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Crl.O.P.No.14451 of 2023
and
Crl.M.P.No.9467 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on 10.07.2023	Orders pronounced on 13.07.2023
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CORAM

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

Crl.O.P.No.14451 of 2023
and
Crl.M.P.No.9467 of 2023

Crl.O.P.No.14451 of 2023:

1. Juzar Saifuddin
2. Huzefa Juzar ... Petitioners

Vs.

The Inspector of Police
City Crime Branch Police Station
Coimbatore.
(Crime No. 19 of 2023)

... Respondent

This Criminal Original Petition is filed under Section 439 Cr.P.C. to enlarge the petitioners on bail in Crime No. 19 of 2023 on the file of the respondent police pending investigation.

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D.Denston ... Petitioner/Intervenor/defacto complainant
..VS..

1. Juzar Saifuddin
2. Huzefa Juzar
3. The Inspector of Police
CCB, Coimbatore. ... Respondents

Crl.M.P.No.9467 of 2023 is filed by defacto complainant D.Denston,
praying to permit the petitioner to intervene in Crl.O.P.No.14451 of 2023.

For Petitioners in : Mr.N.Jothi
Crl.O.P.14451 of 2023 / Senior Counsel
Respondents 1 & 2 for
in Crl.M.P. 9467 of 2023 M/s.G.Mohana Krishnan

For Respondent in :
Crl.O.P.14451 of 2023 / : Mr.Leonard Arul Joseph Selvam
Respondent – 3 in Government Advocate (Crl. Side)
Crl.M.P. 9467 of 2023

For Petitioner /
Intervenor / defacto : Mr.V.Karthikeyan
complainant in for
Crl.M.P.9467 of 2023 M/s.J.Ramesh



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ORDER

Crl.M.P.No.9467 of 2023 is filed by defacto complainant D.Denston, praying to permit him to intervene in Crl.O.P.No.14451 of 2023. This intervening petition is allowed and defacto complainant is permitted to make his submissions as intervenor in this Criminal Original Petition.

2. This Criminal Original Petition is filed praying to enlarge the petitioners on bail in connection with Crime No.19 of 2023 on the file of respondent police.

3. Mr.N.Jothi, learned senior counsel appearing for petitioners submitted that defacto complainant is a moneylender. He advanced money to accused and as a security for the loan advanced, he obtained 39 cheques and two sale agreements. Petitioners, including other accused, have repaid double the loan amount. Despite the payment of double the loan amount, defacto complainant had given a false complaint. On the basis of the said false complaint, First Information Report in Crime No.19 of 2013 was



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Petitioners were arrested on 01.06.2023 and are in judicial custody.

4. It is the further submission of learned senior counsel Mr.N.Jothi that defacto complainant had earlier given a complaint against petitioners. On the basis of the said complaint, petitioners were frequently called for enquiry. Therefore, petitioners filed Crl.O.P.No.18900 of 2021 seeking direction to respondent police not to harass petitioners in the guise of enquiry. This Court passed an order on 21.10.2021 directing petitioners to appear before respondent police on 08.11.2021 and submit documents in support of their case. Accordingly, petitioners appeared before respondent police on 08.11.2021 for enquiry and submitted documents and after perusing the documents submitted by petitioners, further action was dropped against petitioners.

5. It is also the submission of learned senior counsel Mr.N.Jothi



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that defacto complainant again filed a petition in Crl.O.P.No.7384 of 2022 seeking direction for registration of the complaint given by him dated 19.08.2021. This Court passed an order on 15.06.2022 stating that this Court cannot issue direction for registration of First Information Report and it is for the petitioner therein to pursue his right as per Code. It appears that no First Information Report was registered on the basis of defacto complainant's complaint dated 19.08.2021. Instead of filing petition under Section 156(3) Cr.P.C, defacto complainant had given present complaint nearly after two years, only with a view to harass petitioners. After change of officers in the police department, present complaint was given. Petitioners have filed a suit in O.S.No.348 of 2021 on the file of District Munsif Court, Kollam, seeking various reliefs including the relief of declaring the sale agreement dated 12.09.2019 executed between first plaintiff and defendant of the suit is not binding on the plaintiff, relief seeking return of blank signed cheques etc. Defacto complainant filed written statement only on 21.05.2023. When the case is pending, present complaint was given and First Information Report was registered.



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6. In reply, learned counsel for intervenor / defacto complainant Mr.V.Karthikeyan submitted that first petitioner is a habitual offender, he used to get loan and will not repay the amount. The suit in O.S.No.348 of 2021 is a pre-emptive suit filed to avoid similar criminal legal action against petitioners. Original documents should have been with the bank, but there is a prayer sought for for return of original title documents from defacto complainant. Petitioners have executed two sale agreements. Out of these two sale agreements, the first sale agreement dated 03.11.2020 refers to only 650 sq.ft of land. But second sale agreement executed on the same day ie., 03.11.2020 deals with three items of properties. Petitioners have executed the sale agreements by suppressing the fact that the properties concerned in these two sale agreements were mortgaged with Bank of Baroda and Bank of Baroda had initiated SARFAESI proceedings against petitioners to attach these properties and steps have been taken for auctioning the properties.

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for petitioners submitted that the complaint dated 19.08.2021 contained similar allegations. However, defacto complainant has not proceeded further with this complaint. On the same set of allegations made in the complaint dated 19.08.2021, present complaint was given. The suit in O.S.No.348 of 2021 was filed prior to the complaint dated 19.08.2021. Maintainability of the suit before the District Munsif Court, Kollam cannot be considered in this petition. The fact that defacto complainant has not initiated any action under Section 138 of Negotiable Instruments Act shows that cheques were issued only for security purpose and that defacto complainant wants to harass petitioners by sending them to jail. Assuming that if there is some money payable by petitioners to defacto complainant, they have to approach the civil court for recovery of money. The allegation that petitioners have suppressed the mortgage with Bank of Baroda, is not correct. The reason is that sale agreements had been executed with the help of defacto complainant's Advocate. Petitioners could not have suppressed the mortgage debt with Bank of Baroda. Only after knowing the existing mortgage debt, defacto complainant entered into the sale agreements for the



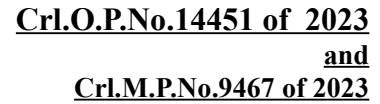
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purpose of security for the loan amount.

9. Considered the rival submissions and perused the records.

10. First Information Report allegations show that defacto complainant is dealing with construction and real estate business for the past 25 years in the name and style of M/s.DD Housing and property developers in Coimbatore. He got introduced to Juzar Saifuddin and his son Mohsin Juzar through one Mr. P.K.Krishnan, in April 2019. They informed him that they are involved in manufacturing and marketing of electrical items. They wanted money for investment in their business and prepared to give profit. Juzar Saifuddin and his wife Samina Juzar and their sons Mohsin Juzar and Huzefa Juzar came to his office and informed him that they are doing business in the name and style of M/s. Global Marketing Manufacturing Enterprises, M/s. Excellent Training corporation, M/s Sz marketing and they dont' want to obtain loan and that they prepared to pay 13% profit to the defacto-complainant, out of 43% profit they get. On the

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<i>S.No.</i>	<i>Date</i>	<i>Name</i>	<i>Amount (Rs.)</i>
1	17.05.2019	Mohsin Juzar	25,00,000
2	20.08.2019	Mohsin Juzar	10,00,000
3	20.08.2019	Samina Juzar	25,00,000
4	21.08.2019	Juzer Saifuddin	15,00,000

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<i>S.No.</i>	<i>Date</i>	<i>Name</i>	<i>Amount (Rs.)</i>
1	13.09.2019	Juzer Saifuddin	15,00,000
2	13.09.2019	Juzer Saifuddin	10,00,000
3	17.09.2019	Mohsin Juzar	5,00,000
4	19.09.2019	Mohsin Juzar	5,00,000
5	15.11.2019	Juzer Saifuddin	12,50,000 + 12.50,000

For the payment of this Rs.60,00,000/-, Juzer Saifuddin, Samina Juzar, Mohsin Juzar, Huzefa Juzar had given an undertaking letter dated 15.11.2019. They agreed to pay 13% profit on the investment. Then accused had shown orders worth Rs.3.72 crores from KSEB. On that basis, defacto complainant paid a sum of Rs.60,00,000/- during the period from 25.11.2019 to 02.03.2020. They promised to pay Rs.10,00,000/- as profit amount and also gave an undertaking to pay the amount on or before 31.03.2020 and till now, defacto complainant invested Rs.1.90 crores, but accused paid only Rs.75,00,000/- through bank transaction. The details of payment from the persons are :-



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<i>S.No.</i>	<i>Date</i>	<i>Name</i>	<i>Amount (Rs.)</i>
1	03.06.2020	Mohsin Juzar	10,00,000
2	04.06.2020	Mohsin Juzar	25,00,000
3	04.06.2020	Juzer Saifuddin	12,50,000
4	06.06.2020	Juzer Saifuddin	12,50,000
5	06.06.2020	Juzer Saifuddin	15,00,000

They promised to pay the balance Rs.1.15 crores and 13% monthly profit amount on or before 12.08.2020, but did not pay as promised. When defacto complainant demanded money, accused informed that they would get Rs.3 crores as community loan and would repay the amount. On 20.09.2021, Huzefa Juzar gave a letter in this regard and that was acknowledged by Samina Juzar, Mohsin Juzar and Huzefa Juzar. However, they have not honoured their words and therefore, defacto complainant demanded the money paid. Accused demanded further investment. Defacto complainant hesitated to concede to their request and also informed that the sale agreements period was over. Accused promised to enter fresh sale agreements on further investment of Rs.50,00,000/-. Therefore,

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defacto complainant paid the following amounts to following persons:-

<i>S.No.</i>	<i>Date</i>	<i>Name</i>	<i>Amount (Rs.)</i>
1	04.11.2020	Mohsin Juzar	15,00,000
2	06.11.2020	Huzefa Juzar	10,00,000
3	07.11.2020	Juzer Saifuddin	25,00,000

Two fresh sale agreements were executed on 03.11.2020 in the presence of Advocate/Notary Public Mr.K.Natarajan. Accused made the payment of Rs.20,00,000/- to defacto complainant, in February 2021. Accused are liable to pay Rs.1.45 crores investment and 13% of profit on the investment made ie. Rs.4,36,80,000/-, a total of Rs.5,81,80,000/-. When demanded this amount, accused gave cheques. When the cheques were presented for collection on 16.08.2021, they were returned for 'funds insufficient', 'account closed', 'referred to drawer', 'payment stopped'. It is seen that the properties, for which sale agreements were executed, were attached for the amount due to the bank and the bank has initiated action for realising the amount.



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12. The aforesaid First Information Report allegations show that defacto complainant had made repeated investments with the accused and that he was also paid to the tune of Rs.1,00,00,000/- from the investment of Rs.2.45crores. It is not the case of one time investment by defacto complainant and cheating committed by accused. Repeated investments had been made by defacto complainant. Defacto complainant had also received payments from accused. The case of petitioners is that it was not the case of investment as alleged by defacto complainant, but they were all loan transactions. It is admitted by learned counsel appearing for defacto complainant / intervenor that there is no specific agreement between defacto complainant and accused with regard to the agreement to pay 13% of profit amount. However, learned counsel for defacto complainant produced xerox copies of undertaking letters executed by accused claiming that accused borrowed the amount and promised to pay profit at 13%. It is his further submission that even in a business transaction, if the amount is not paid and if it is made out that the accused had intention to cheat, it is not necessary to



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In support of this submission, he pressed into service the judgment in '**Asset Reconstruction Company (India) Limited ..vs.. S.P.Velayutham and others**' reported in **(2022) 8 SCC 210**, wherein it is observed as follows:-

“60. In the case on hand, the appellant has not sought a declaration from the High Court that the execution of the document in question was null and void or that there was no title for the executant to transfer the property. The appellant assailed before the High Court, only the act of omission on the part of the Registering Authority to check up whether the person who claimed to be the power agent, had the power of conveyance and the power of presenting the document for registration, especially in the light to the statutory rules. Therefore, the learned Single Judge rightly applied the law and allowed the writ petition filed by the appellant, but the Division Bench got carried away by the sound and fury created by the contesting respondents on the basis of

(i) pendency of the civil suits;



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(ii) findings recorded by the Special Court for CBI cases; and

(iii) the order passed by this Court in the SLP arising out of proceedings under Section 145 Cr.P.C.

61. Arguments were advanced on the question whether the Registering Authority is carrying out an administrative act or a quasi-judicial act in the performance of his statutory duties. But we think it is not relevant for determining the availability of writ jurisdiction. If the Registering Authority is found to be exercising a quasi-judicial power, the exercise of such a power will still be amenable to judicial review under [Article 226](#), subject to the exhaustion of the remedies statutorily available. On the contrary if the Registering Authority is found to be performing only an administrative act, even then the High Court is empowered to see whether he performed the duties statutorily ordained upon him in the manner prescribed by law.



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62. *Much ado was sought to be made by contending that the appellant approached the High Court without disclosing the previous orders of the High Court and this Court, relegating them to civil court for the adjudication of their claim. Reliance was also placed in this regard on the decision of this Court in [Raj Kumar Soni vs. State of U.P.](#)¹⁰.*

63. *But we do not agree. The previous orders directing the appellant to go to the civil court arose out of the proceedings under [Section 145](#) of the Cr.P.C. But it does not mean that the recourse to civil court was seen as the only panacea for all ills.*

64. *Therefore, in the light of*

(i) the Tamilnadu Registration Rules discussed above;



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(ii) the statutory scheme of *Sections 32 to 35* of the Act as well as other provisions as amended by the State of Tamilnadu; and

(iii) the distinction between a challenge to the first 2 steps in the process of execution of a document and the third step concerning registration,

we are of the considered view that the Division bench of the High Court was not right in setting aside the order of the learned single Judge. If the Registering Officer under the Act is construed as performing only a mechanical role without any independent mind of his own, then even Government properties may be sold and the documents registered by unscrupulous persons driving the parties to go to civil court. Such an interpretation may not advance the cause of justice.”

13. Consideration of the submissions of learned counsels appearing for the parties and the materials produced in this case shows that defacto



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complainant repeatedly invested money with accused. He also received money from accused. It appears that it was purely a business transaction. From the encumbrance certificates produced by learned counsel for intervenor / defacto complainant regarding encumbrances in respect of the properties, for which sale agreements were entered into between accused and defacto complainant, it is evident that there were encumbrances even prior to the execution of the sale agreements. Sale agreements were executed with the help of the Advocate/Notary Mr.K.Natarajan. Main requirement for a person before executing the sale agreement is to find out whether the property to be purchased is free from encumbrance. It is not known whether defacto complainant made enquiries with regard to encumbrances in respect of the properties covered under the sale agreements. If he made enquiry and proceeded to execute the sale agreements, despite the subsisting encumbrance, he has to blame himself for that. If he has not made any investigation into the encumbrances before executing the sale agreements, then also he has to blame himself. The fact that the sale agreements were executed in the presence of Advocate/Notary

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Mr.K.Natarajan shows that defacto complainant had taken legal advice. In the said circumstances, there is some substance in the submissions of learned senior counsel appearing for petitioners that defacto complainant had entered into sale agreements after knowing the subsisting encumbrances and the sale agreements were executed only as a security.

14. However, in a bail application, detailed enquiry on the merits of the case of the rival parties is not required. Suffice it is to say that the case is registered for the offences under sections 120 B, 420, 406, 506(i) of IPC and petitioners are in judicial custody from 01.06.2023. The rival claim is to be proved mainly on the basis of documentary evidence produced by the parties. Material part of the investigation is over. Petitioners are in jail from 01.06.2023 and any further detention, in the facts and circumstances of the case and in the considered view of this Court, is not necessary. Thus, this Court is of the view that petitioners have to be released on bail with conditions.



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15. Accordingly, petitioners are ordered to be released on bail on each of them executing a bond for a sum of **Rs.25,000/- (Rupees Twenty Five thousand only)** with **two sureties** each for a like sum to the satisfaction of the learned Judicial Magistrate No.7, Coimbatore, and on further conditions that :-

[a] the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Magistrate may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity.

[b] petitioners shall report before the respondent police daily at 10.30.a.m., until further orders.

[c] petitioners shall not abscond either during investigation or trial.

[d] petitioners shall not tamper with evidence or witness either during investigation or trial.

[f] On breach of any of the aforesaid conditions, the learned Magistrate/Trial Court is entitled to take appropriate



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action against the petitioners in accordance with law as if the conditions have been imposed and the petitioners released on bail by the learned Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560].

[g] If the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

16. With the above conditions, this Criminal Original Petition is allowed.

mra

13.07.2023

Index :Yes/No

Internet:Yes

Speaking Order/Non-speaking Order

To

1. The Judicial Magistrate No.7,
Coimbatore.
2. The Inspector of Police

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WEB COPY City Crime Branch Police Station
Coimbatore.

3. The Public Prosecutor,
Madras High Court,
Chennai.
4. The Superintendent
Central Prison
Coimbatore.



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order in
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