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Crl.O.P.No.30641 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 30.03.2023

Pronounced on : 18.04.2023

CORAM:

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.O.P.No.30641 of 2019

1.J.N.Jahath Ramjee

2.Sai Sri Lakshmi Ramjee

... Petitioners/A1 & A2

Vs.

1.The State

Rep by Inspector of Police,
Central Crime Branch, Team – 1,
Vepery, Chennai – 600 007.

2.Y.K.Mohan Rao

... Respondents

PRAYER : Criminal Original Petition has been filed under Section 482 of the Criminal Procedure Code, to call for the records in FIR No.43 of 2019 dated 04.02.2019 on the file of 1st respondent herein and quash the same.



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For Petitioners : Mr.B.Kumar
Senior Counsel
For M/s. G.Muthukumar

For R1 : Mr.A.Damodaran
Additional Public Prosecutor
For R2 : Mr.U.Venkatesh
For K.V.Babu

ORDER

The petition is to quash the FIR in Cr.No.43 of 2019 on the file of the first respondent herein for the alleged offences under Sections 420, 120 (B) and 506(i) of IPC.

2. It is alleged in the complaint that the second respondent/defacto complainant herein was known to the petitioners since 2005; that in the year 2007, the petitioners approached the defacto complainant herein and his relatives to invest funds for the construction of a shopping mall by the petitioners; that believing the petitioners' representation they had invested Rs.9,00,00,000/- (Rupees Nine Crores only) between 2008 and 2010; that the petitioners on receipt of the above said amount had entered into a Sale Agreement agreeing to sell land



measuring 8.292 Acres in Devadhanam at Trichy and 7.73 Acres in Panayakurichi

at Trichy; that they had also executed Power of Attorney in favour of the defacto complainant and others; that they had deposited all the original title deeds relating to these properties to the defacto complainant as security for the investment made by the defacto complainant; that the petitioners did not keep up their promise to construct the Shopping Mall till 2013; that in the meanwhile the property value increased manifold and the petitioners approached the defacto complainant once again and stated that they would repay the money along with interest and a further sum towards return on investment; that they executed two Agreements dated 27.06.2013 and 21.05.2014 wherein, they agreed to return the invested amount of Rs.9 Crores along with a compensation of Rs.9.75 crores totalling Rs.18.75 crores; that they had paid Rs.75 Lakhs and were due to pay the balance Rs.18 Crores; that thereafter, promising to redeem the property mortgaged with Indian Overseas Bank they requested the defacto complainant to pay a further sum of Rs.60 lakhs to the petitioners and the defacto complainant also paid Rs.60 Lakhs; that out of Rs.18.6 Crores the petitioners paid Rs.1.62 Crores on 15.04.2015; that thereafter, the petitioners had issued a cheque for Rs.18.69 Crores in favour of the defacto complainant acknowledging the fact that they were due to pay money to



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the defacto complainant; and that thereafter, the defacto complainant came to know that the petitioners had sold the property in Devadhanam, Trichy to a company called LSR Properties India Private Limited though original title deeds relating to the said properties were with the defacto complainant; that they had violated the Government Circular which prohibited them from making any sales without presenting the original documents for perusal by Registering Authority; that when questioned by the defacto complainant, the petitioners had abused him in filthy language; that the defacto complainant had also filed a civil suit before this Court in C.S.(Comm.Div.)No.418 of 2018 for recovery of money and also a complaint under Section 138 of Negotiable Instruments Act, 1881 for the dishonoured cheque against the petitioners. The defacto complainant therefore prayed for action against the petitioners. The complaint was registered for the offences under Sections 420, 120 (B) and 506 (i) of IPC.

3. Mr.B.Kumar, the learned Senior Counsel for the petitioners would submit that:

(i) the dispute between the petitioners and the defacto complainant is essentially civil in nature; that the defacto complainant had filed a civil suit before



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this Court in C.S.(Comm.Div.) No.418 of 2018. The said suit was decreed by the Judgment dated 30.09.2022 in favour of the defacto complainant. The defacto complainant had also filed Execution Proceedings to execute the decree. The defacto complainant had stated the facts relating to the allegations in the impugned FIR in the said suit and this Court has already rendered a finding. While so, the impugned FIR is an abuse of process of law.

(ii) The defacto complainant has also filed the complaint against the petitioners for dishonour of cheque issued by them for the alleged liability and the said complaint is pending before Fast Track Court No.3, Saidapet, in C.C.No.5995 of 2018.

(iii) The allegation that the petitioners had sold their property, the original Title Deeds of which were in possession of the defacto complainant and hence, they committed the offence of cheating cannot be countenanced. The petitioners had initially entered into Agreements of Sale with the defacto complainant and had also executed Power of Attorney in favour of the defacto complainant in respect of the properties in question. Thereafter, they entered into two Memorandum of



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Agreements dated 25.06.2013 and 16.05.2014. By these two Agreements, the parties agreed that the Agreements of Sale stood cancelled and defacto complainant agreed to return the documents on receipt of the balance payment. Thus the defacto complainant had nothing to do with the properties thereafter and they were only entitled to recover the alleged money due from the petitioners.

(iv)The first petitioner was examined as D.W.1 in C.S.(Comm.Div.)No.418 of 2018 before this Court. The learned counsel for the defacto complainant during his cross examination of the first petitioner had pointed out an MoU entered into between the petitioners and the defacto complainant on 16.02.2019 after the registration of the impugned FIR. Thus, the defacto complainant had admitted to the execution of the MoU. In the said MoU, the parties have agreed to exchange certain original documents and in consideration of the same, the defacto complainant agreed to withdraw the criminal complaint. It is further stated in the MoU that the civil suit and the criminal complaint for dishonour of cheque would be withdrawn on receipt of payment of Rs.10.75 Crores. Thus, the learned Senior Counsel submitted that the impugned FIR is liable to be quashed for all the above reasons.



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4. The learned counsel for the defacto complainant would submit that merely because a civil suit was filed and the defacto complainant had obtained a decree against the petitioners it would not obliterate the offences committed by the petitioners. The petitioners knowing fully well that the original documents were in possession of the defacto complainant had executed the sale deeds in respect of the properties in favour of a sham company created by them. They had further contravened the Government Circular which stipulated that original title deeds have to be presented before the Sub Registrar for verification before registering the Sale Deed. He submitted that the act of the petitioners in executing the Sale Deeds in favour of third parties in respect of the properties, the original documents of which were in possession of the defacto complainant would amount to cheating. The learned counsel further submitted that in any case, this Court may not exercise its power under Section 482 Cr.P.C., to quash the investigation at the nascent stage. Hence, he prayed for the dismissal of the quash petition.

5. Mr.A.Damodaran, the learned Additional Public Prosecutor appearing for the first respondent submitted that the first respondent could not complete the



investigation as this Court had stayed the proceedings pursuant to the impugned FIR, at the time of admission of this quash petition. Thereafter, this Court directed the first respondent to conduct the investigation by an order dated 01.02.2023. He mentioned that in the order, this Court had observed as follows:

"The learned counsel for the petitioner submitted that a civil suit has been filed by the second respondent against the petitioners on the same cause of action and it has been ended in favour of the second respondent.

2. The learned counsel for the second respondent submitted that the second respondent's grievance is redressed by a decree of the Civil Court; however, he is disturbed due to the allegations made by the petitioner in the present petition.

3. The learned Government Advocate (Crl.side) submitted that the matter cannot be proceeded further, in view of the order of stay already granted by this Court; if the first respondent examines the de facto complainant and comes to know about the decree passed in his favour by the Civil Court, there is possibility for closure of the entire issue.



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4. Taking into consideration of the above facts, I feel it is appropriate to vacate the stay already granted by this Court and direct the first respondent to file a status report.

5. Accordingly, the interim stay granted by this Court on 15.11.2019 stands vacated and the first respondent is directed to file a status report by 21.02.2023.

6. With the above direction, this Criminal Miscellaneous Petition is closed."

Accordingly, the first respondent had filed a Status Report stating that some more witnesses have to be examined and documents have to be collected to ascertain, if there is involvement of any other accused. Hence, the learned Additional Public Prosecutor prayed for the dismissal of the quash petition.

6. This Court finds that there is no dispute between the petitioners and the defacto complainant as regards the following facts:-

(a) The defacto complainant and his relatives invested a sum of Rs.9,00,00,000/-(Rupees Nine Crores only) in the proposed development of a

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shopping mall by the petitioners; that the petitioners had executed deeds of

General Power of Attorney in favour of the defacto complainant's brother. They had also executed Agreements of Sale dated 07.05.2008, 19.06.2008, 05.10.2008 and 10.11.2009 in favour of the defacto complainant.

(b) Thereafter difference of opinion arose between the parties and the defacto complainant and his relatives decided to withdraw their participation in the Joint Venture Agreement. The petitioners agreed to repay Rs.9 Crores and they entered into a Memorandum of Understanding dated 25.06.2013. On the very same day, the petitioners had paid Rs.75,00,000/- to the defacto complainant and undertook to pay the balance of Rs.8,25,00,000 on or before 30.06.2014.

(c) Thereafter another Agreement was entered into on 21.05.2014 wherein, the petitioners agreed to pay a sum of Rs.9,75,00,000/- towards the return of investment in addition to Rs.9,00,00,000/- that was agreed to be paid by the earlier Agreement. The petitioners had also handed over a post-dated Cheque of Rs.9,75,00,000/- on 31.12.2014. The parties agreed to cancel the Agreements of Sale entered into between them.



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(d) Thereafter, the petitioners obtained another sum of Rs.60,00,000/- from the defacto complainant. The petitioners had paid a sum of Rs.1.62 Crores in favour of the defacto complainant and others in terms of the Memorandum of Understanding referred to above. They had failed to pay the balance sum despite several repeated demands and reminders.

(e) The petitioners had sold the property at Devadhanam, Trichy in favour of a Company by the name of LSR Properties India Pvt., Ltd., though the original documents of title were in possession of the defacto complainant.

(f) Hence the defacto complainant and his partners filed Civil Suit before this Court in C.S.(Commercial Division).No.418 of 2018 against the petitioners and the company by name LSR Properties India Private Limited praying for the recovery of Rs.31,40,06,037/- (Rupees Thirty One Crores Forty Lakhs Six Thousand and Thirty Seven Only).



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(g) The petitioners did not honour the cheque issued in favour of the defacto complainant and hence, the defacto complainant had filed a complaint under Section 138 of Negotiable Instruments Act before the learned Metropolitan Magistrate, FTC-3, Saidapet, Chennai in CC.No.5995 of 2018.

(h) While so, the impugned FIR was lodged on 04.02.2019 on the file of the first respondent. The details of the allegations have been extracted in paragraph two of this Order.

(i) The first petitioner was examined as D.W.1 and a specific question was put to him by the learned counsel for the defacto complainant drawing his attention to the Memorandum of Understanding dated 16.02.2019.

(j) The Memorandum of Understanding dated 16.02.2019 was entered into between the petitioners, the said company by the name LSR Properties India Private Ltd., on the one hand and the defacto complainant on the other. The petitioners and the said company agreed to pay Rs.10.75 crores to the defacto complainant in full and final settlement of their liability. The petitioners had



handed over the original sale deeds executed by them in favour of the said LSR

Properties India Private Ltd., in respect of lands in Devadhanam at Trichy. The defacto complainant had in turn returned the original documents, Title Deeds held by him in respect of lands in Panayakurichi village to the petitioners. The defacto complainant agreed that he would withdraw the First Information Report as against the petitioners. The defacto complainant also agreed to withdraw the Civil Suit and the complaint under Section 138 of Negotiable Instruments Act, on the petitioners paying Rs.10.75 Crores to the defacto complainant. The relevant Clauses of the said MoU read as follows:

“4. The Party of the 1st 2nd and 3rd hereby handed over the Original Title Deeds (Doc.Nos.3931/2013(3.51Acres), 3932/2013(2.08 Acres), 3935/2013 (0.250 Acres), 3937/2013 (0.410 Acres), 3938/2013 (0.50 Acres),3939/2013 (0.60 Acres),3940/2013 (0.43 Acres),3941/2013 (0.82 Acres), and 1444/2015 (0.390 Acres) all registered before the Sub-Registrar, Joint – III, Trichy for the total extent of 8.99 Acres to the Party of the 4th part towards security against the above mentioned liability which were registered by Party of the 1st and 2ndPart infavour of the Party of the 3rd Part. The party of the 4th part has returned



the original Title Deeds of Panayakurichi Village and Perambalur Village. Both the parties acknowledged receipt of the same.

5.In consideration of the above the party of the 4th Part agreed to withdraw above mentioned criminal complaint against the Party of the 1st and 2nd Part.”

k. Thereafter, the Civil Suit was decided and decreed in favour of the defacto complainant by the Judgement dated 30.09.2022 wherein, the petitioners were directed to pay the decreed amount. It appears that the defacto complainant had also initiated execution proceedings against the petitioners.

7. From the facts narrated above, it would be clear that the dispute between the petitioners and the defacto complainant is before the Civil Court. Subsequent to the lodging of an FIR, the parties had entered into a Memorandum of Understanding a reading of which indicates that the defacto complainant agreed to withdraw the criminal complaint pursuant to the exchange of documents. The petitioners had handed over the Sale Deeds said to have been executed by them in favour of a third party M/s.LSR Properties India Pvt. Ltd., to the defacto complainant. The defacto complainant in turn handed, over the documents relating



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to land in Panayakurichi at Tiruchy to the petitioners. As regards the Civil Suit and the complaint under Section 138 of Negotiable Instruments Act, the defacto complainant agreed to withdraw on payment of Rs.10.75 Crores as agreed between them. Thus, it is seen that the Civil Suit has culminated in a decree in favour of the petitioners and there was a Memorandum of Understanding after the filing of the impugned FIR. The defacto complainant after the alleged sales made by the petitioners to the said LSR Properties India Private Ltd., had exchanged the documents to protect his interest.

8. The allegation made to attract the alleged offence of cheating in the impugned FIR is that the petitioners had sold the property clandestinely when the original title deeds were with the defacto complainant. The facts narrated above would show that the petitioners did not have the intention to deceive at the very inception. The rights of the defacto complainant is protected by the documents and by the decree of this Court passed in C.S.(Comm.Div.)No.418 of 2018. The defacto complainant also had initiated Proceedings under Section 138 of Negotiable Instruments Act before the concerned Criminal Court. In such view of the matter, merely because the petitioners had sold some properties to third parties,



when the original documents were in possession of the defacto complainant, it would not amount to cheating the defacto complainant. The Honourable Supreme Court in *Mohammed Ibrahim and others vs. State of Bihar and another* reported in *(2009) 8 SCC 751* had held that in a case where a Sale Deed is executed by making a false claim of title, it is the purchaser who can be said to be deceived and not the rival claimant of title. The relevant portion had held as follows:

“20. When a sale deed is executed conveying a property claiming ownership thereto, it may be possible for the purchaser under such sale deed to allege that the vendor has cheated him by making a false representation of ownership and fraudulently induced him to part with the sale consideration. But in this case the complaint is not by the purchaser. On the other hand, the purchaser is made a co-accused”

In the instant case, the defacto complainant is not even a rival claimant of title. This is a case where the petitioners executed Sale Deeds in respect of their property when the original documents were in possession of the defacto complainant. The only point made by the defacto complainant is that the sale deeds were made without producing the original documents in violation of the



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terms of the circular issued by the Government. This Court finds that such an allegation, even if accepted to be true would not attract the offence of cheating of the defacto complainant. It is seen that the act of the petitioners would undoubtedly amount to a breach of promise. Though there is no express promise made by the petitioners that they would not sell the property, the promise can be implied by the fact that the original documents of title were handed over to the defacto complainant. That would not attract the offence of cheating. Further it is seen that the very same issue has been addressed by the Civil Court. That apart after the registration of the FIR, the parties had exchanged the documents of title. This MoU is admitted and cannot be refuted by the defacto complainant. They had agreed to withdraw the criminal complaint pursuant to the said exchange of documents. The documents that are available with the defacto complainant would satisfy the claim of the defacto complainant. The continuation of the investigation on the basis of the impugned FIR would therefore be an abuse of process of law, also due to the subsequent developments narrated above. These issues relating to the interpretation of the Agreements, the Decree of the Civil Court and the Execution Proceedings cannot be left in the hands of the Respondent Police. The Police are not meant to adjudicate civil disputes which had already attained



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finality. The petitioners are said to have threatened the defacto complainant. This

Court finds that the allegation does not show that there was any real threat so as to attract the offence of criminal intimidation. Hence the offence under Section 506(i) of IPC is also not made out. Therefore, the impugned FIR is liable to be quashed. Hence, quashed.

9. With the above observations, the Criminal Original Petition is allowed.

18.04.2023

dk/ay

NCC: Yes/No

Index : Yes/No

Speaking/Non Speaking Order

To

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1.The Inspector of Police,
Central Crime Branch, Team – 1,
Vepery,
Chennai – 600 007.

2.The Public Prosecutor
High Court of Madras
Chennai – 600 104.



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SUNDER MOHAN. J,

dk/ay

Pre Delivery Order in
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