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CrI.O.P.No.11240 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.02.2024

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THE HONOURABLE MRS. JUSTICE T.V. THAMILSELVI

Criminal Original Petition No. 11240 of 2022

and

CrI.M.P.No.6468 of 2022

1.R.Parthiban
2.P.Usha
3.R.P.Rajarajan

... Petitioners

versus

1.The Inspector of Police
EDF-II, Team-III
Central Crime Branch,
Egmore, Chennai.
Crime No.228 of 2017

2.Asha Vijayaraghavan
3.Vikram Vijayaraghavan

... Respondents

Criminal Original Petition filed under Section 482 of Cr.P.C., praying to call for the records relating to the FIR in Crime No.228 of 2017, pending investigation on the file of the Inspector of Police, Central Crime Branch, EDF-II, Team-III, Egmore, Chennai and to quash the same.

For Petitioner : Mr. V .C. Janarthanan

For R1 : Mr. S. Vinoth Kumar
Government Advocate (CrI.Side)

For R2 : Mr. C. Manishankar, Senior counsel
for Mr. S. Senthil



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ORDER

WEB COPY The petitioners have filed this petition to quash the FIR in Crime No.228 of 2017 pending investigation on the file of the 1st respondent, for the offences under Sections 420 of IPC, as against the petitioners.

2. The case of the prosecution is that the petitioners are partners in M/s. R.P. Rajarajan Associates and owner of Multi-storied complex at a prime locality of Chennai. In order to clear the loan over the property, they decided to sell it. In that process, the 2nd respondent agreed to purchase the same and sale consideration was fixed as a sum of Rs.92 Crores. At the time the 2nd respondent was a member of the Income Tax Appellate Tribunal. The 2nd respondent agreed to take over the loan of Rs.29 Crores, borrowed by the petitioners to purchase the property. As advance she issued two cheques for Rs.10 Crores and Rs.8 Crores dated 01.08.2014 and 13.07.2014, agreeing to take over loan and pay the balance, but there was no written agreement. At the instruction of 2nd respondent one cheque for a sum of Rs.10 Crores alone was encashed on 13.10.2014. There was a delay caused by the 2nd respondent in taking over the loan of the petitioners with Indian Overseas Bank, St.Thomas Mount Branch for a sum of Rs.29 Crores by paying the balance advanced sale consideration towards the loan. Even according to the second respondent, she could not mobilise the balance amount and she was waiting to sell her farm



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outside the city to mobilize the balance. Therefore, due to delay, on

12.12.2014 the petitioners returned Rs.7 Crores by Cheque No.448188 in

favour of the 2nd respondent and the same was encashed by her. According to

the petitioners, a sum of Rs.3 Crores was deducted towards loss sustained by

them on account of the delay on the part of the 2nd respondent as they were

unable to pay the bank loan. Even on 12.12.2014, along with the cheque for

Rs.7 Crores, a letter was sent in which it was clearly mentioned about the

deduction of Rs.3 Crores. The 3rd respondent who is advocate by profession

and son of 2nd respondent, communicated through letters stating that the

deduction of Rs.3 crores is not justifiable. In order to cover up the illegal

recession by the second respondent, causing loss, by diminishing the value of

the property and also for recovery of Rs.3 Crores, the respondents 2 & 3 sent

their henchmen demanding payment. The petitioners therefore filed C.S. No.

873 of 2014 for a declaration to declare that withholding of Rs.3 Crores as

damages for illegal recession of contract from the 2nd respondent is

appropriate. As a counter blast to the suit, the 3rd respondent lodged a

complaint before the Mylapore Police stating that only Rs.75 crores was

agreed and a written agreement was made, signed by the second respondent

and the first petitioner did not return it after their signature. In the complaint,

the summons issued to the petitioners have been evaded. Therefore, alleging

inaction on the part of the police officials in investigating the complaint, the



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respondents 2 and 3 filed Crl. O.P. No. 6835 of 2016 in which a direction was issued by this Court to conduct an enquiry on the basis of the complaint.

Pursuant to such direction, on 16.02.2017 a first information report was registered against the petitioners. As per the FIR, the actual proof of payment was not stated. The complaint was filed with deliberate suppression of material facts. Further more, the 2nd respondent also filed C.S. No. 198 of 2021 for recovery of Rs.10,50,00,000/- with interest and for a mandatory injunction directing IDBI Bank to deposit the sale consideration received in auction sale of the property after deducting Rs.14,93,28,098.21. According to the petitioners, due to the delay on the part of the second respondent, they could not only sell the property but the value of the property diminished and therefore, the deduction of Rs.3 crore is proper. As the petitioners could not settle the loan to the Bank, SARFAESI proceedings were initiated because of the non-performance of the terms of agreement by the 2nd respondent.

3. In order to get over the Civil liability, with false allegation, the complaint was given by the defacto complainant after three years. Based on the complaint, FIR was registered in Crime No.228 of 2017 for the offences under Section 420 of IPC, as such is not maintainable. There is no malafide intention on the side of the petitioners to cheat the 2nd respondent. Only due to



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The FIR registered against them as such is invalid under law and there is no prima facie material to satisfy the ingredient of Section 420 of IPC, more particularly malafide intention to cheat the respondents 2 and 3. Hence, he prays to quash the proceedings.

4. To support their arguments the petitioners relied the following ratio laid down by *the Hon'ble Supreme Court of India, reported in 2021 SCC online SC 206, Priti Saraf and another Vs. State of NCT of Delhi and another*, in which reads as follows:

“31. Be it noted that in the matter of exercise of inherent power by the High Court, the only requirement is to see whether continuance of the proceedings would be a total abuse of the process of the Court. The Criminal Procedure Code contains a detailed procedure for investigation, framing of charge and trial, and in the event when the High Court is desirous of putting a halt to the known procedure of law, it must use proper circumspection with great care and caution to interfere in the complaint / FIR / Charge-Sheet in exercise of its inherent jurisdiction.”

5. By way of reply, the learned counsel for the 2nd respondent submitted that initially, agreement between the parties was oral. In fact, a written agreement was entered into between the parties on 13.07.2014 fixing the advance sale consideration at Rs.20 crores. Immediately, on 05.08.2014 the



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second respondent transferred a sum of Rs.1 Crore to the account of her son the second respondent. The petitioners also accompanied the third respondent to the Indian Bank, East Abhiramapuram Branch on 05.08.2014 and received cash of Rs.1 crores and the same was handed over to one Gunasegar, who received the amount and agreed to endorse the agreement with them. Again all the petitioners received another sum of Rs.2 Crores on two occasions viz., 19/08/2014 & 22.09.2014 thereby totally they received Rs.3 Crores as cash and the cheque for Rs.10 Crores dated 13.07.2017 was altered to Rs.7 Crores because Rs.3 Crore was received by cash. Admittedly, the altered cheque was still with them. Believing the words of 1st petitioner they handed over the cash, thereby they returned Rs.7 Crores out of the cheque amount of Rs.10 Crores. In spite of the request the petitioners they have not repaid a sum of Rs.3 Crores received by them as cash. The petitioners filed the suit without disclosing all the facts which clearly shows their dishonest and fraudulent intention to cheat the respondents 2 and 3 of the liquid cash of Rs.3 Crores. It is clear case of cheating and breach of trust. Hence the first respondent police rightly registered the case under Sections 420 IPC against the petitioners. To support his contention the second respondent relied upon the following authorities reported in (2019) 14 SCC 350, in the case of Kamal Shivaji Pokarnekar Vs. State of Maharashtra and others, in which reads as follows:



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“9. Having heard the learned Senior Counsel and examined the material on record, we are of the considered view that the High Court ought not to have set aside the order passed by the trial Court issuing summons to the respondents. A perusal of the complaint discloses prima facie, offences that are alleged against the respondents. The correctness or otherwise of the said allegations has to be decided only in the trial. At the initial stage of issuance of process it is not open to the Courts to stifle the proceedings by entering into the merits of the contentions made on behalf of the accused. Criminal complaints cannot be quashed only on the ground that the allegations made therein appear to be of a Civil nature. If the ingredients of the offence alleged against the accused are prima facie made out in the complaint, the criminal proceedings shall not be interdicted.”

6. The learned Government Advocate (Crl.Side) appearing for the 1st respondent submitted that the investigation is at initial stage. A detailed investigation has to be conducted and therefore, at this stage, the first information report need not be quashed on the ground that there appears to be a dispute, which is Civil in nature between the parties. To support his contention, he relied the judgement reported in **2021 SCC Online SC 206, in the case of Priti Saraf and Another Vs. State of NCT of Delhi and another**, in which reads as follows:



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in what circumstances and categories of cases, a criminal proceeding may be quashed either in exercise of the extraordinary powers of the High Court under Article 226 of the Constitution , or in the exercise of the inherent powers of the High Court under Section 482 Crpc. This has often been hotly debated before this Court and various High Courts. Though in a series of decisions, this question has been answered on several occasions by this Court, yet the same still comes up for consideration and is seriously debated.

25. In this backdrop, the scope and ambit of the inherent jurisdiction of the High Court under Section 482 CrPC has been examined in the judgment of this Court in State of Haryana v. Bhajan Lal (Supra). The relevant para is mentioned hereunder:-

“102. In the backdrop of the interpretation of the various relevant provisions of the code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.”



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the payment of cash to be proved, it can be established only at the time of trial and the preliminary stage of investigation itself cannot be questioned by the petitioners nor it is permissible under law. If at all any findings is given in this petition, it would amount to mini trial which is not permissible under law. In this context, he relied the judgment reported in 2022 SCC Online SC 820, in the case of State of Uttar Pradesh and Another Vs. Akhil Sharda and others, in which it is held as follows:

28. Having gone through the impugned judgment and order passed by the High Court by which the High Court has set aside the criminal proceedings in exercise of powers under Section 428 Cr.P.C., it appears that the High Court has virtually powers under Section 482 Cr.P.C., it appears that the High Court has virtually conducted a mini trial, which as such is not permissible at this stage and while deciding the application under Section 4182 Cr.P.C. As observed and held by this Court in a catena of decisions no mini trial can be conducted by the High Court in exercise of powers under Section 482 Cr.P.C. Jurisdiction and at the stage of deciding the application under Section 482 Cr.P.c., the High Court cannot get into appreciation of evidence of the particular case being considered.”

8. The learned counsel for the 2nd and 3rd respondents contended that they are having bank statements to establish the payment made in cash to the petitioners and they have committed criminal breach of trust. On the other hand the petitioners wrongfully retained the amount Rs.3 Crores belongs to the



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2nd and 3rd respondents. Therefore, the petition as such is not maintainable and prayed to dismiss this petition as devoid of merits.

9. Considering both side submissions, fact reveals that in respect of selling the property, belongs to the petitioners, there was an agreement between the petitioners and the 2nd respondent. As per the contention of the petitioners there was an oral agreement, but according to the respondents 2 and 3 the agreement was in writing, thereby both the parties admits that there was an agreement between the parties, in respect of purchasing the property. As per the contention of the petitioners, the 2nd respondent agreed to purchase the property for Rs.90 crores and paid two cheques for a sum of Rs.10 Crores and another cheque for a sum of Rs.7 Crores and the 2nd respondent agreed to perform her part by paying the entire sale consideration on or before 30.11.2014. As the petitioners are in need of money in order to discharge the loan borrowed by them from the Bank the 2nd respondent agreed to take over the said loan with the bank.

10. The petitioners contention is that the second respondent failed to comply with the terms of the agreement and thereby they sustained loss and the property value also diminished so they retained Rs.3 Crores as damages and repaid 7 Crores through Cheque along with a notice with reasons. The



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repayment of Rs.7 Crores is admitted by the 2nd and 3rd respondents who are the mother and son. For recession of contract the petitioners issued a notice on 15.11.2014 to the 2nd respondent who is an agreement holder wherein they mentioned that the sale consideration was fixed as Rs.92 Crores and they received cheque for Rs.10 Crores and another cheque for Rs.7 Crores. As the 2nd respondent was not inclined to purchase the property, due to loss suffered by them and also by paying the interest for the loan of Rs.36 lakhs per month they continued the same for five more months from 01.07.2014 when she agreed to purchase the property so by calculating the loans sustained for those periods they retained Rs.3 crores. The petitioners also called upon the respondents 2 and 3 to pay the balance sale consideration, for which, reply was given by the 3rd respondent, who is an Advocate by profession. On 27.11.2014 it was replied that they are not going through the proposed purchase transactions of petitioners firm at R.K. Salai. So they replied that they are not inclined to purchase the property. Thereafter on 12.12.2014 the petitioners issued reply to the 2nd respondent stating that due to the non-performance of the terms, they sustained loss and also mentioned that already they deducted Rs.3 Crores as advance amount by encashing the said cheque of Rs.10 Crores so they returned Rs.7 Crores through, Indian Overseas Bank Cheques, dated 05.01.2015 and also mentioned that the said Rs.3 Crores have been deducted towards loss sustained on account of her default. This notice was received by



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the 2nd and 3rd respondents but there was no reply given by her. Thereafter, the petitioners filed a suit C.S. No. 835 of 2014. If at all any payment was made by the 2nd and 3rd respondents as alleged in the complaint they ought to have mentioned the same at the earlier point of time while giving the reply, notice which was issued on 27.11.2014. Further for the recession of contract claimed by the petitioners also it was not properly replied by the 2nd respondent in the year 2014 itself. But after three years the present FIR was lodged based on the complaint given by the 2nd and 3rd respondents stating that they were cheated by the petitioners for Rs.6 Crores and Rs.3 Crores were paid by them out of which Rs.3 Crores paid by cash and Rs.3 Crores was retained by the petitioners through cheque. Deduction of Rs.3 Crores by the petitioner is admitted fact, but payment of Rs.3 Crores in cash is not admitted, for there is no material evidence on the side of the 2nd respondent.

11. Admittedly the 2nd respondent is a Presiding Officer of the Income Tax Tribunal in the year 2014 and the 3rd respondent is Advocate by profession. Therefore, there is no basic material to show that they paid a cash of Rs.3 Crores and the same was cheated by the petitioners. The key ingredients to attract Section 420 of I.P.C is that there must be a fraudulent and dishonest intention on the part of the petitioners, but as rightly pointed out by



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they paid cash of Rs.3 Crores. They would have received receipt to that effect or they would have taken steps to get back those amount from the parties concerned. For the notice justifying the withholding of payment of Rs.3 Crores sent by the petitioners, there was no reply of the 2nd and 3rd respondents who are having legal knowledge. Therefore, prima facie 2nd and 3rd respondents failed to show that from the beginning of the transactions the petitioners acted with an intention to cheat them with fraudulent and dishonest intention. Admittedly, in the year 2014 itself the petitioners filed a Civil Suit in respect of rescinding of the contract, so in the year 2022 near after 7 years, the 2nd respondent has now filed a suit for recovery of money. Even on bare perusal of the plaint cause of action it starts in the year 2014. So there is no basic ingredient to show that the petitioners acted with dishonest intention to cheat the respondents 2 and 3 from the beginning of the transactions. Therefore, the authority relied upon by the petitioners squarely applies to the facts of the case. Admittedly, there is no prima facie to prove that the Bank statement relied by the 2nd respondent shows that they withdraw the amount but there is no proof that they handed over the cash to the petitioners. If at all having valid defence they have to work out the remedy before the Civil Court. Both the parties have filed Civil Suit in C.S.No.873 of 2014 and C.S.No.198 of 2021.

Therefore, the 2nd respondent is directed to work out her remedy through Court of law. But, for prosecuting the petitioners for the offence under section 420



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of IPC there is no basic ingredient to show that they acted with a dishonest intention entered into an agreement with the 2nd respondent. Therefore, it is a clear case of abusing process of law. Hence. this court is inclined to quash the proceedings.

12. Accordingly, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

14.02.2024

Speaking Order/ Non Speaking Order

Index: Yes/ No

Neutral Citation: Yes/No

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To

1.The Inspector of Police,
EDF-II, Team-III
Central Crime Branch,
Egmore, Chennai.
Crime No.228 of 2017

2.The Public Prosecutor,
High Court of Madras.



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T.V.THAMILSELVI, J.

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