



Crl.O.P.No.18263 of 2023
and

Crl.M.P.Nos.12134 of 2023 and 7921 of 2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:21.06.2024

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Crl.O.P.No.18263 of 2023

and

Crl.M.P.Nos.12134 of 2023 and 7921 of 2024

Rajesh S.Bajaj, Male 58 years,
S/o Srichand Bajaj
Director,
Bajaj Promoters Pvt. Ltd.,
No.71/72, Pantheon Road,
Egmore, Chennai 600 008.

.. Petitioner

/versus/

1.The Inspector of Police,
Team-17(A), ALGSC-1,
Central Crime Branch,
Chennai.

2.C.Rammohan

..Respondents

Prayer: Criminal Original Petition has been filed under Section 482 of Cr.P.C., praying to call for the records relating to FIR No.117 of 2023 on the file of the Inspector of Police, Team-17(A), ALGSC-1, CCB, Chennai and quash the same.



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Crl.O.P.No.18263 of 2023

and

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For Petitioner :Mr.Sridhar for
Mr.Prakash Goklaney

For Respondents :Mr.K.M.D.Muhilan
Government Advocate (Crl.Side)for R1
Mr.S.Saravanan for R2

ORDER

Based on the complaint given by the buyer against the promoters, a case has been registered in Crime No.117 of 2023 for the offence under Sections 406, 420, 447 r/w 34 of IPC.

2. The specific allegation found in the complaint is that apart from purchase of undivided share in the property, for a portion bearing Nos.4D and 4E in the fourth floor of the apartment, the petitioner has paid sale consideration and he is in possession since 31.10.2005. However, the promoters had created false document and sold it to the third party.



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Crl.O.P.No.18263 of 2023
and
Crl.M.P.Nos.12134 of 2023 and 7921 of 2024

3.This Court, when the matter came up for admission found that a suit regarding declaration of title in respect of the undivided share been pending and suppressing the pendency of the civil suit, the complaint been given and same was taken up for investigation. Therefore, being *prima facie* satisfied, an exparte interim stay was granted.

4. After notice, the learned counsel appearing for the defacto complainant entered appearance and he would submit that in the suit filed by the accused persons, a counter claim was made and decree has been passed only in respect of the undivided share in the land.

5. As far as the counter claim for cancellation of the sale deed was dismissed and the appeal is likely to be preferred. In any event, the respondent/complainant at the most can claim only right over the undivided share and not upon the superstructure constructed over the larger extent of the undivided share, without paying consideration for that. When that being the subject matter of the investigation, unless the



Crl.O.P.No.18263 of 2023

and

Crl.M.P.Nos.12134 of 2023 and 7921 of 2024

WEB COPY

complainant produce proof for payment for the superstructure, the complaint cannot stand.

6. In the light of the material relied by the learned counsels, this Court is of the view that the matter, where two different contracts between the promoters and the buyer, one for the undivided share and another for construction, unless and until there is *prima facie* material to show that the person, who claims the possession and right over the superstructure has parted away the sale consideration for both particularly for the superstructure *ipse facto* there cannot be any right over the superstructure. Only if something else has done with criminal intention and *mens rea*, same requires investigation. Therefore, first the police shall decide about the merit of the complaint, whether any material available with the complainant to prove payment for the flat in dispute, if not, the complaint is to be closed as mistake of fact.



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Crl.O.P.No.18263 of 2023
and
Crl.M.P.Nos.12134 of 2023 and 7921 of 2024

7. In fine, this Criminal Original Petition is disposed of. The respondent police is directed to complete the investigation within a period of four months and proceed in accordance with law. Consequently, connected Miscellaneous Petitions are closed.

21.06.2024

Index:yes/no
Speaking order/non speaking order
Neutral citation:yes/no
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To:

1.The Inspector of Police, Team-17(A), ALGSC-1,
Central Crime Branch, Chennai.

2.The Public Prosecutor, High Court, Madras.



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Crl.O.P.No.18263 of 2023
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DR.G.JAYACHANDRAN,J.

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Crl.O.P.No.18263 of 2023
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21.06.2024