



Crl.O.P.No.16439 of 2023

In the High Court of Judicature at Madras

Reserved on : 19.9.2023	Delivered on : 22.9.2023
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Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Criminal Original Petition No.16439 of 2023
& Crl.M.P.No.10518 of 2023

Geetha Baskar ...Petitioner

Vs

1.The State rep.by
the Inspector of Police,
CCB-1, Chennai-7.

2.Mannan Bhai ...Respondents

PETITION under Section 482 of the Criminal Procedure Code against the impugned charge sheet in C.C.No.4460 of 2023 on the file of the Metropolitan Magistrate, CCB & CBCID Cases, Egmore, Chennai for offences under Sections 406, 420, 294(b) and 506(ii) of the Indian Penal Code.

For Petitioner	:	Mr.R.Sankarasubbu
For Respondent-1	:	Mr.A.Gopinath, GA (Crl.Side)
For Respondent-2	:	Mr.R.Ravichandran



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ORDER

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This is a petition filed by the petitioner seeking to quash the proceedings pending in C.C.No.4460 of 2023 on the file of the Metropolitan Magistrate, CCB & CBCID Cases, Egmore, Chennai.

2. The background of this case and the grounds raised by the petitioner in this quash petition were captured by this Court while passing an order on 25.7.2023, which is extracted as hereunder :

"Mr.A.Damodaran, learned Additional Public Prosecutor, takes notice on behalf of the first respondent.

2. Mr.R.Ravichandran, learned counsel takes notice for the second respondent.

3. The petitioner herein has been arrayed as A1. The second respondent has given complaint to the first respondent to the effect that originally, he was the owner of the flat and the petitioner was a tenant in the flat. Ultimately, the petitioner wanted to purchase the flat and hence, entered into an agreement of sale by fixing the total sale consideration for a sum of Rs.74,00,000/-. Pursuant to the same, advance of Rs.10,00,000/- was paid by the petitioner to the de facto complainant/second respondent. The balance Rs.64,00,000/- was due and payable and the said amount was promised to be paid at the time of execution of sale deed by the second respondent in favour of the petitioner.



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4. The allegation made by the second respondent is that the petitioner had deceived the second respondent and made him sign the sale deed and ultimately, the demand draft, which was taken for a sum of Rs.64,00,000/-, was never paid to the second respondent. In view of the same, the second respondent has lodged a complaint stating that he was cheated by not paying the balance sale consideration of Rs.64,00,000/-. Accordingly, FIR came to be registered and it was investigated and a final report has also been filed before the Court below. The Court below has taken cognizance for the offences under Section 406 and 420 of IPC. There are two accused persons in this case, namely petitioner and her husband. The petitioner has been arrayed as A1.

5. On carefully going through the sale deed, which was executed in favour of the petitioner, and registered as Document No.3026 of 2021, it is seen that the sale consideration of Rs.74,00,000/- has passed on from the petitioner to the second respondent. This fact is now denied by the second respondent, which means that the second respondent wants to vary the clause contained in the sale deed to the effect that a sum of Rs.74,00,000/- was paid as sale consideration.

6. Till date, the second respondent has not instituted any proceedings against the petitioner seeking for the cancellation of the sale deed, since it is not supported by sale consideration. That apart, the second respondent has also not instituted any proceedings against the petitioner for recovering a sum of Rs.64,00,000/-, which was not paid to him. Rather the second respondent has chosen to file a criminal case



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against the petitioner and her husband for this purpose. The criminal proceedings at the best will only end in punishing the accused persons, if at all, the offence is made out against them under Section 406 and 420 of IPC. The proceedings will not automatically make the sale deed non-est or it will not end up in the second respondent getting the balance sale consideration of Rs.64,00,000/. The issue requires consideration of this Court.

7. The petitioner and the second respondent are directed to appear before this Court during the next date of hearing.

8. Post this case under the caption 'For Passing Further Orders' on 14.08.2023 at 05.00 pm. The case shall be called in the chamber.

9. In the meantime, the proceedings in C.C.No. 4460 of 2023, on the file of Metropolitan Magistrate CCB and CBCID cases at Egmore, Chennai 600 008, shall be kept in abeyance."

3. Pursuant to the above order, the petitioner and the second respondent were present before this Court. Upon hearing them, this Court passed the order dated 14.8.2023, which is also extracted as hereunder :

"Pursuant to the earlier order passed by this Court on 25.7.2023, the petitioner viz., Geetha Baskar was present before this Court. The 2nd respondent viz., Mannan Bhai was present before this Court. The petitioner stated that the 2nd respondent insisted for the



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payment of cash even in the beginning and therefore the sum of Rs.64 lakhs was paid by way of cash on 3.2.2021 itself. She further stated that the 2nd respondent promised that this amount will be returned back as and when the demand draft is taken and issued in his favour. Accordingly, the demand draft was also taken. Since the amount was not repaid back, the demand draft was cancelled on 16.10.2021. Thereafter, registration of sale deed was made on 3.11.2021.

2. The 2nd respondent, who was present before this Court stated that he did not receive any amount apart from Rs.10/- lakhs that was paid during the initial stage.

3. In the light of the specific stand taken by the petitioner and the 2nd respondent, there is no scope for any compromise in this case and this Court has to deal with the case only on merits.

4. Post this case for further hearing on 11.9.2023. Interim order already granted by this Court shall stand extended."

4. This Court heard Mr.R.Sankarasubbu, learned counsel for the petitioner, Mr.A.Gopinath, Government Advocate (Criminal Side) appearing for the first respondent and Mr.R.Ravichandran, learned counsel appearing for the second respondent and carefully considered the materials available on record.



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5. It is not necessary to once again go into the facts of this case and this Court can directly go into the issues that have been raised by the learned counsel on either side.

6. In the complaint dated 06.11.2021, it had been stated that that the second respondent agreed to sell the subject property to the petitioner for a total sale consideration of Rs.74 lakhs, that out of this amount, a sum of Rs.10 lakhs was paid as advance and that the balance of Rs.64 lakhs was promised to be paid at the time of registration of the sale deed by the second respondent in favour of the petitioner (A1). In the said complaint, the specific allegations that had been made by the second respondent against the petitioner and her husband were that though the petitioner promised to pay the balance sale consideration of Rs.64 lakhs at the time of registration of the sale deed and had also shown a demand draft taken in the name of the second respondent at State Bank of India bearing D.D.No.383901, after the registration of the sale deed, this demand draft was not handed over to the second respondent, that even thereafter, the petitioner started giving evasive answers and that ultimately, the second respondent was cheated by the petitioner and her husband to



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the tune of Rs.64 lakhs. That apart, as per the complaint, whenever the second respondent demanded for the said sum of Rs.64 lakhs, he was verbally abused and criminally intimidated. It was under these circumstances the final report came to be filed and the Court below had taken cognizance against the petitioner (A1) for the offences under Sections 406, 420, 294(b) and 506(ii) of the Indian Penal Code.

7. The learned counsel for the petitioner submitted that the balance sale consideration of Rs.64 lakhs was paid by way of cash to the second respondent and that only after receipt of the said sum, the sale deed, which was kept as pending document in P 100/2021, was registered as document No.3026 of 2021 on 03.11.2021.

8. To substantiate the said submission, the learned counsel for the petitioner also brought to the notice of this Court the statement that was recorded from the second respondent at the time of enquiry by the Sub-Registrar, Adyar wherein the second respondent categorically stated that all the issues had been settled and compromised and that he was prepared to register the property in favour of the purchaser.



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9. Per contra, both the learned Government Advocate (Crl.Side) appearing for the first respondent as well as the learned counsel appearing for the second respondent submitted that the petitioner is trying to club two issues and take advantage of the same. It was further submitted that initially, there was a confusion in ascertaining the correct name of the second respondent, as, in the sale deed, the name of the second respondent was mentioned as Amannan Bhai whereas in the PAN card, his name was mentioned as Mannan Bhai, that in view of this discrepancy, the Sub-Registrar concerned refused to register the document and that it was under these circumstances, an enquiry was conducted and the correct name of the second respondent was incorporated.

10. According to the second respondent, this understanding between the parties only pertains to the discrepancy in the name of the second respondent and it had nothing to do with the settlement of the balance sale consideration of Rs.64 lakhs agreed to be paid to the second respondent.



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11. The specific stand that was taken by the learned counsel for the petitioner was that the petitioner had paid the said sum of Rs.64 lakhs by way of cash to the second respondent on 03.2.2021. The learned counsel for the petitioner also relied upon the registered sale deed wherein it has been mentioned that the entire sale consideration of Rs.74 lakhs has been paid to the second respondent.

12. On carefully going through the relevant clause in the sale deed, it is seen that the mode of payment by the petitioner in favour of the second respondent is not mentioned. The relevant clause reads as follows :

*"d;iwa Njjpapy; fpiuak; Ngrp fpiuak; epr;rapj;j
njhif &.74,00,000/- (&gha; vOgj;jp ehd;F ,yl;rk; kl;Lk;).
Nkw;gb fpiuaj; njhif &.74,00,000/- ehd; jq;fsplkpUe;J
KOikahf ngw;Wf; nfhz;L Nkw;gb nrhj;ij jq;fspd;
RthjPdj;jpy; vd; ghpg+uz RaepidNthL xg;gilj;J tpl;Nld;."*

13. It is true that under Section 92 of the Indian Evidence Act, 1872, when the terms of a contract have been reduced to writing while conveying a property, no evidence in oral agreement or statement can be admitted, which tantamounts to contradicting, varying, adding, etc.,



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from the terms of the contract.

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14. Section 92 of the Indian Evidence Act, 1872 itself provides for certain exceptions. There are six exceptions where oral evidence can be given for the purpose of contradicting, varying etc., from the terms of the written contract. One such exception is where fraud is committed, which vitiates the very contract.

15. In the instant case, it had been mentioned in the sale deed that the total sale consideration paid was Rs.74 lakhs. However, according to the second respondent, only a sum of Rs.10 lakhs was paid as advance and Rs.64 lakhs - the balance sale consideration was never paid by the petitioner.

16. It is seen from the records that a demand draft dated 07.9.2021 for a sum of Rs.64 lakhs was taken in the name of the second respondent and it had been drawn at the State Bank of India. If really the cash was paid by the petitioner to the second respondent on 03.2.2021, it defies common sense as to why another demand draft should be taken in the name of the second respondent subsequently



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on 07.9.2021 for the said sum of Rs.64 lakhs.

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17. The specific allegation made by the second respondent is that the demand draft dated 07.9.2021 was shown to the second respondent, that believing the same, the sale deed was registered on 03.11.2021 and that thereafter, the petitioner never handed over the demand draft to the second respondent.

18. If really the balance sale consideration of Rs.64 lakhs was paid by the petitioner to the second respondent by way of demand draft, the same would have been mentioned in the sale deed and curiously, the sale deed is completely silent with regard to the mode of payment of the sale consideration.

19. It is relevant to take note of one important document that was placed before this Court. This is a document wherein the State Bank of India, through the letter dated 16.10.2021, informed the second respondent that the demand draft that was issued for the said sum of Rs.64 lakhs for the disbursement of the housing loan was cancelled.



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20. At this juncture, it is also relevant to take note of the statement that was recorded from the Chief Manager of the State Bank of India under Section 161 of the Criminal Procedure Code (for brevity, the Code) wherein he categorically stated that the petitioner approached them for a housing loan, that initially, a demand draft was drawn in favour of the second respondent on 02.2.2021, that since there was a discrepancy in the name of the second respondent, this demand draft was cancelled, that subsequently, yet another demand draft was drawn in favour of the second respondent on 07.9.2021 for the said sum of Rs.64 lakhs, that this demand draft was taken to the Sub-Registrar Office, Adyar by the officer of the bank, that this demand draft was not handed over to the second respondent and that thereafter, the subsequent demand draft was also cancelled.

21. The said version of the Chief Manager of the State Bank of India was further reiterated by the Assistant Manager of the State Bank of India while recording his statement under Section 161 of the Code.

22. On carefully reading the statement recorded from the second



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respondent under Section 161 of the Code, the sequence of events becomes even more clearer and prima facie it is seen that the said sum of Rs.64 lakhs was never paid to the second respondent by the petitioner. The stand taken by the learned counsel for the petitioner as if the balance sale consideration was paid by way of cash on 03.2.2021 is unbelievable since there is no occasion for drawing the demand draft dated 07.9.2021 for the said sum of Rs.64 lakhs in the name of the second respondent, if really the entire payment was already made.

23. Just because the second respondent has not initiated the proceedings for recovery of the balance sale consideration or for cancellation of the sale deed, that, by itself, will not take away the offence of cheating allegedly committed by the accused persons. The materials placed before this Court clearly make out a prima facie case and this is not a fit case where this Court will exercise its jurisdiction under Section 482 of the Code to interfere with the proceedings pending before the Court below.



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24. The instant case involves disputed questions of fact and the same cannot be gone into in a quash petition. This Court also does not want to render any definite finding on merits since it will have a bearing before the Court below. It is left open to the petitioner to raise all the grounds before the Court below and the same will be considered on its own merits and in accordance with law. The observations, if any, made in this order will not have any bearing and the Court below can independently consider the materials and appreciate the evidence and come to a conclusion.

25. In the result, the above criminal original petition stands dismissed. Consequently, the connected Crl.M.P. is also dismissed.

22.9.2023

To

- 1.The Metropolitan Magistrate, CCB & CBCID Cases, Egmore, Chennai-8.
- 2.The Inspector of Police, CCB-1, Chennai-7.
- 3.The Public Prosecutor, High Court, Madras.

RS

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N.ANAND VENKATESH,J

RS

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