



WEB COPY



Crl.O.P.Nos.13858 & 17092 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :23.07.2024

Pronounced on :31.07.2024

CORAM:

THE HONOURABLE DR JUSTICE G.JAYACHANDRAN

Crl.O.P.Nos.13858 & 17092 of 2023

and

Crl.M.P.Nos.8537, 8538, 10975 & 10977 of 2023

Crl.O.P.No.13858 of 2023:

J.H.Najumudeen

.. Petitioner

/versus/

1.State represented by the
Sub Inspector of Police,
EDF-II, Team-1,
Central Crime Branch,
Vepery, Chennai 600 007.

2.S.V.Ravi

.. Respondents

Criminal Original Petition has been filed under Section 482 of Cr.P.C., praying to quash the charge sheet dated 25.03.2022 filed in C.C.No.2854 of 2022 on the file of the XI Metropolitan Magistrate Court, Egmore, Chennai and consequently quash the said calendar case proceedings in C.C.No.2854 of 2022 on the file of the XI Metropolitan Magistrate Court, Egmore, Chennai.



Crl.O.P.Nos.13858 & 17092 of 2023

WEB COPY

For Petitioner :Mr.P.L.Narayanan, Senior Counsel for
Mr.V.Praveen Kumar

For R1 :Mr.S.Udaya Kumar,
Govt. Advocate(Crl.Side)

For R2 :Mr. B.Kumar, Senior Counsel for
Mr.S.Prakash for R2

Crl.O.P.No.17092 of 2023:

G.Rangasamy

.. Petitioner

/versus/

1.State represented by the
Inspector of Police,
CCB(Central Crime Branch),
EDF-1, Team-1,
Vepery, Chennai 600 007.
in Crime No.444 of 2015

2.S.V.Ravi

.. Respondents

Criminal Original Petition has been filed under Section 482 of Cr.P.C., praying to quash the charge sheet dated 25.03.2022 filed in C.C.No.2854 of 2022 on the file of the XI Metropolitan Magistrate Court, Egmore, Chennai and consequently quash the said calendar case proceedings in C.C.No.2854 of 2022 on the file of the XI Metropolitan Magistrate Court, Egmore, Chennai.



Crl.O.P.Nos.13858 & 17092 of 2023

For Petitioner :Mr.L.Infant Dinesh
For R1 :Mr.S.Udaya Kumar,
Govt. Advocate(Crl.Side)
For R2 :Mr. B.Kumar, Senior Counsel for
Mr.S.Prakash for R2

COMMON ORDER

The petitioners herein are the Accused 1 and 2 in C.C.No.2854 of 2022 on the file of Designated Court for cases investigated by CCB-CBCID at Egmore, Chennai. They are before this Court to quash the case against them taken cognizance for offences under Sections 406, 420 r/w 120(B) of IPC altered into Sections 406,420 r/w 34 of IPC.

2. Before advertng to the contention of the petitioners, the brief facts of the complaint leading to filing of final report is extracted below.

3. 4 ½ grounds of land in S.No.2/132 at Oorur Village, owned by the Proprietor, Francis Sekar Raja of M/s Vicons Constructions Private Limited. The land was encroached and therefore, the defacto complainant by name S.V.Ravi, had thought fit to purchase the property from Francis Sekar Raja, for low price and after evicting the encroachers can sell it for



Crl.O.P.Nos.13858 & 17092 of 2023

higher price. Accordingly, S.V.Ravi approached Francis Sekar Raja and he agreed to sell the property for Rs.6.50 Crores. The defacto complainant paid a sum of Rs.10,00,000/- as advance and entered into a sale agreement on 12.12.2012.

4. Thereafter, the defacto complainant sought help of Rangasamy, the first accused (the petitioner in Crl.O.P.No.17092 of 2023) to arrange a buyer. The said Rangasamy(A1) in turn introduced J.H.Najumudeen, the second accused(the petitioner in Crl.O.P.No.13858 of 2023). After inspecting the property and documents, J.H.Najumudeen, agreed to pay Rs.3.50 crores per ground, free from encumbrance, totally Rs.15.75 crores for 4 ½ grounds and entered into Memorandum of Understanding with the complainant on 02.05.2013. In the said Memorandum of Understanding, Rangasamy is one of the witness.

5. The said J.H.Najumudeen, made part payment on various occasions, totally to the tune of Rs.7.40 crores. The complainant on receiving the money had paid to the owner of the property Francis Sekar



Crl.O.P.Nos.13858 & 17092 of 2023

Raja a sum of Rs.6.50 crores as agreed towards the price. After payment, the defacto complainant got general power of attorney from Francis Sekar Raj on 21.10.2013.

6. Adjacent to this 4 ½ grounds, one Narasimhan had 2458 sq.ft of vacant land. For this land, the defacto complainant paid Rs.2 crores on 18.09.2014 and got a general power in his name. The second accused J.H.Najumudeen, after paying about 50% of the agreed sale consideration, promised to pay the balance sale consideration of Rs.8.35 crores later and requested to execute sale deed for the property. When the defacto complainant hesitated to execute the sale deed, without receiving full sale consideration, Rangasamy the first accused induced the complainant making a false representation that J.H.Najumudeen, is not keeping good health and therefore, the property be transferred to J.H.Najumudeen and he will stand guarantee for the payment of the balance money.

7. Due to the compulsion of the first accused and believing his words that the second accused will pay the balance sale consideration, the



Crl.O.P.Nos.13858 & 17092 of 2023

defacto complainant executed the sale deed in favour of the second accused on 21.07.2014 in respect of 9000 sq.ft of land and on 19.11.2014, 2468 sq.ft of land. Thereafter, when the defacto complainant requested J.H.Najumudeen to pay the balance sale consideration as per the Memorandum of Understanding, J.H.Najumudeen, started evading. When he contacted Rangasamy, he also did not respond properly. Subsequently, when he contacted J.H.Najumudeen, over phone, J.H.Najumudeen, told that the balance sale consideration has been paid to Rangasamy. Then, realising that both Rangasamy and J.H.Najumudeen, together in furtherance of the common intention of cheating had induced him to execute the sale deed without receiving the balance sale consideration of R.8.35 crores.

8. The above complaint was taken up for investigation and in the course of investigation, the respondent police has collected evidence to prove that the defacto complainant holding power of attorney of the property, which was owned by Francis Sekar Raja had executed sale deed in favour of J.H.Najumudeen (2nd accused), without receiving the full sale



Crl.O.P.Nos.13858 & 17092 of 2023

consideration as agreed by the parties. The defacto complainant had executed the sale deed, based on the inducement and undertaking given by the first accused Rangasamy. From out of Rs.7.40 crores, the defacto complainant paid Rs.6.50 crores to the land owner namely Francies Sekar Raja. The vendor has given statement that he has received full sale consideration and authorised the defacto complainant, who is the power of attorney holder to deal with the property. While so, J.H.Najumudeen, the purchaser of the property had paid totally Rs.7.40 crores to the defacto complainant and paid Rs.4.25 crores to Rangasamay on various dates. Though J.H.Najumudeen claims that Rs.4.25 crores was paid to Rangasamy only as per the instruction of the defacto complainant. There is no evidence to show that the payment of Rs.4.25 crores to Rangasamy was on the direction of the defacto complainant. Therefore, having found the material to proceed against these petitioners for the offences under Sections 406, 420 r/w 34 of IPC, final report has been filed.

9. The trial Court has taken cognizance of the offence and the matter is now pending trial. J.H.Najumudeen, the second accused in his quash petition has stated that Crime No.444 of 2015 registered by the



Crl.O.P.Nos.13858 & 17092 of 2023

respondent police and later, culminated in filing the final report in C.C.No.2854 of 2022 has to be quashed since the defacto complainant had no title over the property and infact, the property is found to be a Open Space Reservation (OSR) land owned by the Corporation of Chennai. Further, it was specifically agreed by the defacto complainant that he will evict the encroachers and hand over the vacant land. However, the suit is filed by one of the encroachers in O.S.No.2869 of 2017 on the file of the City Civil Court, Chennai, which is still pending. Therefore, apart from lack of title, there is also breach of agreement committed by the defacto complainant. Hence, the criminal complaint initiated against him is not sustainable. Further, the defacto complainant has received entire sale consideration and confirmed it in writing. When there is no ingredient to attract the offences under Section 406 and 420 r/w 34 of IPC, the learned Magistrate ought not to have taken cognizance.

10. That apart, the learned Senior Counsel appearing for the petitioner/2nd accused submitted that in the absence of any deceptive inducement and misrepresentation, the petitioner cannot be forced to undergo the ordeal of criminal trial. In fact the petitioner is the real



Crl.O.P.Nos.13858 & 17092 of 2023

aggrieved party, being cheated by the defacto complainant by misrepresenting as owner of the property, which infact found to be Open Space Reservation (OSR) land and the possession is now with the Corporation of Chennai. There was a MOU entered between the parties on 02.05.2013. The said MOU has been deliberately suppressed by the defacto complainant. This document and other connected documents which are all of sterling quality to be looked into by the Court while exercising power under Section 482 of Cr.P.C.

11. The learned Senior Counsel appearing for the petitioner/2nd accused further submitted that the petitioner is a retired Director of Facility Management, Health Care in the American Hospital at Dubai. In order to invest his hard earned money, fell into the trap of the complainant and his associate Rangasamy, had parted a sum of Rs.15 crores towards the sale consideration. Rs.4.25 lakhs paid to the first accused Rangasamy, as instructed by the defacto complainant. Despite being a bona fide purchaser and paid substantially to the complainant for which the vendor had no valid title, facing malicious prosecution, even



Crl.O.P.Nos.13858 & 17092 of 2023

after finding of the Civil Court that the subject property is earmarked as Open Space Reservation (OSR) land in the plan approved in the year 1966. Neither Francis Sekar Raja nor Narasimhan from whom the defacto complainant alleged to have been purchased the property had disclosed that the land is OSR land. While so, the payments made and the Civil Court decree being material of sterling quality has to be taken into consideration and the complaint has to be quashed holding it as a malice prosecution.

12. The learned Counsel appearing for the first accused Rangasamy submitted that the property measuring 4 ½ grounds is owned by M/s VICONs Construction Private Limited and Narashimhan in the ratio of 5:1 respectively. Initially by virtue of Board Resolution M/s VICONs Construction Private Limited gave general power of attorney to this petitioner (Rangasamy) authorising him to deal with the property. On behalf of M/s VICONs Construction Private Limited, the Director of Francis Sekar Raja and the petitioner entered into MoU on 03.05.2013. M/s VICONs Construction Private Limited through Francis Sekar Raja agreed to sell the land for Rs.6.50 crores on condition that the purchaser



Crl.O.P.Nos.13858 & 17092 of 2023

crores. On misrepresentation with intention to cheat, A1 and A2 had induced the complainant to execute the sale deed and pursuant to the sale deed, they have taken possession and transferred patta in their name. The property presently stands in the name of the second accused. The contention that the said property belongs to the Corporation is false and misleading. The property was handed over to A2 without any encroachment. Therefore, for no reason the second respondent can withhold the balance sale consideration.

16. Regarding the first accused the learned counsel contended that the alleged power of attorney held by A1 was duly cancelled in the year 2013 itself which is much before execution of power of attorney in favour of the defacto complainant. M/s VICONs Construction Private Limited had sold the property with encroachment for a sum of Rs.6.50 crores. The defacto complainant as power agent of M/s VICONs Construction Private Limited sold the property to the second respondent after removing all the encroachers. The agreed sale consideration is not fully paid. However, the defacto complainant was induced by A1 to execute the sale deed in favour of A2.



Crl.O.P.Nos.13858 & 17092 of 2023

WEB COPY

17. The learned Senior Counsel appearing for the defacto complainant states that under the guise of quash petition 36 documents which are not part of the prosecution documents sought to be relied upon by the accused persons which is totally contrary to the dictum laid down by the Hon'ble Supreme Court in ***State of Orissa v. Dedendra Nath Padhi reported in [2005(1) SCC 568]***.

18. In this regard, the learned Senior Counsel appearing for the petitioner/second accused submitted that in ***Harshendra Kumar D. v. Rebatilata Koley and others reported in [(2011)3 SCC 351]***, the Hon'ble Supreme Court has held that in appropriate case if on the face of the documents, which are beyond suspicion or doubt, placed by the accused to show the accusations against him cannot stand, it would be travesty of justice, if the accused is relegated to trial and he is asked to prove his defence before the trial Court.

19. This Court after considering the elaborate arguments made by the learned counsels for the respective parties and the voluminous



Crl.O.P.Nos.13858 & 17092 of 2023

documents relied by them including the judgment of this Court in connected civil suit, is of a firm opinion that the Court can not conduct a mini trial under the guise of considering documents of sterling quality in the quash petitions.

20. The learned Senior Counsel appearing for the second accused submitted that the property which is subject matter of the civil suit is the subject of the matter of the complaint. However, the learned Senior Counsel appearing for the defacto complainant states that it is different property and unconnected with the subject matter of the complaint.

21. This Court is not inclined to venture into the identification of the property which is the subject matter of the civil suit and the property which is subject matter of the complaint. Apparently, based on the records, a piece of land has been purchased by the second accused and admittedly, he has not paid the full sale consideration to the vendor. A portion of the sale consideration which claims to have been paid to the first accused, needs probe whether it was made on the instruction of the



Crl.O.P.Nos.13858 & 17092 of 2023

complainant or it was dubious design conceived by A1 and A2 to cheat the defacto complainant.

22. As pointed out by the learned counsel appearing for the defacto complainant, the ingredient for misrepresentation and cheating has been *prima facie* made out from out of the investigation done by the first respondent. The inducement of the first accused to execute the sale deed without receiving full sale consideration coupled with the fact that the first accused has received a sum of Rs.4,25,00,000/- from A2, provides the ingredient required for misrepresentation and cheating. Therefore, having transferred the property in his name and taken possession of it, A2 cannot claim that his vendor had no title and therefore, he will not pay the balance sale consideration. The reason stated by A2 to quash the complaint cannot stand the scrutiny of law, since he holds title for the property and apparently, there is no challenge to his title.

23. In the said circumstances, the reason given by the accused for not paying the balance sale consideration cannot sustain, since the



Crl.O.P.Nos.13858 & 17092 of 2023

prima facie material available to proceed against these two petitioners for the offences under Sections 406 and 420 r/w 34 of IPC.

24. Therefore, the Criminal Original Petitions to quash stand dismissed. Consequently, connected Miscellaneous Petitions are closed.

31.07.2024

Index:yes

Speaking order/non speaking order

Neutral citation:yes/no

ari

Issue by 02.08.2024

To

- 1.The XI Metropolitan Magistrate Court, Egmore, Chennai.
2. The Sub Inspector of Police, EDF-II, Team-1,
Central Crime Branch, Vepery, Chennai 600 007.
- 3.The Public Prosecutor, High Court, Madras.



WEB COPY



Crl.O.P.Nos.13858 & 17092 of 2023

Dr.G.JAYACHANDRAN,J.

ari

delivery Order made in
Crl.O.P.Nos.13858 & 17092 of 2023
and
Crl.M.P.nos.8537, 8538, 10975 & 10977 of 2023

31.07.2024