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Crl.O.P.Nos.5903, 6529 and 6531 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.08.2023

PRONOUNCED ON: 22.09.2023

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.O.P.Nos.5903 of 2021 & 6529 of 2021 & Crl.M.P.No.4335 of 2021
and Crl.O.P.No.6531 of 2021 & Crl.M.P.No.4337 of 2021

Crl.O.P.No.5903 of 2021

A.S.Gopal alias A.S.Chellamuthu ... Petitioner
/vs/

1.The District Superintendent of Police,
Sangagiri Main Road,
Nethimedu, Salem.

2.The Inspector of Police,
District Crime Branch,
Salem.

3.The Inspector of Police,
CB-CID, Salem. ... Respondents

Crl.O.P.No.6529 of 2021

V.Sriram ... Petitioner
/vs/

1.The State rep.by Inspector of Police,
District Crime Branch,
Salem. Crime No.11 of 2020

2.A.S.Chellamuthu ... Respondents



Crl.O.P.Nos.5903, 6529 and 6531 of 2021

WEB CO **Crl.O.P.No.6531 of 2021**

P.Senthil Kumar ... Petitioner
/vs/

1.The State rep.by
Inspector of Police,
District Crime Branch,
Salem. (Crime No.11 of 2020)

2.A.S.Chellamuthu ... Respondents

Prayer in Crl.O.P.No.5903 of 2021: Criminal Original Petition has been filed under Section 482 Cr.P.C. to transfer the investigation in Crime No.11 of 2020 on the file of the 2nd respondent police to the 3rd respondent police.

Prayer in Crl.O.P.No.6529 of 2021: Criminal Original Petition has been filed under Section 482 Cr.P.C. to quash the FIR in Crime No.11 of 2020 dated 27.08.2020 on the file of the 1st respondent.

Prayer in Crl.O.P.No.6531 of 2021: Criminal Original Petition has been filed under Section 482 Cr.P.C. to call for records and to quash the FIR in Crime No.11 of 2020 dated 27.08.2020 on the file of the 1st respondent



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Crl.O.P.Nos.5903, 6529 and 6531 of 2021

For Petitioner in Crl.O.P.No.5903/2021	...	Mr.S.Rajarajan
For Petitioner in Crl.O.P.No.6529/2021	...	Mr.N.Baaskaran for Mr.S.Eswar
For Petitioner in Crl.O.P.No.6531/2021	...	Mr.S.Santosh
For all Respondents Crl.O.P.No.5903/2021 and For Respondent No.1 in Crl.O.P.Nos.6529 & 6531 of 2021.	...	Mr.L.Baskaran Govt. Advocate (Crl.side)
For Respondent No.2 in Crl.O.P.Nos.6529 & 6531 of 2021	...	Mr.S.Rajarajan

COMMON ORDER

To transfer the investigation in Crime No.11 of 2020 on the file of the 2nd respondent police to the 3rd respondent police, the criminal original petition in Crl.O.P.No.5903 of 2021 has been filed and challenging the criminal proceedings in Crime No.11 of 2020 dated 27.08.2020 on the file of the 1st respondent, the criminal original petitions in Crl.O.P.Nos.6529 & 6531 of 2021 have been filed.



WEB COPY 2. Since all the three cases are involved in common fact of law, common order is passed.

3. The prosecution case is that the defacto complainant A.S.Chellamuthu S/o Sadaiyan and his wife Selvamathi were Chit Subscribers. M/s.Attur Thuluva Vellalar Sangam Chit Funds Pvt. Ltd., had filed three Arbitration Original Petitions, namely, A.O.P.No.10 of 2017, A.O.P.No.11 of 2017 and A.O.P.No.12 of 2017. Without notice with regard to Arbitration proceedings, the Deputy Registrar of Chits, Salem East (Arbitrator) passed exparte award in all A.O.Ps. There is no arbitration agreement between the defacto complainant and the abovesaid M/s.Attur Thuluva Vellalar Sangam Chit Funds Pvt. Ltd.,. The Arbitration award was signed by one P.Senthil Kumar (A3) in the FIR in Crime No.11 of 2020/the petitioner in Crl.O.P.No.6531 of 2021 and he was not posted as Deputy Registrar of Chits and he worked as a Assistant. Though he was not Deputy Registrar of Chits, he passed three Arbitration awards falsely. Based on that awards, the abovesaid M/s.Attur Thuluva Vellalar Sangam Chit Funds



Crl.O.P.Nos.5903, 6529 and 6531 of 2021

Pvt. Ltd., filed execution proceedings before the II Additional District Judge, Salem. In pursuance of an attachment order was passed. Thereafter, the defacto complainant filed petitions viz., I.A.No.3 of 2017 in AOP No.10 of 2017, I.A.No.4 of 2017 in AOP.No.11 of 2017 and I.A.No.5 of 2017 in AOP No.12 of 2017 for setting aside the award passed by the Deputy Registrar of Chits, Salem. It was likely mentioned in the encumbrance certificate of Sub Registrar, Salem. They also attached other than the properties offered as security for the same debt. Therefore, the defacto complainant gave a complaint before the first respondent police. In pursuance of that complaint, a case has been registered in Crime No.11 of 2020 for the offences under Sections 120 b, 419, 420, 464, 468, 471, 474 IPC. Now, the FIR in Crime No.11 of 2020 is challenged by the accused persons viz., V.Sriram (A2)/Petitioner in Crl.O.P.No.6529 of 2021, P.Senthil Kumar (A3) in Crl.O.P.No.6531 of 2021. Besides, the defacto complainant filed Crl.O.P.No.5903 of 2021 seeking to transfer the investigation of the case in Crime No.11 of 2020 on the file of the second respondent police to third respondent police (CB-CID) Salem.



Crl.O.P.Nos.5903, 6529 and 6531 of 2021

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4.The learned counsel appearing for the petitioner in Crl.O.P.No.5903 of 2021 and the second respondent in Crl.O.P.Nos.6529 of 2021 and 6531 of 2021 contended that the defacto complainant had taken the prized chit for the value of Rs.30 lakh in chit group No.680, Chit No.19, registered as chit agreement No.56/2012 for the value of Rs.30 lakhs from M/s.Attur Tuluva Vellalar Sangam Chit Funds Private Limited. The chit amount has to be paid by way of 30 installments. The said chit was taken in the name of the wife of the petitioner and the petitioner stood as the guarantor for the said chit. Similarly, the petitioner had also taken the prized chit for the value of Rs.15 lakhs payable in 30 installments at the rate of Rs.50,000/- per installment by virtue of chit agreement No.171 of 2013. The petitioner had also taken another chit for the value of Rs.50 lakhs which is repayable in 40 installments at the rate of Rs.1,25,000/- by virtue of Chit agreement No.182/2012 with the same chit company. The wife of the petitioner stood as the guarantor for the aforesaid two chits along with one Arumugam and his wife Chinna Pillai. The petitioner in total has committed a default of Rs.30 lakhs combining all the three chits.



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The petitioner had approached the said M/s.Attur Tuluva Vellalar Sangam Chit Funds Private Limited and requested some time to settle the dispute. For a while, the negotiation was also going on but it did not fructify. Apart from executing the aforesaid three chit agreements by himself and his wife and the contract of guarantee executed by the aforesaid two persons viz., Arumugam and his wife Chinna Pillai, the petitioner and his wife Selvamathy had executed an equitable mortgage dated 18.12.2012 depositing all the original title documents with respect to the property admeasuring 95 cents out of 4 acres and 7.5cents comprised in New Survey No.333/3B as per sub division in Patta No.1723 out of six acres and two cents comprised in Survey No.333/3, Appamma Samuthiram village, M/s. Attur Tuluva Vellalar Sangam Chit Funds Private Limited Taluk, Salem District. Neither the petitioner nor his wife or the other two sureties mentioned supra had executed any other document of security in favour of the M/s.Attur Tuluva Vellalar Sangam Chit Funds Private Limited.



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5. Further, the learned counsel submitted that while the negotiations were carried on for the settlement, the said M/s.Attur Tuluva Vellalar Sangam Chit Funds Private Limited represented by its Foreman-cum-Director Mr.R.Vasanthan son of Rama Naicker and another director Viz., V.Sree Ram son of Vasanthan director of the said company colluded and conspired with one P.Senthil Kumar, who was working as Assistant in the Deputy Registrar of Chits, Salem – East at the relevant point of time and who is now working as Assistant, Sub Registrar's office, Thammanpatti had created and fabricated false and forged security documents in the name of the petitioner, his wife and the surety Arumugam. Apart from that the aforementioned three of them have also conspired and colluded together by way of impersonation and forgery fabricated three arbitration awards in AOP No.10 of 2017, 11 of 2017 and 12 of 2017 on the file of the Deputy Registrar of Chits, Salem East. The aforesaid arbitration proceedings were stated to have been initiated by one Mr.Senthil Kumar, who was acting as Assistant in the relevant point of time in the office of Deputy Registrar Chits, Salem-East. The said Senthil Kumar and the two directors viz.,



Vasantan and Sri Ram fabricated several arbitration awards and security agreements in the name of the subscriber by way of impersonation and forgery and illegally grabbed the properties worth several crores. It is an utter shocking state of affairs for him to know that the officials in the registration department like P.Senthil Kumar are hand in glove with accused persons viz., Vasanthan and Sree Ram, the directors of M/s.Attur Tuluva Vellalar Sangam Chit Funds Private Limited to fraudulently and bogusly created and fabricated statutory records like Arbitration proceedings and arbitration award under the Chit Funds Act, 1982 in order to illegally grab the properties of several innocent persons.

6.The learned counsel further submitted that even after several months the respondent 1 and 2 police do not show any slight interest in the process of investigation. The 1st accused Vasanthan died after the registration of the FIR. The other accused are still at large. The department is also sleeping and did not take any action against the said Senthilkumar who is guilty of gravest offences. After the registration of the FIR, the petitioner also came to know that many of the files went missing. The



Crl.O.P.Nos.5903, 6529 and 6531 of 2021

petitioner had sought for the documents viz., the power and authority of the assistant in the office of Deputy Registrar, Chits to initiate the proceedings of arbitration and pass arbitral awards is not yet answered. By keeping the investigation pending for several months, the respondent police wanted to have given a long rope to the accused from escaping the charges. The case is of serious nature where the officials in the registration department misused their position to pass bogus arbitral awards to illegally grab the property of innocent persons. By keeping the investigation pending, the 2nd respondent police are paving the way for the accused persons to get away from the charges. Therefore seeking to transfer the investigation in Crime No. 11 of 2020 on the file of the second respondent police to the third respondent police and further contended that there is no ground to quash the FIR in Crime No.11 of 2020 and it is not proper to quash the FIR before completion of the investigation and seeking to dismiss the Crl.O.P.No.6529 of 2021 and 6531 of 2021.

7.The learned counsel appearing for the petitioners in Crl.O.P.Nos.6529 of 2021 and 6531 of 2021 submitted that as per the



Awards, the defacto complainant and his wife are liable to pay sums of

Rs.24,68,328/- 12,61,982/- & Rs.29,34,444/- (Totaling to Rs.66,64,754/-)

as on 17.10.2017 and the present FIR is nothing but to cheat the company for such huge amount which is nothing but public money given as chit amount to the defacto complainant and his wife. The chit fund company has been doing chit business for more than 26 years and there is not a single issue of criminality raised by any of the subscribers. So far the defacto complainant and his wife approached 3 forums/authorities viz., Principal District Judge Salem under Section 34 of Arbitration and Conciliation act, 1996 and the District Registrar (Administration) and now before the respondent police and all three forums have no authority to decide the validity of the Award or the jurisdiction of the Statutory authority to pass the award under the Chit Funds Act. The defacto complainant and his wife are abusing the criminal justice system doing forum shopping to harass the chit funds company and his office bearers. The present complaint is nothing but a harm twist method adopted by the defacto complainant and his wife to defraud the Chit Funds Company. The allegation against the petitioner in Crl.O.P.No.6531 of 2021/Senthil Kumar



(A3) being not competent person to pass the arbitration award cannot be raised in the present criminal complaint and the remedy to challenge the arbitration Award lies only by way of statutory appeal before the Government of Tamil Nadu under Section 70 of the Chit Funds Act, 1982. The District Registrar Chits is the statutory arbitrator to pass the awards under the Chit Funds Act, 1982. The respondent police are not competent to decide whether the 3rd accused at the time was competent authority or not to pass arbitration awards. There are allegations that the petitioners have manipulated the attachment order and registered the same in the sub registrar office. In the arbitration proceedings, the defacto complainant and his wife had given an affidavit of undertaking containing the schedules of property and the same was furnished to the Sub Registrar and the same was given to the Encumbrance Certificate. Based on the awards execution proceedings were filed and the competent civil court i.e. Principal District Judge, Salem has passed an attachment order in Execution proceedings. Even as against the same, the defacto complainant is making allegations against the petitioners.



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8. Further, the learned counsel submitted that Attur Thuluva Vellar Chit Funds filed a writ petition in W.P.No.5720 of 2020 to quash the proceedings in Na.Ka.4565/A2/2019 dated 20.01.2020. Similarly writ petitions were also filed in W.P.Nos.9671, 9680 & 9682 of 2020 to call for the records in Award dated 17.10.2017 in AOP Nos.10, 11 & 12 of 2017 on the file of the Deputy Registrar of Chits, Salem East, (Arbitrator), Salem – 636 108 and this Court on the abovesaid writ petitions passed the order dated 19.06.2023 and the relevant para -8 of the order is hereunder:

“8. In view of the limited request made by the learned counsel for the subscribers and the fair submission made by the learned counsel for the Chit Funds company, this Court, without expressing any opinion on the merits of the case and without interfering with the impugned orders, remand the matters back to the Deputy Registrar of Chits, Salem East (Arbitrator) Salem, who shall consider the same and pass appropriate orders, after providing opportunity to the either side, within a period of four months



***from the date of receipt of a copy of this order.
Till the conclusion of the said proceedings, the
Subscribers shall not to alienate the property.”***

9.The learned counsel further contended that since the disputed awards passed in AOP Nos.10, 11, 12 of 2017 by the Deputy Registrar of Chits, Salem East are set aside and remanded the matters back for reconsideration, there is no falsification of records in these matter, hence, keeping the FIR in crime No. 11 of 2020 is misusing the criminal process of law and hence, seeking to quash the FIR in Crime No.11 of 2020.

10.The learned Government Advocate (Crl.side) appearing for the respondent police supported the argument of the learned counsel appearing for petitioner in Crl.O.P.No.5903 of 2021 and the second respondent/ defacto complainant in Crl.O.P.Nos.6529 of 2021 and 6531 of 2021 and pleaded to dismiss the criminal original petitions in Crl.O.P.Nos.6529 of 2021 and 6531 of 2021.



WEB COPY 11.I have considered the matter in the light of the submissions made by the parties and perused the materials available on record.

12.On perusal of records, it is noticed that the defacto complainant A.S.Chellamuthu S/o Sadaiyan and his wife Selvamathi were Chit Subscribers. M/s.Attur Thuluva Vellalar Sangam Chit Funds Pvt. Ltd., had filed three Arbitration Original Petitions, namely, A.O.P.No.10 of 2017, A.O.P.No.11 of 2017 and A.O.P.No.12 of 2017. The Deputy Registrar of Chits, Salem East (Arbitrator) passed exparte award in all A.O.Ps. Based on that awards, the abovesaid M/s.Attur Thuluva Vellalar Sangam Chit Funds Pvt. Ltd.,filed execution proceedings before the II Additional District Judge, Salem. In pursuace of that, attachment order was passed. Thereafter, the defacto complainant filed petitions viz., I.A.No.3 of 2017 in AOP No.10 of 2017, I.A.No.4 of 2017 in AOP.No.11 of 2017 and I.A.No.5 of 2017 in AOP No.12 of 2017 for setting aside the award passed by the Deputy Registrar of Chits, Salem. It was likely mentioned in the encumbrance certificate of Sub Registrar, Salem, the defacto complainant's



Crl.O.P.Nos.5903, 6529 and 6531 of 2021

properties was attached. Therefore, the defacto complainant gave a complaint before the first respondent police. In pursuance of that complaint, a case has been registered in Crime No.11 of 2020 for the offences under Sections 120 b, 419, 420, 464, 468, 471, 474 IPC. Now, the FIR in Crime No.11 of 2020 is challenged by the accused persons viz., V.Sriram (A2)/Petitioner in Crl.O.P.No.6529 of 2021, P.Senthil Kumar (A3) in Crl.O.P.No.6531 of 2021. Besides, the defacto complainant filed Crl.O.P.No.5903 of 2021 seeking to transfer the investigation of the case in Crime No.11 of 2020 on the file of the second respondent police to third respondent police (CB-CID) Salem.

13.It is not disputed that in W.P.Nos.5720 of 2020, 9671, 9680 & 9682 of 2020, the case involved arbitration award in AOP.Nos.10, 12 & 11 of 2017 were set aside and remanded the matters back to the Deputy Registrar of Chits, Salem East (Arbitrator) Salem, for reconsideration and to pass appropriate orders. Further on perusal of para – 4 of the counter affidavit filed in W.P.Nos.9671, 9680 and 9682 of 2020 by the Deputy Registrar (Administration) Salem East, Salem, it is stated that wild



allegations against the office and staff of this respondent with no substance to substantiate the same. There is no forgery or the fabrication of any security document and during the arbitral proceedings, the petitioner and his wife have furnished an undated security bond for a sum of Rs.24,64,425/- agreeing to produce and place at dispersal of the 3rd respondent, the immovable properties sufficient to satisfy the decree. The 5th respondent obtained a copy of the said security bond and presented the same with the 7th respondent to register the same in the Encumbrance certificate and the same was given entry into the Encumbrances Certificate as if it is an attachment before judgment. The 7th respondent after knowing that the indexing the security bonds is a mistake, the 7th respondent sent a letter to this respondent by a letter dated 27.08.2019 and this respondent passed an order on 19.09.2019 in No.3612/A2/2019 cancelling the entries in the encumbrances certificate bearing No.L63/2019, L64/2019 and L65/2019.

14.Further, with regard to Senthil Kumar, the Deputy Registrar had stated that on that relevant date, he was authorized to act as a Deputy



Registrar of Chits. In this regard, Para – 7 of the counter affidavit runs as follows:

“7.With regard to para 11 and 12, it is submitted that the 3rd respondent initiated the conduct of the arbitration proceedings. When on the day of passing the award, the concerned official i.e.joint-1 sub Registrar working as 3rd respondent was absent and the 4th respondent was discharging the functions of the joint-1 Sub Registrar on 17.10.2017. The 4th respondent on that day performed all the duties in his capacity as Joint-1 Sub Registrar, by receiving the documents for registration and registering the same, performing administrative functions of collection and payment of stamp duty on that day. Also as Arbitrator which function was performed by the Joint-1 Sub registrar and passed the awards. The awards were passed in accordance with law and they are passed in the name of the Deputy registrar of chits by a person who was on that day authorized to act all acts that are generally to be done by Joint-1 sub registrar. Hence, the awards passed are legal and valid and there is no fraudulent



element ever involved. The affidavit was filed even without ascertaining the adjudication of the proceedings in the arbitration cases.”

15. In the above circumstances, taking note of the District Registrar's Statement in the counter, Senthil Kumar (A3) was placed in charge to discharge the duty of Deputy Registrar of Chits on the relevant date. Under these circumstances, the awards passed by him are set aside by this Court as stated above and remanded the matters back to the Deputy Registrar of Chits, Salem East (Arbitrator) Salem to pass fresh orders. Taking note of the facts that encumbrances created over the defacto complainant's properties were also cancelled and continuing the investigation in Crime No.11 of 2020 is unwarranted. Therefore, It meets the parameter laid down by the Hon'ble Supreme Court in *State of Haryana and others Vs. Bhajanlal* reported in *AIR 1992 (604)*, *R.P.Kapoor Vs. State of Punjab* reported in *AIR 1960 SC 866* and *Neeharica Infrastructure Pvt. Limited Vs. State of Maharashtra and others* reported in *AIR 2021 SC 1918*, the FIR in crime No.11 of 2020 is liable to be quashed.



Crl.O.P.Nos.5903, 6529 and 6531 of 2021

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16.In the result, FIR in Crime No.11 of 2020 is hereby quashed and the Crl.O.P.Nos.6529 and 6531 of 2021 are allowed. Since FIR in crime No.11 of 2020 is hereby quashed, transferring the investigation in Crime No.11 of 2020 will not arise, therefore, seeking to transfer the investigation in Crl.O.P.No.5903 of 2021 is not required. Therefore, the Crl.O.P.No.5903 of 2021 is dismissed. Consequently, connected miscellaneous petitions are closed.

Index : Yes/No

Internet : Yes/No

22.09.2023

sms

To

1.The District Superintendent of Police,
Sangagiri Main Road,
Nethimedu, Salem.

2.The Inspector of Police,
District Crime Branch,
Salem.

3.The Inspector of Police,
CB-CID, Salem.

4.The Public Prosecutor,
High Court, Madras.



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Crl.O.P.Nos.5903, 6529 and 6531 of 2021

V.SIVAGNANAM ,J.

sms

Pre-delivery order made in
Crl.O.P.Nos.5903 of 2021 & 6529 of 2021
& Crl.M.P.No.4335 of 2021
and 6531 of 2021 & Crl.M.P.No.4337 of 2021

22.09.2023