



Crl.O.P.No.27595/2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.07.2023

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.O.P.No.27595 of 2018 &
Crl.M.P.No.15910 of 2018

1. KailashmulDugar
2. HemantDugar

...

Petitioners

Vs.

Brij Mohan Khandelwal
Brij Sons
No.23, Ramanathan Street,
Kilpauk, Chennai 600 010
Partner M/s.PPD Homes
and M/s.PPD Estates

...

Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, 1973 to call for all the records and quash all the proceedings in C.C.No.5612 of 2018 on the file of the learned XIV Metropolitan Magistrate, Egmore, Chennai.

For Petitioners

: Mr. J. Ranjith Kumar



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for M/s.Surana & Surana

For Respondents

: Dr. V. Suresh
for Mr.N.S.Tanvi

ORDER

This Criminal Original Petition is filed to call for the records and quash all the proceedings in C.C.No.5612 of 2018 on the file of the learned XIV Metropolitan Magistrate, Egmore, Chennai.

2. When the matter is taken up for hearing, the learned counsel for the petitioner as well as the respondent, conceded that the private complaint in C.C.No.5612 of 2018 on the file of XIV Metropolitan Magistrate, Chennai has been taken cognisance without recording the sworn statement of the complainant and examination of witnesses and without following the provisions of Criminal Procedure Code for taking the private complaint into cognizance.

3. It was further submitted that in similar case in Crl.O.P.No.27018



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of 2017, between the same parties, this Court, by its order dated 02.02.2022, set aside the cognisance taken by the XIV Metropolitan Magistrate, Egmore, Chennai and remitted the case to the learned Magistrate for issuing notice to defacto complainant for the purpose of his examination upon oath with a direction to the Magistrate to take decision on merits.

4. The learned counsel for the petitioner has also produced a copy of the order passed by this Court in Crl.O.P.No.27018 of 2017 before this court.

5. I have perused the documents and materials available on record in the light of the submissions made by the learned counsel for both sides.

6. On perusal of records, a private complaint has been filed by the respondent/complainant against the petitioners/accused along with other three persons alleging that a partnership deed dated 5.3.2012 was created between the complainant and the petitioners for purchase of lands and develop the same into flats and thereafter the accused persons, with a



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malafide intention to deceive the complainant caused wrongful loss to complainant by creating documents to suit their convenience and misused the power of attorney, which amounts to criminal breach of trust, cheating and forgery. Thus the petitioners have committed offence under sections 120 B, 406 and 420 IPC.

7. On further perusal of records, it reveals that the learned Magistrate without recording the sworn statement of the complainant as well as the witnesses, if any, produced by the complainant, took cognisance of the complaint in C.C.No.5612 of 2018 for the offence under sections 120B, 406 and 420 IPC. It is contrary to the principles stated in the criminal procedure code. Therefore, taking cognizance of the complainant based on the affidavit alone is not permissible one.

8. In view of the above, taking cognisance of the complaint in C.C.No.5612 of 2018 by the learned XIV Metropolitan Magistrate, Egmore, Chennai on his file is hereby set aside as unsustainable. The matter is



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remitted back to the learned XIV Metropolitan Magistrate, Egmore, Chennai, who shall issue notice to the defacto complainant and examine the complaint and record the sworn statement of the complainant and also witnesses, if any, produced by the complainant and then take a decision upon scrutinising the material evidence and witnesses produced by the complainant on merits and in accordance with law.

9. With the above direction, this Criminal Original Petition is dismissed. Consequently, the connected miscellaneous petition is closed.

Index: Yes/No
Internet: Yes/No
msr

19.07.2023

To

The XIV Metropolitan Magistrate, Egmore, Chennai.

V.SIVAGNANAM, J.,
msr



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