



CrI.R.C.No.392 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.03.2024
PRONOUNCED ON : 04.06.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.R.C.No.392 of 2024

M.Kiran Raj Jain
Authorised Representative of
Mr.Praveen Kumar Jain,
No.25/B, E.V.K.Sampath Road,
Vepery,
Chennai – 600 007.

... Petitioner

Vs.

The Inspector of Police,
EDF-II, CCB,
Office of the Commissioner of Police,
Vepery,
Chennai – 600 007.

... Respondent

PRAYER: Criminal Revision Petition filed under Sections 397 and 401 of Criminal Procedure Code, to set aside the order passed in CrI.M.P.No.28688 of 2023 dated 16.11.2023 on the file of the learned Metropolitan Magistrate, Cases for CCB & CBCID Cases, Egmore, Chennai and direct the respondent to register the petitioner's complaint dated 07.12.2022.

For Petitioner : Mr.V.Paarthiban



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for Mr.A.Elayaperumal

For Respondent : Mr.S.Raja Kumar
Additional Public Prosecutor

ORDER

The petitioner filed a petition in Crl.M.P.No.28688 of 2023 before the learned Metropolitan Magistrate, Court for CCB and CBCID Cases, Egmore, Chennai under Section 156(3) Cr.P.C. seeking direction to register FIR against M/s.Ozone Projects Private Limited and nine of its officials. The Lower Court by impugned order dated 16.11.2023 dismissed the petition. Against which, the present criminal revision petition is filed.

2.The learned counsel for the petitioner submitted that the petitioner purchased a flat N-1603 in an apartment complex named Metrozone and he paid around Rs.2,05,15,383/-. Since the construction was incomplete, the petitioner refused to receive the flat. Thereafter, the petitioner lodged a complaint with the Commissioner of Police, Vepery, Chennai which was forwarded to the respondent Police on 07.12.2022. The respondent Police received the same, but not conducted proper enquiry and closed the complaint at the instance of the promoters of flat viz., M/s.Ozone Projects



Private Limited in a haste on 27.12.2022. Thereafter, the petitioner has filed a petitioner under Section 156(3) Cr.P.C., in Crl.M.P.No.28688 of 2023 before the learned Metropolitan Magistrate, CCB & CB-CID Cases, Egmore, Chennai narrating cheating committed by the said M/s.Ozone Projects Private Limited and the respondent Police not conducted proper enquiry despite cognizable offence made out. The learned Magistrate by order, dated 16.11.2023 dismissed the same finding that it is a civil dispute and not a case for offence under Section 406, 420 r/w 120(b) IPC. Challenging the same, the present revision is filed.

3.He further submitted that it is not in dispute that the petitioner purchased the flat from M/s.Ozone Projects Private Limited and paid the amount of Rs.2,05,15,383/- from the year 2010 onwards. Despite payment of entire amount, the flat not handed over to the petitioner. On inspection, it was found it is an incomplete flat. Later, the petitioner came to know that the said flat sold to third person neither informing the petitioner nor causing cancellation of any documents. Now, the documents are still in the name of the petitioner, but on false particulars, the property sold to third person and thereby, misappropriation and cheating committed. He further submitted that



M/s.Ozone Projects Private Limited not only cheated the petitioner, they had also cheated one Pandiyan who lodged the complaint against the Managing Director, Director of M/s.Ozone Projects Private Limited and a case in Crime No.10 of 2024 for offence under Sections 406, 420 r/w 34 registered by the respondent Police herein. Thus, the respondent Police treated the petitioner's complaint as civil, on the other hand, an FIR in Crime No.10 of 2024 has been registered on the complaint of said Pandiyan, which is of identical facts. The respondent Police acted in perfunctory manner taking sides depending upon the whims and fancies.

4.The learned Additional Public Prosecutor appearing for the respondent Police strongly objected the submissions of the learned counsel for the petitioner stating that in the report, dated 27.12.2022, the Investigating Officer found that the petitioner's grievances has to be addressed by the Tamil Nadu Real Estate Regulatory Authority or the petitioner can seek return of money from the National Company Law Tribunal. Further, the Court below had also given similar reasons and dismissed the petition under Section 156(3) Cr.P.C. He further submitted that the Sub-Inspector of Police, EDF-I Wing, Team-I, CCB, Vepery,



Chennai sent a closure report dated 27.11.2022 to the complainant, wherein it was found that the petitioner purchased a flat in an apartment named “The Metrozone” Flat No.1603, 16th Floor in 'N' Block and paid UDS value of Rs.31,61,000/- and construction cost of Rs.70,61,414/-, in total, the petitioner paid Rs.2,01,77,414/-. The construction agreement was entered between them on 31.08.2010 and thereafter, a Tripartite Agreement was entered between the petitioner's banker Kotak Mahindra Bank Limited and M/s.Ozone Projects Private Limited on 23.09.2010 for Flat No.N-1603. M/s.Ozone Projects Private Limited further collected an additional cost of Rs.7,45,677/- which was also paid. Thereafter, when the flat was inspected, it was found that the flat was incomplete and the petitioner refused to take possession of the property, hence it was found that it is a dispute between the petitioner and the flat promoter. Thereafter, the petitioner was advised to approach the Tamil Nadu Real Estate Regulatory Authority or National Company Law Tribunal and closed the petition. Thereafter, the petitioner approached the Lower Court in Crl.M.P.No.28688 of 2023 and the learned Magistrate by order dated 16.11.2023 gave a similar finding that there is no criminality. He further submitted that the petitioner referring to Crime No.10 of 2024 submitted that the petitioner is also similarly placed and



hence, FIR ought to be registered by the respondent, which is not proper. In that case, the defacto complainant Pandian was owning a part of land in the said project which was sold to M/s.Ozone Projects Private Limited and thereafter, there was a buy back arrangement and the defacto complainant therein was allotted two flats in F-1603 and Z-1603 which was handed over to him and later without the knowledge of the defacto complainant therein, the flats were registered in the name of one S.Thirunavukarasu in Document Nos.4223/2023 and 4222/23, hence a complaint was registered and the investigation is in progress. But the petitioner is not similarly placed and hence, he opposed this petition.

5.The learned counsel for the petitioner filed an additional typed set of papers and submitted that in this case also the petitioner purchased a flat in N-1603 for which the entire sale consideration was paid, construction agreement and UDS agreement entered into, the petitioner also availed financial assistance from Kotak Mahindra Bank Limited but when these agreements were in existence, suppressing the same M/s.Ozone Projects Private Limited executed a sale deed for Flat No.F-1603 in favour of one Mr.P.Thirunavukarasu vide Document No.1302 of 2022 registered on



15.03.2022. Hence, it is a clear case of cheating and misappropriation being committed. Further from the typed set of papers, it is seen that M/s.Ozone Projects Private Limited admitted about receipt of money and also informed the petitioner about the work in progress and shortly to deliver the flat. But contrary to the undertaking and agreement, M/s.Ozone Projects Private Limited sold the same property to a third person in a deceitful manner and hence, a clear case of cheating, misappropriation and cheating committed but the Investigating Officer as well as the Lower Court failed to consider these aspects.

6.Considering the submissions made and on perusal of the materials, it is seen that it is not in dispute that the petitioner entered into Agreement for Sale and Construction Agreement on 31.08.2010 and a Tripartite Agreement was entered between the petitioner's banker Kotak Mahindra Bank Limited and M/s.Ozone Projects Private Limited on 23.09.2010. The petitioner sent communication to M/s.Ozone Projects Private Limited which was acknowledged and they also sent a reply stating that the work was in progress and soon to be completed. Later it was found that construction was not fully completed. M/s.Ozone Projects Private Limited having received



the entire sale consideration, in a deceitful manner executed a sale deed in favour of a third person for the same property Flat No.N-1603 which was to be handed over to the petitioner. Neither the earlier agreements were cancelled nor the money was returned but the property was sold to one P.Thirunavukarasu which would clearly prove that M/s.Ozone Projects Private Limited and its officials in a collusive manner had committed misappropriation, cheating and forgery cognizable offences which needs to be investigated, since prima facie case made out. This Court finding the complaint of the petitioner not acted upon both by the respondent and the Court below on the cognizable offence made out is not proper and hence hereby set aside the order passed by the learned Metropolitan Magistrate, Court for CCB and CBCID Cases, Egmore, Chennai in Crl.M.P.No.28688 of 2023 dated 16.11.2023 and the closure report of the Inspector of Police dated 27.12.2022. Accordingly, the respondent is directed to register a case on the complaint of the petitioner, conduct investigation against the offender and to file a final report in this case.

7.In the result, the criminal revision petition stands allowed.



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Index : Yes/No

Speaking Order/Non Speaking Order

Neutral Citation: Yes/No

cse

To

- 1.The Inspector of Police,
EDF-II, CCB,
Office of the Commissioner of Police,
Vepery, Chennai – 600 007.
- 2.The Metropolitan Magistrate,
Court for CCB & CBCID Cases,
Egmore, Chennai.
- 3.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

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Pre-delivery order made in

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