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Crl.O.P.No.1889 of 2022
and
Crl.M.P.No.803 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on 23.03.2023	Orders pronounced on 18.04.2023
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THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

Crl.O.P.No.1889 of 2022
and
Crl.M.P.No.803 of 2022

1. P.Asir Pandian
2. Vincent George ... Petitioners

Vs.

1. The Commissioner of Police
Central Crime Branch
Chennai – 600 007.
2. The Inspector of Police
Central Crime Branch
EDF-II, Team-III
Vepery, Chennai – 600 007.
3. Muthu Williams ... Respondent



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This Criminal Original Petition is filed under Section 482 Cr.P.C. to call for the records in Crl.M.P.No.14455 of 2021 on the file of the learned Metropolitan Magistrate, CCB & CBCID, Egmore, Chennai and set aside the Order in Crl.M.P. No.14455 of 2021 dated 12.01.2022.

For Petitioner : Mr.N.R.Elango, Senior Counsel
for
M/s.A.S.Aswin Prasanna

For Respondents 1 & 2 : Mr.Leonard Arul Joseph Selvam
Government Advocate (Crl. Side)

For Respondent-3 : Mr.K.S.Viswanathan, Senior Counsel
for
Mr.G.Ilamurugu

ORDER

This petition is filed to call for the records in Crl.M.P.No.14455 of 2021 on the file of the learned Metropolitan Magistrate, CCB & CBCID, Egmore, Chennai and set aside the Order in Crl.M.P.No.14455 of 2021 dated 12.01.2022.



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2. Third respondent filed a private complaint under section 156 (3) Cr.P.C. before the learned Metropolitan Magistrate, CCB & CBCID, Egmore, Chennai in Crl.M.P.No.14455 of 2021. The learned Magistrate, on considering the complaint allegations and materials filed in support of the complaint allegations, found that the closure of the complaint given to the second respondent/police stating that 'the dispute is civil in nature' is not acceptable. He further stated that the averments in the complaint and the documents submitted by the petitioner made out commission of cognizable offence. In this view of the matter, directed the Deputy Commissioner of Police to direct the concerned Inspector of Police to register the first information report based on the complaint dated 08.07.2021, investigate the complaint and file final report.

3. It is seen from the copy of the allegations made in the affidavit filed along with the complaint filed by the third respondent under section 156 (3) Cr.P.C. that,

3(i) YMCA, Madras has properties worth more than Rs.700



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Croroos. A proposal for constructing Convention Centre, Guest Rooms and Commercial Centre in the land owned by YMCA in Kottivakkam was conceived by the YMCA and a Memorandum of Undertaking (MoU) was entered into between YMCA, Madras and M/s.Crystal Creations (India) Pvt. Ltd., on 30.04.2009. The developer would construct buildings for a built-up area of 8,71,200 sq.ft. in 10 acres of land. Out of this constructed area, 47% will be handed over to YMCA, Madras and 53% will be retained and enjoyed by the developer for a period of 99 years. The developer will have to pay Rs.5,00,000/- annually towards rent to the YMCA, Madras, with periodical increase of 10% every 10 Years.

3(ii) C.S.No.862/2003 was filed for getting approval from this Hon'ble High Court by YMCA, Madras. This Hon'ble Court passed an order granting approval on 30.04.2009. Against the said order of approval, one Mr.S.D.Joseph and other filed OSA.No. 142 of 2009 before this Hon'ble Court and on 10.08.2009, a Division Bench of this Hon'ble Court, set aside the order of approval.

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3(iii) Against the said order YMCA and M/s.Crystal Creations (India) Pvt. Ltd., filed SLPs before the Hon'ble Supreme Court, that was later converted into C.A.Nos.1798-1800 of 2013 and 1801-1803 of 2013. After negotiation between YMCA, Madras and M/s Crystal Creations Pvt. Ltd., fresh terms were discussed and revised MoU was entered on 14.11.2015. The Hon'ble Supreme Court disposed of all the Civil Appeals in terms of the revised MoU dated 14.11.2015 observing that the parties are bound by the terms of the MoU approved.

3(iv) The salient terms of the MoU approved by the Hon'ble Supreme Court are as follows:-

a. The 10 acres of land earmarked for development, will be divided into two pieces of 5 acres and set out to each party namely YMCA, Madras (Land Owner) and M/s. Crystal Creations Pvt Ltd., (developer). The northern part consisting of 5



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acres would be allotted to YMCA, and would be known as Owner's land or Land Owner's Share of Property (LSP). The Southern part would be allotted to the M/s. Crystal Creations Pvt. Ltd., and would be known as Developer's Land or Developer's Share of Property (DSP).

b. For developing LSP, the developer shall pay Rs.130 Crores (Rupees one hundred and thirty crores only) to YMCA in a phased manner as specified in clause 3.3. of construction of commercial buildings in the 5 acres SLP.

c. In consideration of the above said payment, YMCA would execute a lease agreement in favour of M/s.Crystal Creations Pvt. Ltd., for the DSP assigned



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5 acres for 99 years, for an annual lease rent of Rs.5 lakhs.

d. All costs for the development of the Owner's land or LSP, over and above the said Rs.130 crores shall be borne by YMCA, as landowner.

3(v) In pursuance of this MoU, many instalments of payments had been received by Mr.P.Asir Pandian, Mr.Vincent George and others on behalf of YMCA, Madras from M/s.Crystal Creations Pvt. Ltd. However, the land owner's share of the property (LSP land) remains vacant with no signs of starting the construction of proposed complex.

3(vi) Mr.P Asir Pandian, General Secretary of YMCA, Madras, circulated Annual Report and Audited Statement of Accounts for the year 2019-2020. Third respondent was shocked to know the misappropriation of funds to the tune of Rs.63 crores (Rupees Sixty Three Crores only) by Mr.P



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Asir Pandian, Mr.Vincent George and others.

3(vii) As per the report the following facts would emerge:-

a. In page No.35/42 of the report under the heading "Advances from Crystal Creation", as Rs.76.54 crores (Rupees Seventy Six crores fifty four lakhs only)

b. In page No.38/42, the Grand Total of Fixed Deposit is shown as Rs.12,82,98,502 (Rupees twelve crores eighty two lakhs ninety eight thousand five hundred and two only)

c. In the last page No.41/42, the total Closing Balance has been shown as Rs.51,91,883/- (Rupees fifty one lakhs ninety one thousand eight hundred and eighty three only)



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3(viii)

Even after receipt of Rs.76.54 crores from M/s. Crystal Creations; no construction work is started in the LSP land. On the other hand, the cash balance and FD available are shown as only Rs.13.33 crores. A sum of Rs.63 crores had been swindled and no accounts have been given. Mr.P.Asir Pandian, Mr.Vincent George and others have criminally conspired with a malafide common intention of their personal unlawful enrichment, committed forgery, manipulation of accounts, fraudulent misappropriation of public funds of YMCA, breach of trust and cheating. They caused loss of Rs.63 Crores to the public Charitable Trust of YMCA.

3(ix) The third respondent lodged a complaint through online on 08.07.2021 with the first respondent/Commissioner of Police and through person on 09.07.2021 and on the same day, the complaint was forwarded by the first respondent to the second respondent. However, the second respondent has not registered any FIR, necessitating giving of the complaint under section 156 (3) Cr.P.C.

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4. As stated earlier, the learned Metropolitan Magistrate, for the reasons stated above, directed the registration of the first information report. Challenging the order passed by the learned Metropolitan Magistrate, CCB & CBCID, Egmore, Chennai in Crl.MP.No.14455 of 2021 on 12.01.2022, this Criminal Original Petition is filed.

5. Learned counsel for the petitioners submitted that there are civil litigations pending in connection with the same dispute. Third respondent along with two others filed application in A.No.1844 of 2021 before this court seeking leave to file a suit for framing a scheme in respect of the money received from M/s.Crystal Creations Pvt. Ltd., as per the MoU filed before the Hon'ble Supreme Court. During the pendency of this application, complaint dated 08.07.2021 was given. This Court, after hearing the parties, dismissed A.No.1844 of 2021 on 08.10.2021. It was observed that the accounts have been properly audited and made known to everyone. Third respondent has not approached the court with clean hands. He has suppressed the proceedings in A.No.1844 of 2021 in the private

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complaint. Third respondent's wife's firm M/s.Amazee Infrastructure participated and submitted a tender for the proposed construction at Royapuram. This tender was found to be invalid and therefore, rejected. Therefore, third respondent joined hand with other persons and filed A.No.1844 of 2021. Third respondent was part of all the major decisions taken, including the so called irregular transactions. Having been a part of all the transactions, he cannot now challenge the decisions taken by the board. This complaint is motivated for the reason that his wife's tender was rejected. There is also an unnumbered suit pending for the same relief. A.No.1844 of 2021 was dismissed. The dismissal of A.No.1844 of 2021 was not brought to the notice of the learned Metropolitan Magistrate. Had it been brought to the notice of the learned Metropolitan Magistrate, the learned Metropolitan Magistrate would not have directed the registration of the first information report. Thus, learned counsel for the petitioner prayed for setting aside the order of learned Metropolitan Magistrate, CCB & CBCID, Egmore, Chennai in Crl.M.P.No.14455 of 2021 on 12.01.2022.



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6. In response, learned counsel for the third respondent submitted that the very filing of this petition for setting aside the order passed under section 156 (3) Cr.P.C. is not maintainable for the reason that even if the first information report is registered, second respondent may choose to file negative final report, if the petitioners are able to show that the amount received from M/s.Crystal Creations Pvt. Ltd., is properly utilised. This is a pre-matured petition and if this petition is entertained, it would amount to opening of flood gate and this Court would be flooded with several petitions challenging the order passed under section 156 (3) Cr.P.C. The order passed by the court in A.No.1844 of 2021 came to be passed in an application filed under section 92 C.P.C. seeking permission to file the suit on the allegations of criminal misappropriation of funds, for rendering of accounts and removal of membership in the Board of Directors etc. During the course of discussion, it was observed that the third respondent has personal interest and he was part of the decision taken on the subject matter. The issue as to whether there was cheating, criminal breach of trust and criminal misappropriation of funds had not been discussed in the order. The

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application came to be dismissed for the reason that there is another unnumbered suit pending for the same relief. In some cases there are overlap of civil liability and commission of criminal offences. It is one such case, where the accused had committed the offences of cheating, fabrication of accounts, criminal misappropriation of funds, cheating and criminal breach of trust. If the alleged first information report is not registered and investigated, the truth will not come out and YMCA, which is functioning with laudable object of service to the society, would end up losing its money and property.

7. In support of his submission that the challenge made by the petitioners and this petition cannot be maintained, he relied on the judgment of the Hon'ble Supreme Court in ***HDFC Securities and others versus State Bank of Maharashtra*** reported in (2017) 1 SCC 640. On the other hand learned counsel for the petitioners pressed into service the judgment of the Hon'ble Supreme Court in ***Babu Venkatesh and others versus State of Karnataka and another*** for the proposition that 'when a civil proceedings is



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pending and decision had been taken in civil proceedings, filing of complaint under section 156 (3) Cr.P.C. would be an abuse of process of law.'

8. Considered the rival submissions and perused the records.

9. It is not in dispute that the third respondent and petitioners are the members of YMCA, Madras. It is claimed that the first petitioner Mr.P.Asir Pandian is the General Secretary of YMCA Madras. Third respondent had given a complaint on 08.07.2021 to the Commissioner of Police making allegations of criminal misappropriation of funds of YMCA. This complaint was enquired by the Sub-Inspector of Police EDF-III, Team-III, CCB, Veppery, Chennai and final report was filed. After referring the MoU between M/s.Crystal Creations (India) Pvt. Ltd., and YMCA, Madras, the suit filed before the court in C.S.No.862 of 2003, OSA No. 142 of 2009 and C.A.Nos.1798 to 1800 of 2013 and 1801 to 1803 of 2013 and the MoU reached and approved by the Hon'ble Supreme Court, the complaint was

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closed stating that as per the terms of MoU part-22 serial number 10.6 especially serial numbers 10.6 (1) and 10.6 (9) there was an agreement to resolve the dispute between the parties through a civil Court. Accordingly, since the issue related to civil dispute, there is no cause for registration of first information report and therefore, the complaint was closed. Thereafter, third respondent filed the complaint under section 156 (3) Cr.P.C. and order passed thereon is now challenged.

10. The main grievance of the learned senior counsel for the petitioners is that the order passed in A.No.1844 of 2021 was totally suppressed in the private complaint. The order passed in A.No.1844 of 2021 had also dealt with the allegations of criminal misappropriation and found that allegations are not supported and ultimately A.No.1844 of 2021 was dismissed.

11. As stated already, A.No.1844 of 2021 was filed seeking



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permission to file the suit under section 92 of C.P.C. on the allegations of misappropriation of funds, seeking rendition of accounts, removal of membership from the Board of Directors.

12. Reading of this order shows it was alleged by the petitioners therein that a sum of Rs.130 crores was agreed to be paid by M/s.Crystal Creations (India) Pvt. Ltd. Only a sum of Rs.76.54 crores was paid and nothing is shown about what happened to the remaining amount. Three properties had been purchased at Kilpauk, Royapettah and Kodaikanal for a sum of Rs.31 crores and there is no information as to what happened to the balance amount. Alleging financial loss was caused to YMCA, serious irregularities and misappropriation of funds, the application was filed. It was alleged by the petitioners/respondents in A.No.1844 of 2021 that third respondent herein has personal interest in the award of contract for the reason that his wife's proprietary concern namely M/s.Amazee Infrastructure offered a tender and that had been rejected as invalid. Not only that third respondent was present on 17.10.2017 in the Project Management



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Committee Meeting when the resolution was passed for certain developments of YMCA property. The auditors' report mentioned all the financial transactions and there is nothing to conceal.

13. There is a similar unnumbered suit pending for the same relief. In the said circumstances, this Court observed that third respondent was himself a party to the decisions taken with regard to all the so called irregular transactions, he has some personal interest in the award of contract. That in the unnumbered suit, third respondent, who is one of the defendants, can agitate the public cause of proper management of the Association. It was found that the so called financial irregularities or misappropriation appeared to be not well founded. It was also observed that YMCA initiated action against M/s.Crystal Creations (India) Pvt. Ltd., and that the accounts of the YMCA have been properly audited and made known to everyone. However in paragraph 44 of the order this court observed as follows:-

“44. In any event, this Court finds on the whole



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that there are plausible answers from the side of the first respondent Association to the allegations and this Court however is not inclined to give any conclusive findings on such matters, in view of the pending un-numbered suit before this Court. At the same time, this Court finds lack of bonafides in the litigation in the first place. Although it was argued that there are other two plaintiffs apart from the second plaintiff, this Court is unable to be persuaded by such specious plea. When it is demonstrated that the second plaintiff has personal interest in the matter and also he being a signatory to all the decisions taken on the subject matters, merely there are two other applicants/plaintiffs joining hands with the second plaintiff, it does not erase the personal interest lurking beneath the public cause projected in the suit. ”



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14. Though the application was dismissed for lack of bonafides that the third respondent has personal interest in the matter and he is the signatory to all the decisions taken in the subject matter, it was also observed that this Court is not inclined to give any conclusive finding on such matters in view of the pending unnumbered suit before the court.

15. The gist of the private complaint allegations is that out of Rs76.54 crores received from M/s.Crystal Creations (India) Pvt. Ltd. a sum of Rs.12,82,98,502/- is invested in Fixed Deposit and the bank balance is shown as Rs.51,91,883/-. There is no proper accounts with regard to the balance amount for a sum of Rs.63 crores. It is alleged that this sum of Rs.63 crores had been swindled. Of course we have seen from the order passed in A.No.1844 of 2021, three properties had been purchased at Kilpauk, Royapettah and Kodaikanal for Rs.31 crores, still there is no explanation offered for the remaining amount of Rs.63 crores. Even before the Court, there is no explanation offered with regard to the balance amount of Rs.63 crores, after the purchase of the aforesaid three properties. When it



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is alleged that there is falsification of accounts and misappropriation of amount, it is the duty and responsibility of the petitioners against whom the allegation is made, to give proper explanation by rendering proper accounts. No such account has been produced before this Court. In the facts and circumstances of the allegations made in the complaint, this Court is of the view that it is a fit case necessarily to be enquired. It is seen from the judgment of the Hon'ble Supreme Court in *HDFC Securities and others versus State Bank of Maharashtra* reported in (2017) 1 SCC 640 (cited *supra*) that the order under section 156 (3) Cr.P.C. requiring investigation by the police cannot be said to have caused any injury and irreparable loss. We must keep in our mind that the stage of cognizance would arise only after the investigation report is filed before the Magistrate. Approaching the High Court even before the stage of issuance of summons is nothing but premature.



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16. Even in the Judgment relied by the learned counsel for the appellant in ***Babu Venkatesh and others versus State of Karnataka and another***, the challenge was made only against the registration of the first information report. No challenge was made against the order directing the registration of the first information report. Registration of the first information report came to be quashed for the reason that the complaint was not supported by the affidavit. Therefore, the Magistrate ought not to have entertained the complaint under section 156 (3) Cr.P.C. Finding that the High Court failed to take into consideration the legal position enunciated by the Hon'ble Supreme Court in ***Priyanka Srivatsava versus State of UP*** held that the continuation of the proceedings would amount to abuse of process of law and quashed the first information report.

17. Recently the Hon'ble Supreme Court in SLP (C) Nos.3931 of 2021, 4922 of 2021 and 5056 of 2021 etc., batch has reiterated that no opportunity of being heard is required to be given to the accused before First Information Report registered.



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18. In the case before hand, so far no first information report is registered and before the registration of the first formation report, this petition is filed challenging the order registering the first information report. The allegations made in the complaint are with regard to the falsification of accounts, criminal misappropriation of funds, criminal breach of trust and cheating of funds received from M/s.Crystal Creations (India) Pvt. Ltd. Admittedly, no construction work has taken place in LSP land in terms of MoU. Of Rs.76.54 crores received, there are accounts to show purchase of properties, Fixed Deposit investment and cash on bank account. Still there is no proper account to the tune of Rs.32 crores. The Hon'ble Supreme Court in **“Lalit Kumari versus State of UP”** reported in **(2014) 2 SCC 1** directed the conduct of the preliminary enquiry in certain cases. It is observed in para 120.6 of the above judgment as follows:-

“vi) As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The



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category of cases in which preliminary inquiry may be made are as under:

- a) Matrimonial disputes/ family disputes*
- b) Commercial offences*
- c) Medical negligence cases*
- d) Corruption cases*
- e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.*

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.”

19. The allegations against the petitioners in the complaint are related to corrupt practices adopted by them in handling the funds. Thus,



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this Court is of the view that a preliminary enquiry is required before deciding as to whether the registration of the first information report is necessary or not. The complaint given by the third respondent was closed for the reason that the MoU between YMCA, Madras and M/s.Crystal Creations (India) Pvt. Ltd., has a term for settling the dispute between them in the Civil Court. This particular term for settling the dispute between them in a Civil Court does not mean that if cognizable offence is committed by the members and office bearers of YMCA, Madras, and it comes to light, no criminal prosecution can be launched.

20. It is seen from the judgment reported in ***(2012) 9 SCC 460 (Amit Kapoor ..vs.. Ramesh Chander and another)*** that there may be cases which are purely a civil wrong or purely a criminal offence or both civil wrong and criminal offence constituting both on the same set of facts. If the records disclose commission of criminal offence and the ingredients of the offences are satisfied, then, such criminal proceedings cannot be quashed merely because civil wrong can also be committed.

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21. Therefore, the closure of the report without conducting a proper preliminary enquiry on the allegations made in the complaint given to the police is not correct and legal. Therefore, this Court now modifies the order of the learned Metropolitan Magistrate, CCB & CBCID, Egmore, Chennai, in the sense that instead of directly registering the first information report, second respondent is directed to conduct preliminary enquiry on the allegations made in the complaint filed under section 156 (3) Cr.P.C. giving opportunity to both third respondent and petitioners to produce relevant documents in support of their case. On the basis of the evidence produced by them, it is open to second respondent either to register the first information report against petitioners, if the commission of cognizable offence is made out or close the complaint in the manner known to law. In either case, parties must be intimated about the result of the enquiry. This exercise is to be completed within a period of four weeks from the date of receipt of a copy of this order.



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22. Accordingly, this Criminal Original Petition is disposed of.

Consequently, connected Miscellaneous Petition is closed.

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Index :Yes

Internet:Yes

Speaking Order/Non-speaking Order

To

1. The Metropolitan Magistrate,
CCB & CBCID,
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2. The Public Prosecutor,
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G.CHANDRASEKHARAN,J.

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order in
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