



WEB COPY



Crl OP No.34268 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2023

CORAM :

THE HONOURABLE **MR. JUSTICE SUNDER MOHAN**

Crl.O.P.No.34268 of 2019
and Crl.M.P.Nos.18976 and 18977 of 2019

K.Lakshmanasamy

... Petitioner

Vs.

T.P.Dijeth

... Respondent

PRAYER : Criminal Original Petition filed under Section 482 of the Criminal Procedure Code seeking to call for the records in the above C.C.No.2643 of 2019 on the file of the 23rd Metropolitan Magistrate, Saidapet, Chennai 600 015 and consequentially quash the above said private complaint against the petitioner.

For Petitioner : Mr.K.M.Subheramaniam

For Respondent : Mr.G.Ashok Kumar

ORDER

This petition has been filed seeking to call for the records in the above C.C.No.2643 of 2019 on the file of the 23rd Metropolitan



Crl OP No.34268 of 2019

Magistrate, Saidapet, Chennai 600 015 and consequentially quash the said private complaint filed against the petitioner for the alleged offence under Section 406, 420, 506(i) I.P.C.

2.It is alleged in the complaint that the petitioner had approached the complainant for sublease of his business along with the shop premises from the original owners who were allotted the shop premises by the Chennai Corporation. It is further alleged that the complainant was running a business in the said shop and since he was in urgent need of money, he approached the petitioner herein. The petitioner had agreed to pay a total sale consideration of Rs.26 lakhs for the said shop along with the business run by the complainant and on such payment, the complainant also promised the petitioner that he will make arrangement to get the allotment order transferred in his name by the authorities of Chennai Corporation. Hence the petitioner paid a sum of Rs.12 lakhs as advance for the said transaction and when the complainant demanded the balance sale consideration of Rs.14 lakhs, he refused to make payments and when the same was questioned, he threatened him with dire consequences. It is further alleged that taking advantage of the situation of the complainant when he was badly in need of money, the petitioner



Crl OP No.34268 of 2019

had made a false representation and induced the complainant to handover the possession of the shop premises along with the business run by him.

3.Learned counsel for the petitioner would submit that the entire transaction is civil in nature. Even if the allegations in the complaint are taken as gospel truth, it would only amount to a breach of promise / breach of contract and there is nothing in the impugned complaint to show that there was deception at the inception for attracting the offence under Section 420 I.P.C. As regards the offence of criminal breach of trust, there is nothing in the impugned complaint to show that the petitioner has misappropriated any property so as to constitute the offence of breach of trust.

4.Learned counsel for the complainant would submit that the petitioner who is in default in payment of balance sale consideration has induced him to handover the possession by deceitful means. He had only paid Rs.12 lakhs as against the total consideration of Rs.26 lakhs and when the same was questioned, he threatened the complainant with dire consequences and that he would engage henchmen to kill him. Hence he prayed for dismissal of the petition.



Crl OP No.34268 of 2019

5.This Court on reading of the impugned complaint finds that there is an agreement between the defacto complainant and the petitioner, wherein the petitioner had agreed to purchase the business of the complainant along with the shop premises for a total sale consideration of Rs.26 lakhs. The respondent had stated that he would also ensure that the allotment of the shop premises is made in favour of the petitioner by the Chennai Corporation.

6.It appears that the petitioner had not paid the balance sale consideration as promised by him. It is also an admitted fact that the complainant / respondent could not ensure that the allotment was made in favour of the petitioner by the Corporation. It appears to be the case of dispute between two parties who had entered into a contract. At best, this would only amount to breach of promise. There is nothing in the impugned complaint to suggest that the petitioner practiced deception at the very inception of the contract. The conduct in paying the advance of Rs.12 lakhs to the complainant shows that he had intended to act as per the terms of the contract. Hence the offence of cheating has not been made out.



Crl OP No.34268 of 2019

7.As regards offence under Section 406 I.P.C., there is nothing in the impugned complaint to show that any property was entrusted to the petitioner which had been misappropriated so as to constitute the offence of breach of trust. As regards the alleged threat, this Court has repeatedly held that there must be a real threat for attracting the offence of criminal intimidation. Mere words in the absence of real threat would not constitute criminal intimidation.

8.For the above reasons, the impugned complaint is quashed. This Criminal Original Petition stands allowed. Consequently, the connected miscellaneous petitions are closed.

17.03.2023

kas

Index: Yes/No
Speaking Order / Non-Speaking Order
Neutral Citation: Yes / No

To

1.The 23rd Metropolitan Magistrate
Saidapet
Chennai 600 015

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



WEB COPY



Crl OP No.34268 of 2019

SUNDER MOHAN, J.

kas

Crl.O.P.No.34268 of 2019
and Crl.M.P.Nos.18976 and 18977 of 2019

17.03.2023