in Criminal M.P. No. 9804 of 2021 by the XVIII Metropolitan Magistrate, Saidapet, Chennai is hereby set aside. No costs.

08.12.2022

Maya

To

1. The Assistant Commissioner of Police



Salem City
Salem District.

WEB COPY



Criminal Revision Case No. 903 of 20__

V.SIVAGNANAM, J.

Maya

2. Inspector of Police
Kitchipalayam Police Station
Salem.
3. The Public Prosecutor
Madras High Court
Chennai.

Criminal Revision Case No. 903 of 2021

Dated : 08.12.2022