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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.03.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.25107 of 2018
& Crl.MP.No.14177 of 2021

1.P.Sengodan
2.A.S.Angkammal ...Petitioners

Vs.

1. The State rep by
The Inspector of Police,
Avinashi Police Station,
Tiruppur District.
Crime No.395 of 2018.

2. V.Venugopala Rao ...Respondents

Prayer : Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code to call for the records relating to FIR in Crime No.705 of 2018 on the file of the respondent Police and quash the same.

For Petitioners : Mr.N.Manokaran

For R1 : Mr.R.Kishore Kumar
Government Advocate [Crl. Side]

For R2 : Mr.J.Antony Jesus

ORDER

The petitioners/A3 and A4 in Crime No.705 of 2018 for the offences under Section 417 and 420 IPC filed this quash petition.

2.The second respondent lodged a complaint on 03.10.2017 against the accused. Since no action was taken, the second respondent approached this Court by filing a direction petition in Crl.O.P.No.7130 of 2018, obtained an order on 08.03.2018 and a case was registered against the petitioners and two others on 17.10.2018 in Crime No.705 of 2018 for the offence alleged to have committed in the year 2006.

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3.The contention of the learned counsel for the petitioners is that the second respondent was employed as Quality Controller in Tiruppur Textiles Private Limited, at that time, A1 and A2, C.K.Dhandapani and Sasikala approached him, represented that they are employed in SPK Real Estate, a layout was developed at Kuppandampalayam, for each plot Rs.30,000/- to be paid and the allottees would be chosen by lucky draw and the persons who are not selected in the lucky draw, the money paid by them would be repaid. Believing their representation, the second respondent paid a sum of Rs.1,20,000/- for two plots each in the name of his son and daughter. In the lucky draw conducted by SPK Real Estate, the second respondent's son and daughter's names were not selected and subsequently, the money was also not paid to the second respondent and to several others. Hence, the similarly placed persons who lost their money approached the Consumer Forum, during the pendency of the complaint before the Consumer Forum, for some of the complainants money was repaid, as regards the second respondent, he was informed about allotment of plot and asked to pay the balance amount, but he failed to comply with the condition and hence, money could not be repaid. Further, the petitioner gone to his native at Vijayawada for some time, later came back and that is the reason for the delay in lodging the complaint cannot be accepted. It is further submitted that it was a lucky draw scheme which was promoted, with terms and conditions, and notices were issued. On agreeing to the conditions in the notice, money was collected. As regards the second respondent, he was allotted of plots and notice was issued to him to comply to make further payment which he failed to do so.

4.He further submitted that suppressing all these facts, the second respondent lodged a complaint, for the payment made in the year 2006. Due to long delay no civil case can be filed, since it would be hit by limitation, he found the other way round and approached this Court seeking direction, got FIR registered in the year 2018. Further, the second respondent earlier approached the Consumer Forum in C.C.No.101 of 2009. The District Consumer Disputes Redressal Forum, Coimbatore by order dated 27.11.2009 in a batch of cases, dismissed the claim of the second respondent along with others. The said order is a well reasoned order, against which, no appeal filed by the second respondent. Suppressing the same, the second respondent lodged a false complaint against the petitioners, due to the directions of by this Court, the respondent police registered the FIR without considering the delay, limitation and the complaint apparently civil in nature. He further submitted that the pros and cons of the scheme clearly informed and stated in the notice, the second respondent failed to comply with his obligation, suppressing the same gave a criminal colour and a false case registered against the petitioners.

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5.In support of his contentions, the learned counsel for the petitioners relied on the following decisions:

1) N.Raghavender vs. State of Andhra Pradesh reported in 2021 (15) SCALE 201
2) Sushil Sethi vs. State of Arunachal Pradesh reported in 2020 (3) SCC 240
3) Thermax Ltd. and others vs. K.M.Johny and others reported in (2011) 13 SCC 412.

6.The learned counsel for the petitioners further produced the Scheme notice giving the details about the scheme and the subsequent notice issued on 23.10.2006, from which it is seen that it is only a lucky draw scheme

7.The learned Additional Public Prosecutor appearing for the first respondent submitted that on the direction of this Court, a case was registered on the complaint of the second respondent/defacto complainant. Earlier, the second respondent approached this Court in Crl.O.P.No.7130 of 2018 seeking direction to register a case based on his complaint dated 03.10.2017, this Court passed an order directing the respondent police to register a case and in view of the same, a case was registered in Crime No.705 of 2018 for the offence under Sections 417 and 420 of IPC. The admitted case of the second respondent is that in the year 2006, he subscribed to the scheme advertised by the petitioners in the name of SPK Real Estate. The scheme is by a lucky draw, the persons who are not successful in the lucky draw, the principal amount would be repaid. Agreeing to the same, the second respondent subscribed to the scheme. Further, during investigation it was found that the second respondent along with others approached, the Consumer Redressal Forum, which dismissed the claim of the second respondent and thereafter, no appeal filed. He further submitted that the investigation is in progress and soon appropriate final report will be filed. Further it is submitted by the second respondent that the petitioners not only cheated the second respondent, they also cheated several other persons. The petitioners settled for several of the subscribers to the scheme, admitting that they were unable to complete the scheme as projected.

8.He further submitted that finding that the second respondent hails from Vijayawada, a far off place and for his livelihood, having no support in Tirupur, the second respondent came to Tirupur for employment in Tirupur Textiles Private Limited, taking advantage of the same the petitioners refused to settle the subscribed amount of Rs.1,20,000/- to the second respondent. He further submitted that the amount was paid in the year 2006, now the value of Rs.1,20,000/- had multiplied

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several fold, the petitioners on collection of subscribers money invested in lands and now the value of the lands have appreciated manifold , they enjoyed and benefitted on the money of the subscribers, who are now giving one reason or other for not repaying the amount and they were taking shelter under the notice earlier issued. The District Consumer Redressal Forum dismissed the second respondent's petition on the point of limitation and not on merits. The second respondent lodged a complaint, made representation to the respondent police to register the case which was not heeded to. Thereafter, the second respondent approached this Court, obtained order, on the directions of this Court, FIR was registered and in view of the same, the petitioners cannot raise any ground on the point of limitation. Further, the findings of the District Consumer Redressal Forum will no way affect the criminal complaint and case of the second respondent. He further submitted that it would be sufficient if the deposited amount along with reasonable interest, be paid to the second respondent.

9.Considering the submissions made and on perusal of the materials placed before this Court, it is seen that the alleged offence took place in the year 2006 and several years thereafter in the year 2018, FIR came to be registered. The notices produced show it is a scheme by lucky draw, for the persons not selected in the lucky draw, the subscribed amount would be repaid. Further, in clause 3 of the publication, it is mentioned that in the event of successful in the lucky draw, only the land alone will be given and the subscribed amount would not be repaid. The petitioners developed 5540 plots and if the persons are not satisfied with the allotment of plots, their plots would be sold to others and only thereafter, their money would be repaid.

10.In this case, the second respondent now come forward to receive the subscribed amount of Rs.1,20,000/- with interest. The petitioners without prejudice to their rights and considering the request of the second respondent, agreed and paid a sum of Rs.2,00,000/- by way of three demand drafts, namely, DD.No.000740 for a sum of Rs.1,00,000/-, DD.No.000755 for a sum of Rs.50,000/- and DD.No.000756 for a sum of Rs.50,000/-. The second respondent/defacto complainant received the Demand Drafts and the same is acknowledged by the second respondent in the copy of the Demand Drafts produced before this Court.

11.Considering all these facts and further finding that the transaction is of the year 2006, the petitioner had already suffered an order of the Consumer Redressal Forum, the scheme is a conditional lucky draw scheme, earlier agreeing to the same, the second respondent subscribed and now cannot term it as a

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case of cheating. In view of the above, this Court is inclined to quash the proceedings against the petitioners.

12.Accordingly, the proceedings in Crime No.705 of 2018 against the petitioners/A3 and A4 pending on the file of the respondent police is hereby quashed. Further, the other two accused, namely, A1 and A2, who are said to be the agents, though they have not approached this Court they are similarly placed, hence, the proceedings in Crime No.705 of 2018 pending against A1 and A2 is also quashed.

13.In the result, this Criminal Original Petition is allowed. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar

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To

1.The Inspector of Police,
Avinashi Police Station,
Tiruppur District.

2.The Public Prosecutor,
High Court, Madras.

Crl.O.P.No.25107 of 2018

MT (CO)
PR (31/03/2022)

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