



CrI.O.P.No.28714 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 13.07.2023

THE HONOURABLE MR. JUSTICE V. SIVAGNANAM

CrI.O.P.No.28714 of 2019 &
CrI.M.P.No.15300 of 2019

J.K. Ramesh

.. Petitioner

Vs.

1. The State of Tamilnadu,
represented by the
Sub Inspector,
CCIW – CID,
Chennai-32.
2. The Deputy Registrar,
Housing, Chennai Zone,
Chennai 600 018.
State of Tamilnadu

.. Respondents

PRAYER : Criminal Original Petition filed u/s.482 of Cr.P.C., seeking to call for the records relating to CC.No.4921 of 2018, pending on the file of the 2nd Metropolitan Magistrate, Egmore and quash the same as illegal, unsustainable in law.

For petitioner : Mr. V. Muthuraju

For Respondents : Mr. L. Baskaran

Govt. Advocate (crl.side)



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ORDER

This Criminal Original Petition is filed to call for the records relating to C.C.No.4921 of 2018, pending on the file of the 2nd Metropolitan Magistrate, Egmore and quash the same as illegal, unsustainable in law.

2. The cause of the prosecution is that A1, who was previously working as Special Officer in-charge in Harijan Co-operative Housing Society from 2009 to 17.05.2020. The petitioner/A3 who did not have requisite qualification for becoming a member of the above Society, purchased the Plot No.25/1, TS.No.56, Block 15, measuring 2408 sq.ft. belonging to the Society in violation of procedures indicated in GO (MS).No.224, Housing and Urban Development Department dated 27.11.2009, with the connivance of A1 and A2 and caused a loss to the tune of Rs.23,86,444/- to the society and also caused revenue loss to Government to the tune of Rs.2,02,272/- by availing stamp duty concession.

3. The learned counsel for the petitioner submitted that the petitioner purchased the property from the Harijan Co-operative Housing Society on



22.07.2010. The society fixed the liability upon its member for causing loss to the society to the tune of Rs.23,86,844. The petitioner being a purchaser of the property is not responsible for any loss to the society. He is simply a purchaser from the society. Therefore, he has not committed any offence as stated by the prosecution. Hence he seeks to quash the C.C.No.4921 of 2018 pending on the file of learned II Metropolitan Magistrate, Egmore.

4. The learned Govt. Advocate(cr.side) submitted that the petitioner is not a member of the Society. With the connivance of A1 and A2, the petitioner purchased the property belonging to the Society on 22.07.2010 measuring an extent of 2408 sq. ft. together with building and in the said transaction, he caused loss to the tune of Rs.23,86,444/- to the society and also caused revenue loss of Rs.2,02,272/- to the Government by availing stamp duty concession. Hence, he was charged for the offences under sections 420, 409 IPC along with other accused.

5. Heard both sides and perused the materials available on record.

6. On verification of materials on record, the fact reveals that the



petitioner is not the member of the society as on 22.07.2010. The allegation against the petitioner/A3 is that he, in connivance with A1-Special Officer in charge of the Society and A2, purchased the property belonging to the society when he was not eligible to get the sale of property. Apart from that, he also availed concessional stamp duty when he was not eligible for the same.

7. It is not in dispute that the petitioner is not a member of the abovesaid Cooperative Housing Society. Further, it is also not in dispute that he had purchased the property from the member of the Society on 22.07.2010. It is also seen that for causing loss to the society, departmental proceedings under section 81 of the Societies Act has been initiated against the then Special Officer of the Society and liability was fixed upon him for causing loss to the Society. Under such circumstances, the petitioner being the purchaser of the property from the Society is no way responsible for causing loss to the Society. Under the circumstances, this court is of the view that no ingredients required section 420 and 409 IPC is made out against the petitioner for commission of the offence. The criminal proceedings initiated against the petitioner in C.C.No.4921 of 2018 on the



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file of learned II Metropolitan Magistrate, Egmore, is inappropriate and does not meet the parameters laid down by the Honourable Supreme Court in the following cases viz., ***(i) State of Haryana and others Vs. Bhajanlal reported in AIR 1992 (604); (ii) R.P.Kapoor Vs. State of Punjab reported in AIR 1960 SC 866; (iii) Neeharica Infrastructure Pvt. Limited Vs. State of Maharashtra and others reported in AIR 2021 SC 1918;***

8. In view of the above, the proceedings initiated against the petitioner is liable to be quashed.

9. In the result,

- The Criminal Original Petition is allowed.
- The impugned proceedings against the petitioner in CC.No.4921 of 2018 on the file of learned II Metropolitan Magistrate, Egmore is hereby quashed. Consequently, the connected miscellaneous petition is closed.

13.07.2023

msr

To

1. The Sub Inspector,

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CCIW – CID,
Chennai-32.

2. The Deputy Registrar,
Housing, Chennai Zone,
Chennai 600 018.
State of Tamilnadu
3. The Public Prosecutor,
High Court, Madras

V. SIVAGNANAM, J.

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