



WEB COPY

CRL MP(MD).



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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Criminal Jurisdiction

Monday, the Twenty Third day of January
Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice G.ILANGO VAN
CRL MP(MD). Nos.3572 of 2021 & 3574/2021

in

CRL OP(MD)Nos.4920 & 2638 OF 2019

G.Kalaiselvan ... Petitioner/2nd Respondent
same in both Crl MP's
Vs

1 State represented by its
Inspector of Police
City Crime Branch
Tiruchirappalli City ... 1st Respondent/1st Respondent

in both Crl MP's

2 V.Agoramoorthy

... 2nd Respt in CRL MP(MD). Nos.3572 of 2021/Petitioner

2. V.P.Seetharaman
3. A.S.Sundaram
4. V.Swaminathan
5. P.Hariharan
6. Srinivasan
7. S.Anand

... 2nd to 7th Respondents in CRL MP(MD).Nos.3574/2021 /
Petitioner

Common Prayer :- CRL MP(MD). No.3572 & 3574 of 2021

Criminal Miscellaneous Petitions are filed under section 482 of Cr.p.c. To Recall the order in Crl.OP.(MD).No.4920 and 2638 of 2019 dated 26.7.2019.

CRL OP(MD) 4920/2019:

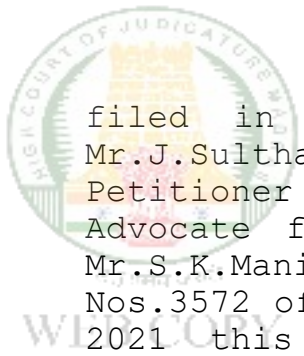
Petition is filed under section 482 of the Criminal Procedure Code praying to call for records relating to the First Information Report in Crime No. 5 of 2019, on the file of the first respondent and quash the same as against the petitioner herein.

CRL OP(MD) 2638/2019:

Petition is filed under section 482 of the Criminal Procedure Code praying to call for records relating to the First Information Report in Crime No. 5 of 2019, on the file of the first respondent and quash the same as against the petitioner herein.

ORDER:- These Criminal Miscellaneous Petitions coming on for orders on this day and upon perusing the petition and the affidavit

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filed in support thereof and upon hearing the arguments of Mr.J.Sulthan Basha Advocate for M/s.Ajmal Associates for the Petitioner (in both MP's) and of Mr.M.Sakthi Kumar , Government Advocate for the first Respondent , (in both MP's) and Mr.S.K.Mani Advocate for the Second Respondent in CRL MP(MD). Nos.3572 of 2021 and 2nd to 6th Respondent in CRL MP(MD). Nos.3574 of 2021 this Court made the following order:

These petitions have been filed to recall the common order passed in Crl.O.P.(MD).Nos.2638 & 4920 of 2019, dated 26.07.2019.

2. The background facts in brief:

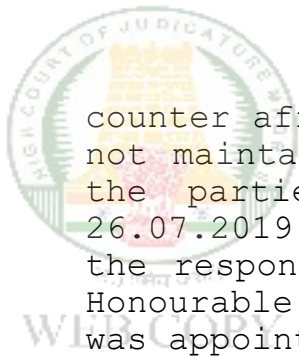
Originally, the petitioner as complainant filed a police complaint against the private respondents for the offences punishable under Sections 120(b), 406 and 420 IPC, which was registered in Crime No.5 of 2019 against 7 persons. During the pendency of the above said FIR, the matter was referred to the Mediation with the consent of both parties by the order of the Court. The matter was referred and compromise was reached between the parties and in pursuance of the above said compromise that was reached, the FIR was also quashed by a common order, dated 26.07.2019.

3. After the quashment of the FIR, again problem arose between the parties and now, it is the case of the petitioner to the effect that the second respondent in this matter, who is the first accused in the above said crime, did not fulfil his obligation as per the settlement agreement. So seeking punishment, the petitioner filed Cont.P.(MD).No.1566 of 2019 before this Court and that petition was dismissed on 25.10.2019 observing that if there is any failure on the part of the contract party to the settlement agreement, as per the terms of the settlement, the petitioner has to approach the concerned Court for appropriate remedy. The relevant portion of the order is extracted hereunder:

"4.Based on the compromise, this Court quashed the FIR in Crime No.5 of 2019, by the order dated 26.07.2019. If the respondents did not act upon the compromise between themselves, no contempt is made out before this Court. Therefore, this contempt petition is dismissed.

5.However, it is open to the petitioner to approach the appropriate Court and seek relief based on the compromise entered between themselves."

4. After the dismissal of the above said contempt petition, the first accused, namely, Natesan Housing Private Limited represented through its Proprietor, namely, V.P.Seetha Raman, who is the first accused in the above said crime filed Arb.O.P.No.353 of 2021 before the Principal Seat of this Court for referring the dispute to Arbitration and in the Arbitration petition, this petitioner filed



counter affidavit contending that the Arbitration petition is not maintainable, in view of the settlement of the dispute between the parties in the Crl.O.P.(MD)Nos.2638 & 4920 of 2019 dated 26.07.2019. By order, dated 18.08.2021, rejecting the contention of the respondents, the matter was referred to the Arbitrator and the Honourable Justice Mr.P.Shanmugam, Former Judge of the High Court was appointed as Arbitrator in this matter.

5. The parties appeared before the Arbitrator and after hearing the parties, taking into account the relevant documents, award was passed in Arbitration Original Petition No.353 of 2021 on 08.07.2022. It appears that the above said award has been passed pending this petitions. These petitions were filed before this Court on 7th December 2020.

6. Another proceedings has also been initiated by this petitioner before the Tamil Nadu Real Estate Regulation Authority in C.No.137 of 2021 for taking action against the first respondent for not obeying the terms of compromise and for other actions. But that was withdrawn on 21.08.2022 by the petitioner and so, it was dismissed on 22.08.2022. So, these are the developments that took place subsequent to the order in the main original petitions. During the pendency of these two petitions, another proceedings was also initiated by this petitioner by way of filing writ petition in W.P. (MD).No.399 of 2021 to initiate criminal prosecution against the respondents on the basis of the power of attorney document executed in his favour by this petitioner and others, dated 23.02.2015. Against the above said order, writ appeal was filed and stay was also granted.

7. In the light of the above said developments, let us discuss further. These two petitions have been filed seeking to recall the quashment on the ground that fraud has been played not only upon him but also upon this Court. It has been stated in the grounds that by suppressing a letter received from the Tamil Nadu Real Estate Regulation Authority, the above said compromise before the Mediator has been entered into. Not only that, they have also failed to comply with the terms of the agreement. When a fraud has been played upon the Court by the private respondents, the above said order is required to be recalled.

8. Per contra, it is the submission on the part of the respondents to the effect that absolutely, there is no criminality in the above said transaction and it is only an agreement of Joint Development venture, by the builder, namely, the first respondent Company, who has to construct by taking all appropriate steps, including plan approval, etc., and they are entitled for share of the profit. According to the petitioner, in respect of the specific agreement reached between the parties, the first respondent did not take any action to appoint another builder for the purpose of completing the construction work. So automatically, the criminality



must be revived and FIR must be restored to the file. The respondent police and investigation must be undertaken.

9. According to the respondents, he has produced or arranged another builder for the purpose of completing the work, but that was not allowed by the petitioner and because of his failure only, it failed, for which, he cannot give any penalty and more so, when award has been passed by the Arbitrator.

10. Even though the facts are not necessary for the purpose of deciding these petitions, to give a complete picture about the issue between them only, I have narrated the entire facts.

11. The learned counsel for the respondents submitted that once order has been passed by this Court by invoking jurisdiction under Section 482 Cr.P.C., no recall petition is permissible except under special circumstances, which according to him, are not sufficient so far as this order is concerned. It is also contended that not only Arbitration award has been passed and if any failure is noticed on the part of the private respondents, the petitioner can only enforce the Arbitration award or the terms of agreement that was reached between the parties before the Mediation Centre, which also formed part and parcel of the order passed in the main criminal original petitions.

12. He would rely upon the judgment of the Bombay High Court in the case of **Gopal Vs. State of Maharashtra** in **Criminal Application No.2159 of 2018**. Apart from that, for the case with regard to the Power of the Court to recall the order after signing the same, he would also rely upon the Judgment of the Honourable Supreme Court in the case of **Hari Singh Mann Vs. Harbhajan Singh Bajwa and others** reported in **(2001) SCC 169**. Per contra, the counsel for the petitioner would rely upon the Judgment of the Honourable Supreme Court in the case of **Ganesh Patel Vs. Umakant Rajoria** reported in **2002 Live Law SC 283**.

13. No doubt, recall of an order passed while exercising the jurisdiction under Section 482 Cr.P.C. is permissible only on the limited ground and whether that is available is the only point that has to be decided in this matter. There is no need by elaborately reproducing or discussing the judgments cited by the parties, since I proposed to dispose these matters in view of subsequent developments.

14. The issue is very simple whether a party to the agreement can revive the criminal complaint, if other party fails to carry out or comply the terms of compromise. The learned Senior Counsel for the petitioner submitted that for rendering justice between the parties, the above said order must be recalled and in the light of the averments made in the complaint, the respondent must be directed



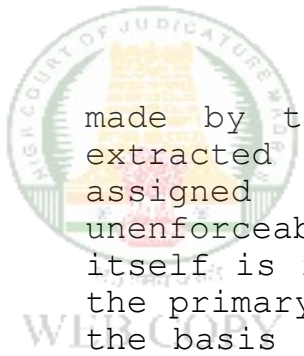
to undergo the process of investigation and trial if final order is filed.

15. According to him, there was intentional fraud by the private respondents, so this Court should allow the investigation to be carried on and punish by reviving the investigation process. Per contra, as I mentioned earlier, the learned counsel for the respondents submitted that it is only business venture issue between them and absolutely, there is no criminality involved.

16. The allegation against the private respondents is that by misusing the power of attorney, which was executed in favour of Seetharaman for the purpose of developing, constructing the flats and selling the same, he clandestinely sold the property to the Company, in which, he is also one of the Directors. Such a power was not given to him in the power of attorney; It is purely a business transaction development agreement. But having sold the property without proper permission from the petitioner and others, they sold the same and appropriated the sale proceeds. According to him, the offences under Sections 420, 406 and 120(b) IPC are *prima facie* made out.

17. Let us straight away go to the award that was passed by the Arbitrator, so that, the matter can be given a quietus. The discussion in the award gives clear picture about the issue. Reading of the award shows that a detailed discussion has been made with reference to the entire issue and transaction between the parties. In the Arbitration Original Petition, it was contended on the ground that the settlement dated 15.07.2019, namely, the agreement that was reached between the parties during the pendency of the quash petition, must be given effect to. So according to him, on the basis of the agreement in the Mediation process that is disputed, must be resolved by the Arbitrator.

18. Per contra, it was submitted by the petitioner that larger issues are involved in this matter as to whether the power of attorney holder, namely, first accused, namely, Seetha Raman exercised his power and other issues. After elaborate discussion of all the issues, as I mentioned earlier, the Arbitrator is of the view that the matter can not be resolved, only on the basis of the Mediation agreement. But other factors are also relevant. According to the Arbitrator, action on the part of the above said Seetharaman is not a *bonafide* one. But different interpretation has been given by the parties in the terms in the documents that were produced i.e., joint development agreement No.1 and Joint Development Agreement No.2 and settlement of agreement that was reached between the parties before the Mediation Centre of this Court. So according to the Arbitrator, since parties are given to understand many things in different agreements, the claim that was made by the Seetharaman will not lie and it was dismissed. But however, the counter claim



made by this petitioner was allowed. The award portion be extracted for better appreciation of the issue. The reasons assigned is that since the primary agreements have become unenforceable due to frustration etc. facts, the mediation argument itself is not enforceable. The findings of the Arbitrator is that the primary agreements themselves are not valid. So the complaint on the basis of the agreement will also have to fail. The claimant was directed to pay the counter claim amount in addition to the expenses mentioned in the order totalling Rs.13,23,06,392/- to the respondents, namely, the petitioners and others within a period of two months from the date of receipt of the order.

19. Apart from that, they are also directed to pay interest and costs. It was further ordered that on receipt of the amounts mentioned, the respondents, namely, the petitioners and others were directed to execute necessary deed for conferring the title or power to the claimant without liability to pay capital gains and value of 105 constructed flats. Reading of the final portion of the award shows that the petitioner was directed to execute conveyance deed in favour of the first respondent Company for 105 constructed flats after payment of the above said amount. It is seen that the entire issue has been given a quietus by way of passing this award.

20. So the question which arises for consideration, is whether in view of the above said development which culminated in the form of award, the contention on the part of the petitioner that by playing fraud upon the Mediator and the Court, the above said agreement was entered into between them and quashment of order has also been obtained so it must be recalled is sustainable. In my considered view, in view of the above said development, I find no reason to recall the order that was passed by this Court in the above said main original petitions. Parties can very well work out their remedy in pursuance of the above said Arbitration award. Even though this Court cannot go into the merits once again, only subsequent development has been taken into account for deciding the facts, which may not be inappropriate in the facts and circumstances of the case. The reason being that when plea that has been taken by the petitioner to nullify the above said order of quashment, this subsequent development has been taken to decide this issue.

21. I find absolutely no merit in these petitions and these petitions deserve to be dismissed and accordingly, these criminal miscellaneous petitions are dismissed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

/02/2023

Sub Assistant Registrar(CS)



TO

1. The Inspector of Police
City Crime Branch Tiruchirappalli City.
2. The Additional Public Prosecutor
Madurai Bench of Madras High Court, Madurai

Copy to:

The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court, Madurai

+ 2 cc to M/S Ajmal Associates Advocate CA Sr.3611 & 3612/2023

ORDER DATED : 23/01/2023

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ORDER

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CRL MP(MD).Nos.3572 & 3574 of 2021
in

CRL OP(MD)Nos.4920 & 2638 OF 2019
Giving direction and etc.
as stated within.

KB(16.02.2023) 7P 6C