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Crl.O.P.No.24180 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2023

CORAM:

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

Crl.O.P.No.24180 of 2019
and Crl.M.P.No.12793 of 2019

1. Le Josephine Consal

2. Le Prince Consal

...Petitioners

-Vs-

B.Ravikumar

... Respondent

Prayer: Criminal Original Petition filed under Section 482 of Code of Criminal Procedure, to call for the records in C.C.No.2963 of 2016 on the file of XVII Metropolitan Magistrate, Saidapet and quash the same.

For Petitioners : Mr.S.Veeraraghavan

For Sole Respondent : Mr.R.Vijayaraghavan

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.2963 of 2016 on the file of XVII Metropolitan Magistrate, Saidapet.

2. Heard the learned counsel for the petitioner and the learned



Crl.O.P.No.24180 of 2019

counsel for the sole respondent and perused the materials available on record.

3. The respondent lodged a complaint alleging that the respondent owned a property and he had entered into an agreement for Joint Venture with A1 and A2. They also entered into a memorandum of agreement for development dated 25.04.2004. As per the terms of the memorandum of understanding, the accused 1 and 2 have to provide separate built up area of 3400 sq.ft in the said property along with his sale consideration. The defacto complainant also executed a Power of Attorney in favour of the company, M/s Le Royal Constructions Private Limited, represented by its Managing Director viz., first accused, for the purpose of obtaining demolition, planning permission and execution of sale deed in favour of the property purchasers. While being so, the neighbour of the complainant filed a suit for declaration as against the defacto complainant and also A1 and A2. In view of the pendency of the civil suit, the joint venture project could not be taken up. After dismissal of the suit, the complainant approached the accused to complete the project as per the Memorandum of Understanding dated 25.04.2004. However, the project was not started and without even the consent of the complainant, the first



Crl.O.P.No.24180 of 2019

and second accused had executed a sale deed in respect of 320 sq.ft undivided share in the subject property by the registered sale deed dated 26.11.2004. In fact, the said sale deed was executed by the third accused and she has no power to execute any sale deed. The accused without even completing the construction, had executed a sale deed. Hence, the complaint.

4. On perusal of records and also after recording the sworn statement, the Trial Court had taken cognizance for the offences under Sections 420, 406, 464, 467 read with 120(B) of IPC in C.C.No.2963 of 2016.

5. The learned counsel for the petitioners would submit that as per the Memorandum of Understanding, the petitioners had completed the work of demolition and applied for planning permission. During the initiation of construction work, one Augustin who is a neighbour of the respondent's property have caused boundary dispute and as such, he also filed a suit for declaration and title in respect of the subject property. In the said suit, the petitioners were also the parties and the entire suit was duly contested by the petitioners and also on behalf of the defacto



Crl.O.P.No.24180 of 2019

complainant. After dismissal of the suit, the petitioners had put up construction and also executed a sale deed in favour of the fourth accused in respect of 320 sq.ft undivided share. In turn, the fourth accused had executed a Power of Attorney in favour of the petitioners and based on the original Power of Attorney executed by the defacto complainant and another Power of Attorney executed by the fourth accused, sale deed was executed in favour of the first accused company.

6. The learned counsel for the respondent would submit that in terms of Memorandum of Understanding, they have to hand over the construction area of 3400 sq.ft in favour of the respondent. Without even completion of construction, they themselves registered a sale deed and thereby, cheated the defacto complainant.

7. A perusal of records and the Memorandum of Understanding revealed that there was no mention about the undivided share and also there was no mention about the share in the undivided share of total extent of 4794 sq.ft of land.

8. The learned counsel for the petitioners produced additional



Crl.O.P.No.24180 of 2019

typed set of papers and it also revealed that the calculation of the owner share is also annexed along with the Memorandum of Understanding.

Accordingly, the total land area is 4794 sq.ft, estimated constructed area including common area is 9396 sq.ft, the land owner was allotted 3400 sq.ft of constructed area. Proportionately calculated undivided share for 3400 sq.ft comes around 1734 sq.ft. For the remaining construction area, the undivided share comes around 1794 sq.ft.

9. Even according to the respondent, now the petitioners had sold out to an extent of 320 sq.ft of undivided share. The remaining undivided share is very much available. As per the Power of Attorney and as per the Memorandum of Understanding, if the petitioners had violated any of the conditions, the respondent ought to have filed a suit for appropriate relief for violation of any of the terms and conditions of the Memorandum of Understanding. Admittedly, there was a suit filed by the neighbour and it was duly contested by the petitioners. Therefore, there was a delay in putting up construction. Therefore, no offence is made out as against the petitioners for the offences punishable under Sections 420, 406, 464, 467 read with 120(B) of IPC. Therefore, the present complaint is nothing but a clear abuse of process of law. All averments are civil in nature and as



Crl.O.P.No.24180 of 2019

such, the respondent attempted to give criminal colour to the civil dispute.

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10. In view of the above, the impugned proceedings in C.C.No.2963 of 2016 on the file of XVII Metropolitan Magistrate, Saidapet cannot be sustained as against the petitioners and it is liable to be quashed. Accordingly, the proceedings in C.C.No.2963 of 2016 on the file of XVII Metropolitan Magistrate, Saidapet, is hereby quashed.

11. Accordingly, this Criminal Original Petition stands allowed. Consequently, connected Miscellaneous Petition is closed.

09.11.2023

Internet: Yes
Index : Yes/No
Speaking/Non Speaking order
mn

G.K.ILANTHIRAIYAN. J.

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Crl.O.P.No.24180 of 2019

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WEB COPY

The XVII Metropolitan Magistrate, Saidapet.

Crl.O.P.No.24180 of 2019

09.11.2023