IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Orders Reserved On 19.10.2022	Orders Pronounced On 02.11.2022

Crl.O.P.No.29819 of 2018
and
Crl.MP.No.17481 of 2018

Vamseedharan ... Petitioner

Vs.

1.State by Sub-Inspector of Police,
Central Crime Branch,
Vepery, Chennai-7.

2.C.Ekambaram ... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.3260 of 2018dated 28.04.2018 filed by the respondent police before the Metropolitan Magistrate [CCB & CBCID Metro Cases], Egmore in Crime No.328 of 2017 on the file of the respondent police and quash the same.

For Petitioner	:	Mr.S.Ashok Kumar Senior Counsel for Mr.V.Balu
For Respondents		
R1	:	Mr.L.Baskaran Government Advocate [Crl. Side]
R2	:	Mr.A.Kumaraguru

ORDER

The petitioner/A2 in C.C.No.3260 of 2018 on the file of the learned Metropolitan Magistrate [CCB & CBCID Metro Cases], Egmore facing trial along with two others for the offence under Sections 423, 420 r/w. 34 IPC, filed this quash petition.

2.The case of the prosecution is that the defacto complainant lodged a complaint stating that he owns a property measuring 3450 sq.ft. at Door No.5/13, Michael Garden, Ramapuram. The defacto complainant's son was interested in producing a film for which he needed money and hence, the said property was intended to be mortgaged to raise funds. At that time, A3/friend of defacto complainant's son introduced the petitioner/A2 projecting that he would get funds for lesser interest and introduced one Haji Ali/A1 during June 2015. A1 perused the original documents and agreed to finance a sum of Rs.1.25 Crores. Further, A1 requested that a sale deed to be executed in his name with a promise that it was only a mortgage in all sense and once the mortgage amount is repaid, he would re-convey the property and the sale deed is to be used as a security which was confirmed by the other two accused. Believing the promise, a sale deed in Document No.2026/2015 was registered in favour of A1. In the sale deed document, a sum of Rs.1,20,40,000/- was shown as sale consideration paid by Cheque No.000238 dated 27.08.2015 drawn on HDFC Bank, Ashok Nagar Branch. Despite recording of the same in the sale deed, no such cheque was issued. Thereafter, all the accused with common intention used this document to again pledge the document with Cholamandalam Investment Finance Company Limited, obtained loan and used the same for their own purpose and not paid to the defacto complainant. When the defacto complainant questioned the same, two cheques for a sum of Rs.50,00,000/- and Rs.75,00,000/- was given by A2 with a condition that only after the instruction from A2, the cheques are to be presented. Each time when the defacto complainant demanded for money, all the accused gave evasive reply. Further, it was found that one Keerthivasan, brother of A2 received around Rs.35 lakhs from the mortgaged amount received from Cholamandalam Investment Finance Company Limited. The defacto complainant came to know about the mortgage only after perusing the Encumbrance Certificate and the cheque which was shown in the sale consideration was in fact encashed by the brother of A2. The Bank Officials confirmed the trail of the amount from Cholamandalam Investment Finance Company Limited to the brother of A2 for a sum of Rs.35 lakhs and Rs.4 lakhs, the balance amount being utilized by A1 to make his payments and on the whole, no money was paid to the defacto complainant for the sale executed. Hence, he lodged a complaint, on registration of FIR enquiry conducted, investigation completed listing L.W.1 to L.W.12, documents collected and charge sheet filed. Against which, the present quash petition is filed.

3.The contention of the learned counsel for the petitioner is that the petitioner is arrayed as A2 in this case, the defacto complainant's son Kamal was interested in producing a film for which he needed some money. He would submit that the defacto complainant's son and A3 are friends, so he approached A3 for money, who introduced A2 informing that A2 can find out a financier with less interest and further, who in turn introduced A1 who is a financier, thereafter it was between the defacto complainant and A1 and the petitioner/A2 had no role whatsoever between them. He further submitted that to implicate the petitioner, a projection was made that the petitioner issued two cheques drawn on Standard Chartered Bank for Rs.50 lakhs and Rs.75 lakhs respectively. L.W.8/Pradeep, Manager of Standard Chartered Bank clearly state that these two cheques were not presented with their Bank. Had there been any cheque given by A2, the defacto complainant would have necessarily deposited the cheques in the Bank which would have either honoured or dishonoured. In this case, the positive evidence is that these two cheques projected against the petitioner/A2 never reached the Bank and it is only a ploy. He further submitted that as regards the receipt of Rs.4 lakhs by Keerthivasan, brother of A2 from A1 on 04.09.2015 by way of Cheque bearing No.000238 which is the cheque referred in the sale deed, the petitioner is not aware of the same. Added to it, the brother of the petitioner/A2 is neither an accused nor a witness in this case, in view of the same, this fact cannot be proved. He further submitted that the defacto complainant filed a civil suit in O.S.No.421 of 2015 and the same was dismissed, against which no steps taken. On the contrary, the defacto complainant using the criminal complaint to settle the civil dispute between the defacto complainant and A1, in the process, the petitioner was caught in the cross fire. He further submitted that apart from introducing A1, the petitioner/A2 has got nothing to do in the entire transaction. He would also submit that though the property was pledged by the defacto complainant to A1, the defacto complainant is still in possession of the property, the mortgage dispute is given a criminal colour and the petitioner was falsely implicated in this case. Hence, he prayed for quashing the proceedings against the petitioner.

4.The learned counsel appearing for the second respondent/defacto complainant submitted that the contention of the petitioner that the petitioner/A2 only acted as an introducer and nothing more cannot be countenanced for the reason that there are ample evidence by way of statements and documents to prove that the petitioner's connivance and active role in unison with common intention with the other accused in committing the offence of cheating. The defacto complainant's son Kamal in the anxiety and eagerness to produce a movie was desperate for money, informed the same to A3, A3 introduced the petitioner/A2, who in turn introduced A1 as a financier. A1 agreed to give a loan of around Rs.1.50 Croers for which A1 imposed a condition that for the mortgage loan a sale deed to be executed on the defacto complainant's property measuring 3450 sq.ft. at Ramapuram and assured that though a sale deed is executed it will be treated only as a mortgage deed and on discharge of the mortgage, the property would be re-conveyed to the defacto complainant. Believing the same, the defacto complainant executed a sale deed on 27.08.2015 vide Document No.2026 of 2015. In the sale deed, Cheque No.000238 dated 27.08.2015 drawn on HDFC Bank, Ashok Nagar Branch for a sum of Rs.12,40,00,000/- is recorded for the sale consideration, on the contrary, no amount was paid as promised. When the defacto complainant insisted for money, A2 issued two cheques bearing Nos.000045 and 000046 respectively drawn on Standard Chartered Bank and informed that the cheques are to give assurance for the amount to be paid and not to be used until said so. Thereafter, the defacto complainant becoming doubtful of the conduct of the accused applied for Encumbrance Certificate, found that using the sale deed A1 pledged the property with Cholamandalam Finance for a sum of Rs.1,05,00,000/- which was repaid by way of top-up loan from Reliance Finvest Corporation by obtaining a sum of Rs.1,57,00,000/-.

5.He further submitted that the defacto complainant executed the sale deed without receiving any sale consideration, A1 in connivance with the other accused using the sale deed initially obtained loan from Cholamandalam Investment Finance Company Limited and thereafter with Reliance Finvest Corporation and cheated the defacto complainant by not making any payment. A2 in connivance with A1 though issued two cheques, not given instructions to present the cheques. The Manager of HDFC Bank, Ashok Nagar Branch confirms that on 08.09.2015, Keerthivasan/brother of A2 received Rs.35 lakhs from the mortgage amount and further Rs.4 lakhs was issued by way of Cheque No.000238 which is the cheque referred in the sale deed. Thus, the active role played by A2 in cheating the defacto complainant is clearly proved by the statements of L.W.5 to L.W.9. A1 using the sale deed converted the property to his name and insisting the tenants of the defacto complainant to pay the rent to A1 directly is spoken by L.W.10 and L.W.11. He further submitted that there are enough and sufficient materials to show that all the accused with common intention acted in unison to cheat the defacto complainant's huge sum of money run to more than Rs.1.50 Crores. Further the Civil Suit filed for injunction by the defacto complainant not to disturb the peaceful possession and enjoyment of the suit property was dismissed for insufficient stamp, the defacto complainant's position is such that he is unable to pay the stamp duty and pendency or otherwise of the civil suit have no direct barring on the criminal case. He further submitted that in this case, sale deed was executed on 27.08.2015, complaint was lodged in the year 2017, thereafter on completion of investigation charge sheet filed which was taken on file on 28.04.2018, immediately the petitioner filed this quash petition obtained an order of stay and the case is pending before the Trial Court for the past four years without any progress. The petitioner and other accused finding that the defacto complainant is about 78 years and with health ailments he might not survive for long, somehow prolong the case. The defacto complainant once kicks the bucket, the petitioner and the other accused can have their own way. Further, tactfully and strategically the other two accused were yet to file any discharge petition or similar quash petition, once this quash petition is disposed, the other two accused will take turns, file discharge petition or quash petition and further prolong the case for long years. Hence, he prayed for dismissal of this petition with suitable direction to complete the trial.

6.The learned Government Advocate [Crl. Side] submitted that in this case on the complaint of the defacto complainant, FIR registered investigation conducted and during investigation 12 witnesses examined. He would submit that L.W.1 is the defacto complainant, L.W.2 is the son of the defacto complainant, both speak about the relationship between A1 to A3 and the false promise made by them and in a deceitful manner sale deed got executed. L.W.3 is the SRO who registered the sale deed, L.W.4 and L.W.5 are the witnesses to the sale deed. L.W.5 is the Manager of HDFC Bank who states about the diversion of Cheque No.000238 which is the cheque issued towards the sale consideration for the sale deed and this cheque was encashed by the brother of A2. Thus, it is confirmed that no amount was paid to the defacto complainant for execution of the sale deed and the sale deed was executed by fraud in a deceitful manner. L.W.6 is the Branch Manager of Cholamandalam Finance who states about A1 creating a mortgage on the property of the defacto complainant, L.W.7 is the Manager of Reliance Finvest Corporation who state about the top-up loan obtained by A1 and L.W.8 is the Manager of Standard Chartered Bank who state about the two cheques issued by A2 but so far not encashed. L.W.9 is the Manager of HDFC who confirms about the transaction of A1, L.W.10 and L.W.11 are the tenants under the defacto complainant who were forced to pay the rent to A1. L.W.12 is the Investigating Officer who completed the investigation and filed charge sheet against the accused.

7.He further submitted that from the statement of witnesses and documents collected, it is a clear case of cheating. All the accused usruped the property of the defacto complainant by making false promise and based on which, a sale deed was executed without any sale consideration. The cheque for a sum of Rs.12,40,00,000/- which was shown as sale consideration in the sale deed was in fact encashed by the brother of A2. He would submit that the prosecution had sufficient materials to proceed against the accused and the trial itself can be completed within a specified period, preferably within a period of six months considering the age of the defacto complainant and also considering the fact that the occurrence took place in the year 2015.

8.Considering the submissions and on perusal of the materials, it is seen that the petitioner/A2 projected the case as though he is only an introducer who introduced the defacto complainant to A1 for mortgage loan and nothing more. From the statement of witnesses and documents collected, it is seen otherwise. In the sale deed in Document No.2026/2015, it is referred that sale consideration is said to have been paid by way of Cheque No.000238. But the specific case of the defacto complainant is that the cheque was never handed over to him. The evidence of the Manager of HDFC Bank confirm that through this cheque a sum of Rs.4 lakhs was paid to Keerthivasan, brother of A2. Added to it, sale deed executed on 27.08.2015 and the mortgage of the property was made with Cholamandalam Investment Finance Company Limited on 01.09.2015, i,e. within four days. Thereafter, it was topped up with Reliance Finvest Corporation on 30.09.2015. Thus, the pattern clearly proves the deceitfulness adopted by the accused. As regards the fraudulent execution of sale deed, the SRO/L.W.3 confirms the same as well as the witnesses to the document. Further, huge amount of mortgage amount was used by A1 to make his other payments and substantial amount was transferred to the account of brother of A2 but no amount including the mortgage amount was paid to the defacto complainant. From the materials collected, it is seen that there is no iota of material to show that any payment was made to the defacto complainant. The defacto complainant, a retired person of 73 years, deceitfully cheated by the accused herein. As regards this petitioner/A2 he played an active role along with other accused. In view of the above, this Court is not inclined to entertain this petition. Hence, the Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is closed.

9.Further, considering the long pendency of the case and also the age of the defacto complainant, it is by accident or design, the other accused, namely, A1 and A3 so far neither filed a discharge petition nor a quash petition, the apprehension is that they might take turns to file sub petitions claiming it as a matter of right thereby further delay the progress of trial. If such situation arise, it is for the Trial Court or this Court to take appropriate action considering the plight of the defacto complainant and the materials collected during investigation. Finding that there are only 12 witnesses and almost all the witnesses are from Chennai, this Court directs the Trial Court to proceed with the trial and complete the same within a period of six months from the date of receipt of a copy of this order, if required post the case on short intervals. If any dilatory tactics is adopted, the learned Magistrate shall take coercive action following the dictum of the Apex Court in the case of ***P.K.Shaji vs. State of Kerala*** reported in ***[2005] AIR SCW 5560*** and ensure that the trial is completed within the stipulated time.

02.11.2022

Index : Yes/No
Internet: Yes/No
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To

1.The Sub-Inspector of Police,
Central Crime Branch,
Vepery, Chennai.

2.The Metropolitan Magistrate
[CCB & CBCID Metro Cases], Egmore

3.The Public Prosecutor,
High Court, Madras.

M.NIRMAL KUMAR, J.

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Pre-delivery order made in

Crl.O.P.No.29819 of 2018

02.11.2022