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Crl.O.P.No.31518 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2023

CORAM

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.O.P.Nos. 28681 & 31518 of 2019

and

Crl.M.P.Nos.17263, 17265, 15274 & 15275 of 2019

N.Venkatesan

... Petitioner

[in Crl.OP.No.28681/2019]

Mrs.Chandrika

... Petitioner

[in Crl.OP.No.31518/2019]

Vs.

1.State Rep. by

The Inspector of Police,
CCIW CID, Chennai.

... Respondent

[1st respondent in both Crl.OPs]

2.The Deputy Registrar (Cooperative Housing)

Chennai Zone,
Chennai - 600017.

... Respondent

[2nd respondent in Crl.OP.No.28681/2019]

3.A.Muruganandam

Joint Registrar, Housing Board,
Chennai Zone, Chennai-17

... Respondent

[2nd respondent in Crl.OP.No.31518/2019]



Crl.O.P.No.31518 of 2019

COMMON PRAYER: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code to call for records pertaining to the case in C.C.Nos.2181 of 2019 pending on the XI Metropolitan Magistrate, Saidapet and quash the same as against the petitioner.

For Petitioner : M/s.A.Kalaiselvan [in Crl.OP.No.31518/2019]

: M/s.S.Shanmuga Sundaram [in Crl.O.P.No.28681/2019]

For Respondents : Mr.A.Damodaran, Addl. Public Prosecutor [R.1 & R.2]

COMMON ORDER

The petitions are to quash the final report for the offences under Sections 120(b), 409 and 420 r/w Section 109 IPC.

2. It is alleged in the final report that the 1st accused had sold a plot measuring an extent of 4410 sq.ft. to the 2nd accused at the rate of Rs.416/- per sq.ft. in the year 2011; that the guideline value in the year 2011 was Rs.800/-; that since the 1st accused petitioner in Crl.OP.No.31518/2019 had sold the plot for the price lesser than the guideline value prevailing at the time of the sale deed and caused loss to the Society, she is guilty of the



aforesaid offences; that since A.2 the petitioner in Crl.OP.No.28681/2019 had purchased the property for a lesser value, he is guilty of abetment of the aforesaid offences.

3. The learned counsels for the petitioners would submit that the 1st accused was appointed as a Liquidation Officer of the Society on 18.11.2010 and she had only executed a sale deed pursuant to an allotment order passed by the Special Officer of the Society on 11.12.2004. The said Special Officer had fixed the price at Rs.416/- per sq.ft. and the total value for the said plot was Rs.18,34,560/-. Since the 1st accused had only executed the sale deed in terms of the price fixed by the Special Officer, she would not be guilty of the aforesaid offences.

4. The learned counsel for the A.2 would submit that the allotment was made in his favour on 11.12.2004 and he was made to believe that the plot of land would be sold to him at Rs.18,34,560/- and hence he paid the sale consideration and got the sale deed executed. Therefore, he cannot be attributed with the requisite *mens rea* for committing the aforesaid offences.



5.(a). Per contra, the learned Additional Public Prosecutor would submit that the allotment order was made in the year 2004 whereas the sale deed was executed in the year 2011. In the meantime, the Government had issued a circular to all the Registrars giving guidelines as to how the prices have to be fixed for sale of property belonging to the Society. The said circular suggests that the price must be fixed on the basis of the guideline value after taking into consideration the market value at the relevant point of time. The 1st accused had deliberately ignored the said circular and had caused wrongful loss to the Society. That apart, enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act was initiated against the 1st accused and thereafter a surcharge proceedings were also initiated and in the said surcharge proceedings it was found that the 1st accused had caused wrongful loss to the tune of Rs.16,93,440/- to the Society and therefore it cannot be said that the 1st accused is not guilty of the aforesaid offences.

5.(b). The learned Additional Public Prosecutor further submitted that there are other allegations as against the 1st accused wherein she had caused



wrongful loss to the other Society as well and hence submitted that the quash petition may be dismissed.

6. This Court on perusal of the impugned final report finds that the allegation is that the land belonging to the Society was sold for a price lesser than the guideline value in the year 2011 and thereby caused loss to the Society. This Court also finds that admittedly the Special Officer of the Co-operative Society concerned had allotted this plot of land in favour of the 2nd accused and the sale consideration was also fixed in the year 2004. Thereafter, this allotment order was not recalled or modified. The petitioner who was then the Liquidation Officer for the Society had executed a sale deed on 25.04.2011. Even assuming that the 1st accused had violated the terms of the circular, this Court is of the view that *mens rea* cannot be attributed to the 1st accused since the sale deed is based on the value fixed in the allotment order. Even as regards the 2nd accused, it is seen that he had purchased the property and paid the sale consideration only in terms of the allotment order.



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7. As regards the submission that a circular has been violated, it seems that a surcharge proceedings have been initiated against A.1 and there is an order against A.1 making her responsible for the wrongful loss caused to the Society and recovery proceedings have been initiated against her. That proceeding is independent of this criminal proceedings and it is made clear that any observation made by this Court would not affect the right of the Society to pursue other remedies either for recovery of the property or for the alleged loss caused to the Society. This Court is only concerned with the offences that is alleged to have been committed. In the facts and circumstances of the case, this Court is of the view that offences alleged against the petitioners are not made out and hence this Court is inclined to quash the proceedings as against the petitioners.

8. With the above observations, this Criminal Original Petitions are allowed. Consequently, connected Criminal Miscellaneous Petitions are closed.

28.06.2023

Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No
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To,

- 1.The The Inspector of Police,
CCIW CID, Chennai.
- 2.The Joint Registrar, Housing Board,
Chennai Zone, Chennai-17.
- 3.The XI Metropolitan Magistrate, Saidapet



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SUNDER MOHAN. J.

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