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CrI.RC.No.1048 of 2023 & CrI.MP. No. 8371 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.07.2023

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THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

CrI.RC.No.1048 of 2023

&

CrI.MP. No. 8731 of 2023

A.Karthikeyan

...Petitioner

vs.

Inspector of Police
Central Crime Branch, EF-II
Team IXA
Vepery, Chennai 600 007
(CCB Cr. No.526 of 2015)

...Respondent

PRAYER: Criminal Revision Petition filed under Section 401 Criminal Procedure Code, 1973 to call for the records in CC.No.7221 of 2019 pending on the file of the learned CCB & CBCID Metropolitan Magistrate, Egmore-8 and to set aside the order dated 21.11.2022 passed in CrI.M.P. No.12969 of 2020.

For Petitioner : Mr.P. Palaninathan

For Respondent : Mr. J. Subbiah

Government Advocate (CrI.Side)

ORDER

The present Criminal Revision Petition is filed against the order dated 21.11.2022 in CrI.M.P.No.12969/2020 in C.C. No.7221/2019, on the file of the learned CCB & CBCID Metropolitan Magistrate, Egmore - 8.



2. The present revision petitioner is the 5th accused on the file of the CCB & CBCID Metropolitan Magistrate, Egmore-8. The Inspector of Police, Central Crime Branch, EDF-II, Team-IX, Vepery, Chennai 600 007, based on the complaint given by one L. Santhana Krishnan, S/o.late Lingadurai residing at 18th Avenue, Ashok Nagar, Chennai, registered an FIR in Crime No.526/2015 of Central Crime Branch, Chennai, against the accused 1 to 6 for the offences punishable under Sections 120(B), 406 and 420 IPC. After completing investigation, a final report in CC No.7221/2019 was filed, in which the present revision petitioner was arrayed as the 5th accused. On the appearance of the accused, copies of records were furnished to them under Section 207 Cr.P.C.. Subsequently, the 5th accused filed a petition under Section 239 Cr.P.C. to discharge him of the offences under Sections 120(B), 406 and 420 IPC.

3. The case of the prosecution in nutshell is as follows:

- i. The 1st accused Shajahan, was employed in Neyveli Lignite Corporation as a technician. The 2nd accused Nazeema Banu is his wife.
- ii. Shajahan (A1) and Nazeema Banu (A2) and Shakila (A4) were running a firm in the name and style of M/s. 5 Ventures Construction.



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The 3rd accused Kaleel, the 5th accused Karthikeyan and the 6th accused Sabapathi were also associated with them and they had represented to the complainant that they can construct a multi storied building.

iii. The complainant's wife Sheela Rani, who was working in Sarvodaya English School, K.R. Puram, Bangalore, requested Shajahan (A1) during March 2013 to construct a building in her school and paid an advance of Rs.35 lakhs through a cheque from the account of Sarvodaya English school. Since the accused did not construct the building, the defacto complainant approached them to return the money back to his wife. All the accused returned the money back to Sarvodaya English School, on account of which the defacto complainant Santhana Krishnan was impressed with the 1st accused Shajahan and requested the latter to construct a 6 storied building in Chennai and paid a sum of Rs.3 crores on various dates as listed out here under.

<i>S. No.</i>	<i>Date</i>	<i>Amount Paid</i>	<i>To whom</i>	<i>In the presence of</i>	<i>Which place</i>
1	22.11.13	&.1,60,00,000/- cash	Shajahan	Nazeema Banu, Shakila, Kaleel, Karthick, Sabapathi,	No.77, B.6th Cross Street, VGP Srinivasan



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S. No.	Date	Amount Paid	To whom	In the presence of	Which place
				Balasubramaniam, Siva Subramaniam of Neyveli.	Nagar, Rajakilpakkam North, Chennai 73.
2	11.12.13	&.1,25,00,000/- cash	-do-	Nazeema Banu, Shakila, Kaleel, Karthick, Arumugam, Sabapathi, Bala subramaniam, Siva Subramaniam	-do-
3.	27.12.13	&.15,00,000/-	-do-	Nazeema Banu, Shakila, Kaleel, Karthick, Arumugam, Sabapathi, Bala Subramaniam, Siva Subramaniam	-do-

iv. On 05.02.2014, an agreement was entered into between the defacto complainant Santhanakrishnan and Shajahan with regard to the receipt of Rs.3 crores, in which the defacto complainant's wife Sheela Rani and his son Hari Govind signed as witnesses. On the same date for the balance amount of Rs.3 crores, Rs.1,82,000/- was paid as cash and for the balance amount, the following post dated cheques were given to Shajahan (A1) and Nazeema Banu (A2) as detailed hereunder:



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S.No.	Date	Bank & A/C. No.	Cheque No.	In favour of	Amount
1.	05.02.14	Cash paid			1,82,000/-
2.	07.02.14	HDFC Bank Bangalore Branch A/C.No.28151 930001290	026864	5 Ventures	50,00,000/-
3.	17.02.14	-do-	026859	5 ventures	50,00,000/-
4.	01.03.14	-do-	026860	5 Ventures	50,00,000/-
5.	01.03.14	-do-	026861	5 ventures	50,00,000/-
6.	24.03.14	-do-	026862	5 Ventures	50,00,000/-
7.	26.03.14	-do-	026863	5 Ventures	51,18,000/-
Total					3,00,00,000/-

v. However, the accused did not take steps to construct a 6 storied building as promised by them though they received a sum of Rs.6 crores from the defacto complainant. On the contrary, they misappropriated the funds. Therefore, based on the complaint of the defacto complainant, FIR was registered and after concluding investigation, the respondent police filed a final report as stated above against all the accused.

4. Heard Mr.P. Palaninathan, learned counsel for the petitioner and Mr. J. Subbiah, learned Government Advocate (CrL.Side) for the respondent.



5. Mr.P. Palaninathan, learned counsel for the petitioner contended that the present revision petitioner/5th accused is not at all connected with M/s. 5 Ventures construction company and that he did not also sign the Memorandum of Understanding dated 05.02.2014. His further contention is that there are no averments in the final report filed by the respondent police as against the present revision petitioner/5th accused and that he was not associated with M/s. 5 Ventures Company Limited as alleged by the prosecution. Therefore, he prayed for discharging him from the offences under Sections 120(B), 406 and 420 IPC.

6. Per contra Mr. J. Subbiah, learned Government Advocate (CrL.Side) would contend that a perusal of the statements of the witnesses would prima facie show that the present revision petitioner had taken part in the commission of the crime and that there is a specific charge against him under Sections 120(B), 406 and 420 IPC. He would further contend that the present revision petitioner also was associated with A1 and others and he facilitated both the parties for measuring the property where the multi storied building was to be constructed. His specific contention is that only after conclusion of the trial it can be found out whether the present accused had conspired with the other accused to commit the offences under



sections 120(B), 406 and 420 IPC. He therefore, contended that the trial court had rightly dismissed the petition filed under Section 239 Cr.P.C by the revision petitioner and there is no reason for this Court to interfere with the same.

7. A perusal of the partnership deed dated 30.12.2013 shows that Nazeema Banu (A2) and Shakeela (A4) are the partners in 5 Ventures firm. Shajahan is the husband of Nazeema Banu. The defacto complainant is an Ex-service man who was working in Neyveli Lignite Corporation from 1981 to 2017 as a General Manager. He was introduced to Shajahan by one Kaleel (A3). Shajahan was also working in Neyveli Lignite Corporation. According to the complainant all the accused including the present revision petitioner requested him to give a sum of Rs.50 lakhs for investing the same in the business and accordingly he gave different cheques in favour of Shajahan (A1) and Nazeema Banu (A2) in the presence of Kaleel (A3), Shakeela (A4) and Karthikeyan (A5). He had also contended that he gave another sum of Rs.6 crores to Shajahan and Nazeema Banu, in the presence of all the accused. A Memorandum of Understanding was also entered into in this regard on 05.02.2014 between the defacto complainant and the partners of M/s. 5 Ventures firm. A perusal of the 161 Cr.P.C statements



recorded by the police shows that there is prima facie case against the present accused also. Merely because he is neither a partner in the 5 Ventures firm nor signed the Memorandum of Understanding entered into between the defacto complainant and the partners of 5 Ventures firm, it cannot be stated that he cannot be charged for the offences punishable under Sections 120(B), 406 and 420 IPC. The counsel for the revision petitioner contended that the prosecution did not produce any iota of evidence to show that the present revision petitioner was associated with the 5 Ventures firm. It is too premature to go into this aspect at this stage. At the time of framing of charges, the Judicial Magistrate has to take into account the FIR and the 161(3) Cr.P.C. statement and other connected documents to find out whether there is any prima facie case against the accused. Only after the conclusion of the trial it can be found out whether the present accused received a sum of Rs.20 lakhs from the total amount of Rs.6 crores as alleged by the prosecution and that he also committed the offences punishable under Sections 120(B), 406 and 420 IPC. The trial court judge was right in dismissing the petition filed by the present revision petitioner and I do not see any reason to interfere with the same.



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8. In the result,

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- i. the Criminal Revision Petition is dismissed. No costs. Consequently, connected Criminal Miscellaneous Petition is dismissed.
- ii. the order dated 21.11.2022 passed in CrL.M.P. No.12969 of 2020, on the file of the learned CCB & CBCID Metropolitan Magistrate, Egmore-8, is confirmed.

14.07.2023

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Index : yes/no

Speaking /Non speaking Order

To

1. CCB & CBCID Metropolitan Magistrate, Egmore-8.
2. The Section Officer, Criminal Section, High Court, Madras.



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R.HEMALATHA, J.

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