IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.01.2024

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

<u>CRL.OP No. 15842 of 2022</u>

R.Farahathullah ...petitioner

Vs.

1.State Represented by
The Inspector of Police(crime),
H-1, Washermenpet Police Station,
Cr. No. 231 of 2022.
2.T.A.S Imrankhan
3.The State Represented by its
The Inspector of Police, CCB,
Money Cheating Loundry wing Team,
Veppary, Chennai.
(R3 Impleaded as per order dated 18.08.2022 in Crl.MP. No. 12855 of 2022 in Crl.OP. No. 15842 of 2022) ...Respondent

PRAYER : This appeal filed under Section 482 of Cr.P.C, to call for the FIR in Crime No. 231 of 2022 and quash the same dated 28.03.2022 pending on the file of the first respondent.

For Petitioner : Mr.T.PaulRaj
For R1 & R3 : Mr.S.Vinoth Kumar
Government Advocate Crl. side
For R2 : Mr. Mohammed Rafi

ORDER

The petitioner herein filed this petition to call for the FIR in Crime No. 231 of 2022 and quash the same dated 28.03.2022 pending on the file of the first respondent.

2. The case of the prosecution is that the petitioner has borrowed a sum of Rs.49 lakhs from the second respondent and failed to repay the same. Subsequently, he sent a complaint to the Assistant commissioner of Police on 29.08.2021 and the said complaint was forwarded to the first respondent herein and CSR. No. 358/2021 was given. Since, no complaint was registered, the second respondent herein sent a petition dated 29.12.2021 to the Commissioner of Police but no case was registered. Thereafter, the second respondent filed Crl.M.P. No. 162 of 2022 under Section 154(3) of Cr.P.C before the XV Metropolitan Magistrate George Town Chennai and the Magistrate ordered for inquiry into the complaint of the second respondent dated 29.08.2021. After enquiry the first respondent registered a FIR under Section 420 of Cr.P.C in crime No. 231 of 2022. Challenging the said FIR the petitioner filed this petition.

3. The learned counsel for the petitioner submits that the petitioner is

falsely implicated in this case and also there is no evidence on the side of the respondent to prove that the petitioner borrowed a sum of Rs.49 lakhs from the first respondent but without any material evidence FIR was lodged against the petitioner as such is abuse of process of law. Hence, he prays to allow this petition.

4. By way of reply, the learned counsel for the respondent submits that the petitioner had informed the second respondent that he was willing to sell the shops and fixed a price of for all the 4 shops at Rs.95,00,000/- and agreed to register the property within a period of three months. Thereafter on 31.01.2021, the agreement was executed and the second respondent paid a sum of Rs.90,00,000/- as advance to the petitioner for the said shops and a balance of Rs.5,00,000/- to be paid at the time of registration and the petitioner accepted that he would register the said shops in favour of the second respondent within a three months. Further, the second respondent paid a sum of Rs.69,00,000/- to the petitioner which was sough to be borrowed by him for his urgent needs and executed a promissory for the said amount on 31.01.2021 and the petitioner also promised to repay the same within a period of three months. But the petitioner failed to registered the sale deed within a agreed period of three months and delayed the registration and borrowed amount was not repaid within agreed time.

Thereafter, the petitioner had handed over 9 cheques under the pretext of repaying all amounts to the second respondent but the said cheques were dishonored as drawer signature differ and Funds Insufficient. furthermore, the petitioner executed a Power of Attorney in favour of his relatives name as though he was absolute owner of the the shops and also sold the shops using said Power of Attorney to his own relatives to that effect the encumbrance certificate also produced. Therefore, the allegations leveled against him is sustainable and prayed to dismiss this petition.

5. Considering the facts of the case, it reveals that the second respondent lodged a complaint stating that the petitioner failed to execute the sale deed in respect of shops as per the sale agreement dated 31.01.2021 after obtaining the sale consideration of Rs.90,00,000/- from the second respondent and during the pendency of the case the petitioner transferred the shops to the third party. On the other side, the petitioner contention is that the alleged sale agreement as well as cheques were forcefully obtained by the defacto complainant with the help of the police and he has no liability to pay the amount to the defacto complainant nor he entered into any sale agreement with the second respondent and also totally denied the transactions with the petitioner. On seeing the facts of the case, this Court is of the view that without any material evidence it cannot be decided at this

time whether the petitioner is entitle to pay the amount or not which it needs detailed investigation. Hence, this court is not inclined to quash the FIR No. 231 of 2022. Accordingly, this petition is dismissed.

19.01.2024

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<u>T.V.THAMILSELVI, J.</u>

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