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Crl.O.P.Nos.1804 & 2709 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.Nos.1804 & 2709 of 2021
and Crl.M.P.Nos.1053, 1054, 1487 & 1489 of 2021

Crl.O.P.Nos.1804 of 2021 :-

1. Sundaravadivelu
2. K.C.Chandrasekaran
3. Manjula
4. G.Gurusamy
5. Sasikala

...Petitioners

Vs.

1. State represented by
The Inspector of Police,
CCB, Team XVI A
Veppery,
Chennai – 600 007.

2. K.M.Narayanasamy Kutty

... Respondents

Prayer: Criminal Original Petitions filed under Section 482 of Code of Criminal Procedure, to call for the records and quash the proceedings in C.C.No.5209 of 2020 on the file of the learned Metropolitan Magistrate, C.C.B.Cases and C.B.C.I.D (Metro Cases), Chennai.

For Petitioners : Mr.M.Krishnamoorthy

For Respondents

For R1 : Mr.A.Gopinath
Government Advocate (Crl. Side)

For R2 : MrB.Senthil Kumar



Crl.O.P.Nos.1804 & 2709 of 2021

Crl.O.P.Nos.2709 of 2021 :-
Gayathri

...Petitioner

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Vs.

1. The Inspector of Police,
Central Crime Branch,
Anti Land Grabbing Special Cell-I,
Team XVI A, Veppery,
Chennai – 600 007.

2. K.M.Narayanasamy Kutty

... Respondents

Prayer: Criminal Original Petitions filed under Section 482 of Code of Criminal Procedure, to call for the records relating to the case in C.C.No.5209 of 2020 pending trial on the file of the learned Metropolitan Magistrate, C.C.B.Cases and C.B.C.I.D (Metro Cases), Chennai.

For Petitioners : Mr.K.C.Senthilkumar

For Respondents

For R1 : Mr.A.Gopinath

Government Advocate (Crl. Side)

For R2 : MrB.Senthil Kumar

COMMON ORDER

These petitions have been filed to quash the proceedings in C.C.No.5209 of 2020 pending trial on the file of the learned Metropolitan Magistrate, C.C.B.Cases and C.B.C.I.D (Metro Cases), Egmore, Chennai, thereby taken cognizance for offences under Sections 120(B), 409, 420, 423, 465, 467, 468, 471 of IPC and Section 82 of the Registration Act, 1908, as against the petitioners.



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2. The petitioners in Crl.O.P.No.1804 of 2021 are arrayed as A3, A4, A6, A7 and A8 and the petitioner in Crl.O.P.No.2709 of 2021 is arrayed as A5 in the above said case. Hence, this Court is inclined to pass common order in both petitions.

3. The case of the prosecution is that the defacto complainant/second respondent in both petitions is the owner of 1 ground 875 sq.ft., land situated at D.No.24, 1st Cross Street, West CIT Nagar, Nandhanam, Chennai-35. In order to develop the said property into flat scheme, the property was entrusted to M/s.L.S.V.Estates and Proprietary Concern belonging to the accused 1 & 2. The defacto complainant also executed power of attorney in favour of the first accused to sell 50% of the builder share in the land and flats and another registered power of attorney was also executed to construct the flats on the land. An non-registered joint venture agreement was also executed between the defacto complainant and M/s.LSV Estates on 21.06.2002.

4. It is alleged that after construction, the first accused had executed nine sale deeds, selling nine flats to nine different persons out of which three flats were sold to A4, A6, A7, A8 who are all relatives of



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the defacto complainant. The allegation is that the defacto complainant's share flats were also sold to the petitioners by the accused 1 to 3. Since, the accused 4 to 8 are the relatives of the defacto complainant, they knowingly purchased the three flats which were allotted to him. Hence, the complaint.

5. On receipt of the complaint, initially FIR was registered on the file of the Inspector of Police, J-1, Saidapet Police Station and subsequently it was transferred to CCB, Veppery, Chennai for further investigation. A charge sheet was filed before the learned Metropolitan Magistrate, Special Court for Land Grabbing Cases-II, Chennai, and subsequently transferred to the file of the learned Metropolitan Magistrate, C.C.B. Cases and C.B.C.I.D (Metro Cases), Chennai and taken cognizance in C.C.No.5209 of 2020. The copies under Section 207 of Cr.P.C., were served on the accused on 18.01.2021.

6. The learned counsel appearing for the petitioners in Crl.O.P.No.1804 of 2021, submitted that even according to the case of the prosecution, the petitioners are only purchasers. After seeing the Joint venture agreement, which was entered between the defacto complainant



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and the accused 1 & 2, they had purchased their undivided share. After purchase, the entire revenue records were mutated in their name and they are in possession to their flats. No offence is made out as against the petitioners, since they are only *bonafide* purchasers.

7. The learned counsel appearing for the petitioner in Crl.O.P.2709 of 2021 submitted that in fact, entire sale consideration was directly paid to the defacto complainant through their bank account by way of cheques and demand draft. Therefore, the petitioner has not committed any offence as alleged by the second respondent.

8. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

9. On perusal of the records revealed that, the second respondent is the owner of the property ad measuring 1 ground 875 sq.ft., situated at D.No.24, 1st Cross Street, West CIT Nagar, Nandhanam, Chennai-35. In order to develop the property, he entered into join venture agreement with the first and second accused. He had executed unregistered join venture agreement and accordingly 50% of the



undivided share allotted in favour of the first and second accused. They proposed to construct eight flats. In fact, four flats were allotted in favour of the builders viz., first and second accused and four flats were allotted in favour of the second respondent. However, the power holder constructed nine flats and executed the nine sale deeds in favour of the petitioners and others in respect of the entire undivided share viz., 1 ground 875 sq.ft.

10. On perusal of the encumbrance certificate also revealed that the power holder sold out the entire extend of the property. Though the petitioners are the *bonafide* purchasers, without even verifying the joint venture agreement and power of attorney executed in favour of the first and second accused, they purchased the flats. Therefore, they also conspired together and purchased the flats from the accused 1 & 2. In fact, the petitioners are relative of the defacto complainant and the specific case of the complainant is that the without giving any share entire flats were sold out in favour of the purchasers. Subsequently, he cancelled the power of attorney and settled the property which was originally allotted in his favour in favour of his wife.



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11. That apart, A1 and A2 are still absconding and yet to be secured. Therefore, the grounds raised by the petitioners are mixed question of fact and it cannot be considered in the quash petition to quash the entire proceedings. In this regard, it is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in **Crl.A.No.579 of 2019** dated **02.04.2019** in the case of **Devendra Prasad Singh Vs. State of Bihar & Anr.**, wherein it is held as follows:-

" 12. So far as the second ground is concerned, we are of the view that the High Court while hearing the application under Section 482 of the Cr.P.C. had no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their statements and, therefore, there was no prima facie case made out against respondent No.2. In our view, this could be done only in the trial while deciding the issues on the merits or/and by the Appellate Court while deciding the appeal arising out of the final order passed by the Trial Court but not in Section 482 Cr.P.C. proceedings.

13. In view of the foregoing discussion, we allow the appeal, set aside the impugned order and restore the aforementioned complaint case to its original file for being proceeded with on merits in accordance with law.



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12. The Hon'ble Supreme Court of India dealing in respect of the very same issue in ***Crl.A.No.1572 of 2019*** dated 17.10.2019 in the case of ***Central Bureau of Investigation Vs. Arvind Khanna***, held as follows:

“19. After perusing the impugned order and on hearing the submissions made by the learned senior counsels on both sides, we are of the view that the impugned order passed by the High Court is not sustainable. In a petition filed under Section 482 of Cr.P.C., the High Court has recorded findings on several disputed facts and allowed the petition. Defence of the accused is to be tested after appreciating the evidence during trial. The very fact that the High Court, in this case, went into the most minute details, on the allegations made by the appellant-C.B.I., and the defence put-forth by the respondent, led us to a conclusion that the High Court has exceeded its power, while exercising its inherent jurisdiction under Section 482 Cr.P.C.

20. In our view, the assessment made by the High Court at this stage, when the matter has been taken cognizance by the Competent Court, is completely incorrect and uncalled for.”



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13. Further the Hon'ble Supreme Court of India also held in the order dated **02.12.2019** passed in **Crl.A.No.1817 of 2019** in the case of **M.Jayanthi Vs. K.R.Meenakshi & anr**, as follows:

"9. It is too late in the day to seek reference to any authority for the proposition that while invoking the power under Section 482 Cr.P.C for quashing a complaint or a charge, the Court should not embark upon an enquiry into the validity of the evidence available. All that the Court should see is as to whether there are allegations in the complaint which form the basis for the ingredients that constitute certain offences complained of. The Court may also be entitled to see (i) whether the preconditions requisite for taking cognizance have been complied with or not; and (ii) whether the allegations contained in the complaint, even if accepted in entirety, would not constitute the offence alleged.

.....

13. A look at the complaint filed by the appellant would show that the appellant had incorporated the ingredients necessary for prosecuting the respondents for the offences alleged. The question whether the appellant will be able to prove the allegations in a manner known to law would arise only at a later stage....."



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14. In view of the above discussions, this Court is not inclined to quash the proceeding. However, considering the facts and circumstances of the case, the personal appearance of the petitioners is dispensed with and they shall be represented by a counsel after filing appropriate application. The petitioners shall be present before the Court below at the time of furnishing of copies, framing charges, questioning under Section 313 Cr.P.C., and at the time of passing judgment. The trial Court viz., learned Metropolitan Magistrate, C.C.B. Cases and C.B.C.I.D (Metro Cases), Egmore, Chennai, is directed to take suitable steps to secure the first and second accused and proceed with the trial in accordance with law and complete the same within a period of six months from the date of receipt of a copy of this Order.

15. Accordingly, both the Criminal Original Petitions stand dismissed. Consequently, connected miscellaneous petitions are closed.

20.11.2023

Internet: Yes

Index : Yes/No

Speaking/Non Speaking order
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1. The Metropolitan Magistrate,
C.C.B. Cases and C.B.C.I.D (Metro Cases),
Egmore, Chennai.
2. The Inspector of Police,
CCB, Team XVI A
Veppery,
Chennai – 600 007.
3. The Public Prosecutor,
Madras High Court,
Chennai.



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G.K.ILANTHIRAIYAN. J.

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