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CRL.O.P.No.25972 / 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.12.2022

CORAM

THE HON'BLE MS.JUSTICE R.N.MANJULA

CrI.O.P.No.25972 of 2021
and CrI.M.P. No.14360 of 2021

1. Ramesh Kumar Gulecha
2. Khimraj Sakariya
3. Vijayakumar Gulecha ... Petitioners

vs.

1. The State represented by
The Inspector of Police,
District Crime Branch,
Chengalpattu.
(Cr. No.3 of 2021)

2. Pethal ... Respondents

Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records relating to the FIR in Cr. No.03 of 2021 pending on the file of the District Crime Branch, Chengalpattu District and quash the same by allowing this Criminal Original Petition.



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For Petitioners : Mr.M.Guruprasad
For Respondent -1: Mr. A.Damodaraj,
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to call for the records relating to the FIR in Cr. No.03 of 2021 pending on the file of the District Crime Branch, Chengalpattu District and quash the same

2. The petitioners are the builders against whom the second respondent / *de facto* complainant had given a complaint on the allegation that the petitioners have cheated her and committed acts of endangering human life.

3. The case of the prosecution is that the *de facto* complainant had purchased a flat bearing No.A413, 4th floor, A block, forming part of the project known as 'Lifestyle Happy Nest' with the built up area measuring an extent of 1,089 sq.ft. which has an exclusive car parking together with 591 sq.ft., undivided share of land at Thirukkatchur, Chengalpattu Taluk for a consideration of Rs.34,50,267/-. When the *de facto* complainant



took possession of the property she came to know that the petitioners have defrauded her by not making the construction properly. Since the walls of the building were not connected with each other and due to gaps in the connecting walls, there is constant leakage of water from the upper floors. Since the electrical wirings are concealed inside the wall, there is a constant threat of electrocution and threat to lives. Due to which the second respondent was unable to make use of the property. In this regard a case has been registered against the petitioners in Cr. No.3 of 2021 for the offence under Section 336 & 420 IPC.

4. The learned counsel for the petitioners submitted that the second respondent's allegations are false and exaggerations; before purchasing the house, the second respondent and her husband have visited the property which was already a built flat and only thereafter, they had ventured to purchase the same; the transactions between the petitioners and the second respondent are only business transactions and hence it is civil in nature; no criminal colour can be given to a civil cause of action; the second respondent, instead of approaching the appropriate forum, had filed a criminal complaint without any basis; since there are no materials



to show that the petitioners have cheated the second respondent with dishonest inducement, the case against the petitioners should be quashed.

In support of his above contention he relied on the judgment of the Hon'ble Supreme Court held in ***State of Haryana and others Vs. Bhajan Lal and Others*** reported in ***1992 Supp (1) Supreme Court Cases 335***.

5. On perusal of the First Information Report, it is seen that the walls of the house were not properly connected and the roof was also not properly laid and hence the water used to seep into the flat and due to which there is a risk of making the electrical fittings concealed inside the walls dangerous. The learned counsel for the petitioners submitted that there is no act of cheating on the part of the petitioners because the *de facto* complainant had visited the whole constructed building before purchasing.

6. It is seen that the *de facto* complainant had purchased the house on 05.03.2020 and the complaint was given only on 21.08.2021. It is not the contention of the petitioners that the second respondent / *de facto* complainant is the second purchaser. Even though the second respondent



had visited the flat before purchasing, the *de facto* complainant cannot test at that time whether the rain water would seep into the walls and cause electrical short circuit. Only when the property is put to use, the second respondent can realise that the defects are of such a nature that it would endanger the human life.

7. It is seen that the complaint has been given on 21.08.2021 i.e. within one and half years of the purchase of the building. Before filing the complaint, the petitioners as builders did not volunteer to shoulder the responsibility to rectify the defects and make the flat not dangerous.

8. The learned counsel for the second respondent submitted that the second respondent has sent a legal notice to the petitioners for which the petitioners have sent a reply.

9. Though compensation can be a matter of civil dispute, the act of causing endangerment to the human life can come under a criminal offence. Only if the investigation is allowed to go, the first respondent can collect materials with regard to the alleged act of endangerment.



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Since the second respondent has made serious allegations of endangerment to human life due to the careless act on the part of petitioners, I feel it is appropriate to allow the investigation to go in order to unearth the real facts. Since the materials are sufficient enough to make out a *prima facie* case against the petitioners, I do not find any reason to quash FIR at the threshold stage itself.

10. In view of the above stated reasons, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No
Internet : Yes/No
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To
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1. The Inspector of Police,
District Crime Branch,
Chengalpattu.
2. The Public Prosecutor,
High Court, Madras.



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R.N.MANJULA, J.

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