IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.09.2022

CORAM:

THE HON'BLE Ms.JUSTICE **R.N.MANJULA**

Crl.O.P.No.26020 of 2021
and Crl.M.P. No.14411 of 2021

1. Venkatesan
2. Banumathi
3. Parvathy ... Petitioners

Vs.

1. State rep. by
The Inspector of Police,
Triplicane Police Station,
Chennai.

2. Shankar ... Respondents

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C.,to call for records in Cr. No.94 of 2020 on the file of the first respondent and quash the same.

For Petitioner : Mr. J.Jayan

For Respondent-1 : Mr.A.Damodaran, APP

O R D E R

This Criminal Original Petition has been filed to call for records in Cr.No.94 of 2020 on the file of the first respondent and quash the same.

2. The case of the prosecution is that the second respondent / *de facto* complainant who is running a Bakery business had approached the first accused who is doing a Construction and flat promotion in the name and style 'S.R.P. Homes' which is being managed by accused 1, 2 & 6; on coming to know availability of the flats constructed for sale in S.No.769/11, the *de facto* complainant and her uncle Loganathan went and visited the place and booked a flat consisting 1147 sq.ft. for a price of Rs.39,24,000/- and paid a part payment of Rs.10,50,000/- and also entered into an agreement on 24.02.2018 towards the allotment; despite the *de facto* complainant and her uncle made substantial payment, they were not able to purchase the flats as agreed; they came to know that the constructions are being done without CMDA approval and hence it was stopped; when the petitioner and her uncle asked the first accused to return the amount paid by them, the first accused, his wife and his brother gave cheques; when the cheques were presented for collection, they

returned as 'Insufficient funds'; when the *de facto* complainant once again approached the first accused, he told them that he had given the money to the land owners and only if they return the money, he can refund it. Since the first accused cheated the *de facto* complainant after receiving the money, a case was registered in Cr. No.94 of 2020 under Section 406 and 420 IPC.

3. The petitioners are the accused 3, 4 and 5. Heard Mr. J.Jayan, learned counsel for the petitioners and Mr.A.Damodaran, learned Additional Public Prosecutor appearing for the first respondent.

4. The learned counsel for the petitioners submitted that there is no direct transaction between the *de facto* complainant and the petitioners and this is only a commercial transaction for which no criminal liability can be attached; the second respondent ought to have approached the civil Court or Real Estate Regulatory Authority to get the possession of the flat from 'S.R.P. Homes'

5. Records would show that the petitioners are the owners of the land situated in S.No.769/11 and they have entered into an agreement with the company of the first accused namely 'S.R.P. Homes'. As per the agreement, it

was agreed between the parties that the first respondent company should finish the constructions within a period of two years. The date of agreement is 31.01.2018. It was agreed between the first accused and the petitioners that a sum of Rs.40,00,000/- will be paid as caution deposit and it is returnable after the completion of the project. On the date of agreement, the promoter has paid a sum of Rs.30,00,000/- and agreed to pay an yet another sum of Rs.10,00,000/- within three months. The *de facto* complainant has given a complaint on 30.02.2022 by alleging that he had made payments on several dates from 26.02.2018 to 02.07.2018. The agreement between the first accused and the *de facto* complainant and her uncle were entered on 24.02.2018. The petitioners who are the land owners have entered into an agreement with the first accused on 31.01.2018 itself. So the money paid to the petitioners by the builder on 31.01.2018 cannot be the money received from the *de facto* complainant or her uncle.

6. Even if it is presumed that the first accused had given the money as per the agreement, by making use of the advance money given to him by the buyers of the flat, that cannot attach any criminal liability on the petitioners. Because the *de facto* complainant or any other buyer for that matter enters into

agreement to purchase flats only from the flat promoter namely the first accused. Hence the first accused alone is responsible to hand over the possession of the flats to buyers as agreed by him.

7. So far as the petitioners / land owners are concerned they are liable to execute an undivided share of land corresponding to each flat to the purchasers. It is not the grievance of the *de facto* complainant that the land owners namely the petitioners herein have refused to execute a sale deed in respect of their undivided share either by themselves or through power agents

8. Since the petitioners have no overt act in the occurrence and they have not received any money from the buyers and they also depended upon the first accused to get the project completed, the petitioners cannot be fastened with any criminal liability. In view of the same, the materials available on record are not sufficient to make out a case of offence of cheating or criminal breach of trust against the petitioners.

9. The word "Cheating" as defined under Section 415 IPC is extracted hereunder:

*"**415. Cheating** — Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".*

10. The petitioners did not influence the *de facto* complainant or any other buyer to purchase the flat from the first accused company. In fact the *de facto* complainant had not even met the petitioners who are owners of the land, at the time when they entered into the agreement with the first accused for purchase of the flats. Hence, no ingredients of cheating is seen to be present as against the petitioners / accused 3, 4 & 5.

11. The term "Criminal Breach of trust" is defined nder Section 405 IPC which is extracted hereunder:

*"**405. Criminal breach of trust** — Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".*

12. There is no entrustment of any property made by the *de facto*

complainant or any other buyer in favour of the petitioners' herein. When nothing was entrusted by the *de facto* complainant with the petitioners, the petitioners cannot be charged for criminal breach of trust. The averments of the complaint and the materials available on records do not disclose any grounds to charge the petitioners / accused 3,4,& 5 for the offences under Section 420 or 406 IPC.

13. Though the powers of the Court to quash the proceedings under Section 482 Cr.P.C. should be rarely invoked, the Court shall not hesitate to invoke the same if the situation is compatible for the guidelines laid down by the Hon'ble Supreme Court in the case of ***State of Haryana and others Vs. Bhajan Lal and Others*** reported in ***1992 Supp (1) Supreme Court Cases 335.*** In the said case it is held as under:

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(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 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 bu 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 every 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 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".

14. The allegations made in the complaint, on the face of it, does not constitute any offence against the petitioners herein. Further the second respondent / *de facto* complainant has also got an efficacious alternative remedy by way of filing a civil case and by initiating appropriate proceedings before the concerned Court. In view of the above stated reasons, I feel it is a fit case where the case against the petitioners / accused is liable to be quashed.

15. In view of the above, this Criminal Original Petition is allowed and the FIR in Cr. No.94 of 2020 on the file of the first respondent police is hereby quashed as against the petitioners alone. Consequently, connected miscellaneous petition is closed.

26.09.2022

Index: Yes/No
Speaking / Non Speaking Order
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R.N.MANJULA, J.

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To

1.The Inspector of Police,
Triplicane Police Station,
Chennai.

2.The Public Prosecutor,
High Court of Madras.

Crl.O.P.No.26020 of 2021

26.09.2022