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Crl.O.P.No.25101 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.10.2023

CORAM:

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

Crl.O.P.No.25101 of 2021
and Crl.M.P.Nos.13829 and 13830 of 2021

Mahesh Bhandari

... Petitioner

Vs.

1. State represented by
The Inspector of Police,
Central Crime Branch, Team – 17,
Vepery, Chennai.

2. G.Christopher ... Respondents

PRAYER:- Criminal Original Petition filed under Section 482 of Cr.P.C praying to call for the records in C.C.No.4897 of 2023 on the file of the learned M.M. for CCB and CBCID Cases, Egmore, Chennai and quash the same.

(Amended as per order dated 07.09.2023 in Crl.M.P.No.14064 of 2023 in Crl.O.P.No.25101 of 2021)

For Petitioner	: Mr.G.Ashok Kumar
For R1	: Mr.A.Gopinath Government Advocate (Criminal Side)
For R2	: Notice Served, No Appearance



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ORDER

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This Criminal Original Petition has been filed calling for the records in C.C.No.4897 of 2023 on the file of the learned Metropolitan Magistrate for CCB and CBCID Cases, Egmore, Chennai and to quash the same.

2. Heard the learned counsel for the petitioner and the learned Government Advocate (Criminal Side) for the first respondent. Though notice served on the second respondent and the name has been printed in the cause list, today, no one appeared before the Court in person or through pleader.

3. The case of the prosecution is that the defacto complainant lodged a complaint alleging that the petitioner had executed two unregistered sale agreements in favour of the defacto complainant and the wife of the defacto complainant for the undivided share of 660.825 sq.ft and 540.675 sq.ft in his land situated at Madipakkam Srinivasa Nagar, Kavimani Street, Door No.97, Plot No.207, S.No.91/10 for construction of plots. After that the defacto complainant entered into an unregistered construction agreement with one L.David Chandra Prakash for construction of Flat 'B' on the ground floor to an extent of 900 sq.ft super built area in his name and Flat 'B1' on the first floor measuring 1100 sq.ft super built area in the name of his wife. Out of Rs.41



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Lakhs fixed for construction, the defacto complainant gave Rs.30 Lakhs by cash and Rs.20,000/- by cheque to the petitioner. After construction of flats, the said L.David Chandra Prakash failed to handover both the flats. The petitioner sold the undivided shares to the said L.David Chandra Prakash through sale deeds vide Document Nos.5426 and 5427 of 2007. The said L.David Chandra Prakash executed a registered settlement deed for both flats in favour of his wife one Punitha. They both mortgaged the settlement deed for the undivided share of both flats at HDFC Bank, Anna Salai Branch and received a total loan of Rs.43 Lakhs through HDFC bank Manager of loan department. Hence, the complaint.

4. On receipt of the complaint, the first respondent filed an FIR in Crime No.321 of 2009 for the offences under Sections 406 and 420 IPC. After registration of FIR, the first respondent filed a final report and the same has been taken cognizance in C.C.No.4897 of 2023 on the file of the learned Metropolitan Magistrate for CCB and CBCID Cases, Egmore, Chennai.

5. A perusal of records revealed that there are totally three accused, in which the petitioner is arrayed as A3. It is seen that the first accused is doing construction business in the name of Trinity Homes, the second accused is his



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wife. The third accused is instrumental in carrying out the criminal intentions of the first accused. The first accused informed both the defacto complainant and his wife that he would construct flats at Door No.97, Kavimani Street, Srinivasa Nagar, Madipakkam. He also took the defacto complainant and his wife and showed them the place and convinced both of them with words of desire to construct flats and introduced the third accused as the owner of the place and entered into an unregistered agreement with him. A sum of Rs.20,000/- was received by the accused as an advance for construction. Thereafter, the accused had received another sum of Rs.30,00,000/- from the defacto complainant. Even after the construction of the building, the first accused continued to delay the deed registration. It is also seen that even after payment of Rs.43,00,000/- by the defacto complainant, the first and second accused had taken money from the bank with the help of the third accused. The accused received a sum of Rs.20,000/- through cheques from the defacto complainant followed by Rs.30,00,000/- in cash. The accused have acted in breach of the construction agreement entered into with the defacto complainant and his wife. According to Document Nos.5426 and 5427 of 2007, two flats were mortgaged in the name of the first accused and the said flat was mortgaged in HDFC Bank and the third accused took a mortgage loan along with the other accused and did not return the amount to the defacto complainant.



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6. Therefore, the petitioner along with A1 and A2 committed offences under Sections 406 and 420 of IPC and there are specific allegations to attract the said offences as against the petitioner.

7. In this regard, it is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in **Crl.A.No.579 of 2019** dated **02.04.2019** in the case of **Devendra Prasad Singh Vs. State of Bihar & Anr.**, as follows:-

" 12.So far as the second ground is concerned, we are of the view that the High Court while hearing the application under Section 482 of the Cr.P.C. had no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their statements and, therefore, there was no prima facie case made out against respondent No.2. In our view, this could be done only in the trial while deciding the issues on the merits or/and by the Appellate Court while deciding the appeal arising out of the final order passed by the Trial Court but not in Section 482 Cr.P.C. proceedings.

13.In view of the foregoing discussion, we allow the appeal, set aside the impugned order and restore the aforementioned complaint case to



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*its original file for being proceeded with on merits
in accordance with law.*

8. Recently, the Hon'ble Supreme Court of India dealing the very same issue in ***Crl.A.No.1572 of 2019*** dated 17.10.2019 in the case of ***Central Bureau of Invstigation Vs. Arvind Khanna***, as follows:

“19. After perusing the impugned order and on hearing the submissions made by the learned senior counsels on both sides, we are of the view that the impugned order passed by the High Court is not sustainable. In a petition filed under Section 482 of Cr.P.C., the High Court has recorded findings on several disputed facts and allowed the petition. Defence of the accused is to be tested after appreciating the evidence during trial. The very fact that the High Court, in this case, went into the most minute details, on the allegations made by the appellant-C.B.I., and the defence put-forth by the respondent, led us to a conclusion that the High Court has exceeded its power, while exercising its inherent jurisdiction under Section 482 Cr.P.C.

20. In our view, the assessment made by the High Court at this stage, when the matter has been taken cognizance by the Competent Court, is completely incorrect and uncalled for.”



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9. Further the Hon'ble Supreme Court of India also held in the order

dated **02.12.2019** in **Crl.A.No.1817 of 2019** in the case of **M.Jayanthi Vs.**

K.R.Meenakshi & anr, as follows:

"9. It is too late in the day to seek reference to any authority for the proposition that while invoking the power under Section 482 Cr.P.C for quashing a complaint or a charge, the Court should not embark upon an enquiry into the validity of the evidence available. All that the Court should see is as to whether there are allegations in the complaint which form the basis for the ingredients that constitute certain offences complained of. The Court may also be entitled to see (i) whether the preconditions requisite for taking cognizance have been complied with or not; and (ii) whether the allegations contained in the complaint, even if accepted in entirety, would not constitute the offence alleged.

.....

13. A look at the complaint filed by the appellant would show that the appellant had incorporated the ingredients necessary for prosecuting the respondents for the offences alleged. The question whether the appellant will be able to prove the allegations in a manner known to law would arise only at a later stage....."



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The above judgments are squarely applicable to this case and as such, the points raised by the petitioners are mixed question of facts and it cannot be considered in a quash petition under Section 482 Cr.P.C.

10. The provisions of inherent jurisdiction under Section 482 Cr.P.C can be invoked only to meet out the ends of justice and to prevent the abuse of process of law.

11. Therefore, this Court is not inclined to quash the proceedings in C.C.No.4897 of 2023 on the file of the learned Metropolitan Magistrate for CCB and CBCID Cases, Egmore, Chennai. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous petitions are closed.

18.10.2023

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



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To

1. The Metropolitan Magistrate for CCB and CBCID Cases, Egmore, Chennai.
2. The Inspector of Police,
Central Crime Branch, Team – 17,
Vepery, Chennai.
3. The Public Prosecutor
Madras High Court.



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