



Crl.O.P.No.5516 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:15.07.2024

Coram:

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

Crl.O.P.No.5516 of 2024

and

Crl.M.P.No.4032 of 2024

1.J.Kalaivani

2.R.Kaliyamoorthy

.. Petitioners

/versus/

1.State rep.by

Inspector of Police, Avadi CCB,

Avadi City CCB

(Crime No.51 of 2023)

.. Respondent/
complainant

2.R.Vasudevan

.. Respondent/
Defacto complainant

Criminal Original Petition has been filed under Section 482 of Cr.P.C., to call for the records in Crime No.51 of 2023 on the file of the 1st respondent police and quash the same.

For Petitioners

:Mr.N.R.Elango, Senior Counsel for
Mr.A.S.Aswin Prasanna

For R1

:Mr.S.Udaya Kumar
Govt.ADvocate (Crl.Side)

For R2

:K.S.Arumugam



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ORDER

The petitioners herein are the second and fourth accused in the complaint registered by the Avadi-CCB in FIR No.51 of 2023, dated 28.08.2023.

2. Sum and substance of the complaint is that the complainant believing the words of one Ramasamy, who claims himself as Power of Attorney Holder from the owners of 7/8th undivided share and agreement holder from the owner of 1/8th undivided share in respect of the property at K.K.Nagar, Chennai, measuring to an extent of about 4800 sq.ft, had parted away Rs.2.5 crores as advance, but later, When the defacto complainant came to know that Ramasamy, the first accused has received Rs.2.5 crores as advance of the agreement holder in respect of 1/8th share, which was not held by him and thereafter, when this was questioned by the complainant, the first accused Ramasamy gave two post dated cheques dated 15.11.2022 for Rs.1,50,00,000/- and another dated 09.11.2022 for Rs.1,00,00,000/-. However, he requested not to present the cheque, meanwhile, he will settle the issue between the share holders and will execute the sale deed by receiving the balance sale consideration.



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Inspite of repeated request, the said Ramasamy failed to fulfil the terms of the contract. When the defacto complainant pressurised to execute the deed, he started threatening him with dire consequences. It is also stated in the complaint that the advance money paid to the said Ramasamy, was shared with other accused A2 to A4, who had purchased the property. Hence, the respondent police has registered the complaint for the offences under Sections 406 and 420 of IPC against four persons.

3. Ramasamy (A1) was arrested and released on bail after 58 days on condition that he should deposit a sum of Rs. 25,00,000/- before the trial Court in Crime No.51 of 2023. A2 and A4 seeks to quash the complaint on the ground that the power executed in respect of 7/8th share is to deal with the property and the said Ramasamy had sofar paid only Rs.27,00,000/- in the name of A3-Jeevitha (daughter of A2), who is also arrayed as one of the accused. That apart, A2 has not received any consideration. Having come to know about the registration of the criminal case, she is ready and willing to return the said sum of Rs. 27,00,000/-. However, there is no element of criminal offence and inducement or cheating, since she never had contact with the defacto



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complainant.

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4. The learned Senior Counsel appearing for the petitioners per contra submitted that after executing power of attorney in favour of the said Ramasamy, on 04.07.2022, the petitioners herein had entered into an agreement on 28.08.2023 and the said agreement been renewed by subsequent agreement dated 26.11.2023. However, the learned counsel submitted that there is specific allegation made in the complaint against A4 that from the advance money made by the complainant, A2 and A4 jointly purchased the property at Neyveli for value of Rs.1 crore.

5. The learned Government Advocate (Crl.Side) today circulated CD file.

6. This Court finds no material to substantiate the claim of the complainant that his money was used for purchase of the property in the name of A2 and A4, who are the petitioners before this Court. Further, this Court finds that except the statement of the complainant and his son there is no material to attribute any criminality against A2 and A4.



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7. The learned Government Advocate (Crl.Side) submitted that in view of the interim stay granted by this Court, there is no progress in the investigation.

8. This Court however finds that the complaint was registered on 28.08.2023. Whereas this Court granted stay of investigation till the dispute is settled through Mediation. This order was passed on 06.03.2024, which is nearly more than six months after registration of the complaint.

9. From the materials sofar collected in the investigation and the substance of the complaint, this Court finds that the defacto complainant, who has entered into the sale agreement with the power agent of A2, who had borrowed the money of Rs.2.5 crores and the same is admitted by the power agent by name Ramasamy. It is contended that a sum of Rs.66,00,000/- repaid by A1. However, the same is denied by the Learned Counsel appearing for the defacto complainant say only Rs.33,00,000/-was received and Rs.25 lakhs been deposited in the crime



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account as precondition for bail. A suit has been filed by the subsequent purchaser and the same is pending.

10. On factual matrix that having received Rs.33 lakhs from the power agent, filed an application to withdraw Rs.25 lakhs deposited by A1 and the failure of the defacto complainant not presenting two cheques given to him towards entire advance received by A1, this Court finds that if at all any dispute between the power agent and the defacto complainant, on receiving part of the advance money, then it purely takes the shape of the civil dispute a breach of contract and it has to be decided in the civil Court and it cannot be given a criminal colour. More particularly, as against these petitioners, they have no connection with the alleged entrustment or deception to attract offences under Section 406 and 420 of IPC. Hence, this Criminal Original Petition to quash Crime No.51 of 2023 as against A2 and A4 stands allowed.

11. The learned Senior Counsel appearing for the petitioners submitted that having received Rs.27,00,000/- from the power agent, the second petitioner has a moral obligation to return it and without harping



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on technicality is ready to repay Rs.27 lakhs to the defacto complainant and also take all necessary measures to cancel the power of attorney executed in favour of A1. Consequently, connected miscellaneous Petition is also closed.

15.07.2024

Index:yes/no
Neutral Citation:yes/no
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To:

- 1.The Inspector of Police, Avadi CCB,
Avadi City CCB.
- 2.The Public Prosecutor, High Court, Madras.

DR.G.JAYACHANDRAN,J.

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