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Crl.O.P.No.18308 of 2023

In the High Court of Judicature at Madras

Reserved On : 08.1.2024	Delivered on : 10.1.2024
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Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Criminal Original Petition No.18308 of 2023
& Crl.M.P.Nos.12169 & 12171 of 2023

Nithya

...Petitioner

Vs

1.State rep.by
 The Inspector of Police,
 Central Crime Branch
 (EDF-1, TEAM 1), Chennai-7.

2.B.Sugunalatha
 3.Dr.Shiva Prasad Palani

...Respondents

PETITION under Section 482 of the Criminal Procedure Code to
 call for the entire records in C.C.No.2150 of 2023 on the file of the
 learned Metropolitan Magistrate Court (CCB & CBCID), Egmore,
 Chennai and quash the same.

For Petitioner	:	Mr.D.Shivakumaran
For R1	:	Mr.A.Gopinath, GA (Crl.Side)
For R2 & R3	:	Mr.S.Haja Mohideen Gisthi



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ORDER

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This criminal original petition has been filed by fourth accused to quash the proceedings in C.C.No.2150 of 2023 on the file of the Metropolitan Magistrate for Exclusive Trial of CCB Cases (Relating to Cheating Cases in Chennai) & CBCID Metro Cases, Egmore, Chennai-8 (for short, the Court below).

2. The case leading to filing of this petition is as follows :

(i) Respondents 2 and 3 lodged a complaint before the first respondent against two companies, the petitioner, who is director of the companies and the other directors on the ground that the complainants were lured to invest in the projects undertaken by the two companies namely accused Nos.1 and 2 and thereby the complainants had parted with huge sums of money to the tune of Rs.13.64 Crores.

(ii) The grievance of the complainants is that the project was never completed by the companies namely accused Nos.1 and 2 and that the complainants were left high and dry. It has been alleged that the complainants were cheated by the accused persons and that the directors of the two companies also committed criminal breach of



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trust.

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(iii) The complaint was taken on file and a first information report came to be registered on 24.1.2022 in Crime No.24 2022 on the file of the first respondent as against six accused persons. The petitioner has been added as the fourth accused in her capacity as the director of the two companies and wife of the third accused.

(iv) Thereafter, accused Nos.1 to 5 filed Crl.O.P.No.17795 of 2022 before this Court seeking to quash the first information report registered in Crime No.24 of 2022 on the file of the first respondent. This Court disposed of the said quash petition by order dated 17.8.2022, the relevant portions of which are extracted as hereunder :

"3. A perusal of the First Information Report indicate that huge amount has been invested under the pretext of construction of two residential flats and the amount has been invested in the year 2017. However, project has not seen the light of the day. According to the petitioner, a sum of Rs.13.64 crores has been invested.

4. It is a clear case of inducement and having lured the parties to invest such a huge amount, the project is not completed and the flats are not handed over. On perusal of the materials on record, this Court is of the view that the matter requires to be probed further.

5. At this stage, the learned counsel for the



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respondents 2 and 3 would submit that one more chance may be give to the parties to mediate the issue and if in the mediation nothing works out, thereafter, the investigation shall proceed.

6. Considering the nature of dispute between the parties and the fact that the receipt of the amount is not disputed, this Court is of the view that the matter can be referred to mediation and outer time limit for mediation shall fixed as one month and within one month, if the mediation is not fructified, the police is at liberty to proceed with the investigation and file final report as per law.

7. With the consent of both sides, that

i] Mr.N.Kirubakaran, Judge [Retd.], High Court, Madras, residing at No.36, 2nd Cross Street, Rayala Nagar, Ramapuram, Chennai – 600 089, Mobile No.9445025454 is appointed as a Mediator to mediate the matter.

ii] the learned Mediator after issuing notice to the parties for mediation in the first week of September, 2022, is requested to conclude mediation proceedings within a period of one month from the date of first mediation.

iii] the learned Mediator shall fix his fees and the same shall be borne by the parties equally.

8. It is made clear that if nothing fructifies in the mediation proceedings, the first respondent shall proceed with the investigation and file the Final Report as per law."

(v) Pursuant to the above order, the Mediator held two meetings on 28.10.2022 and 17.11.2022. However, the mediation failed and the



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same was recorded on 17.11.2022.

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(vi) Thereafter, the first respondent went ahead with the investigation and a final report was filed before the Court below and the same was taken on file in C.C.No.2150 of 2023. The Court below took cognizance of the case by an order dated 09.3.2023 for the offences under Sections 406 and 420 read with Section 34 of the Indian Penal Code. The same has been put to challenge in this petition.

3. Heard the learned counsel for the petitioner, the learned Government Advocate (Criminal Side) appearing for the first respondent and the learned counsel appearing for respondents 2 and 3.

4. The learned counsel for the petitioner submitted that the cognizance order dated 09.3.2023 does not reflect any application of mind and that the Court below has mechanically taken cognizance of the final report. He further submitted that this is a case, which is civil in nature, that the complainants concealed the fact that two parallel complaints in Complaint Nos.463 and 464 of 2020 were given before the National Consumer Disputes Redressal Commission (NCDRC), New



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Delhi by the complainants, that the same ultimately resulted in an order dated 22.9.2023 allowing the complaints, that the said order dated 22.9.2023 has been put to execution before the NCDRC, New Delhi in Execution Application Nos.291 & 292 of 2023 by the complainants and that two affidavits were filed on behalf of the first accused - company undertaking to repay back the entire amount in four quarterly instalments.

5. The learned counsel for the petitioner also submitted that no offence has been made out against the petitioner and that it is not known as to in what capacity, the petitioner has been made accountable for the transaction between the first accused - company and the complainants, that even the statements that were recorded from the witnesses under Section 161 of the Criminal Procedure Code only implicated the two companies - accused Nos.1 and 2 and the third accused and that the continuation of the criminal proceedings as against the petitioner (A4) will result in abuse of process of court.

6. Per contra, the learned Government Advocate (Criminal Side) appearing for the first respondent submitted that prima facie materials



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are available against the petitioner, that the conduct of the petitioner clearly establishes the fact that there was a criminal intent to cheat the complainants and to commit criminal breach of trust and that therefore, the petitioner has to necessarily undergo the trial and establish her innocence. Accordingly, he sought for dismissal of this petition.

7. The learned counsel appearing for respondents 2 and 3 submitted that the petitioner was actively involved in the running of the affairs of the two companies, that even the earlier opportunity that was given by this Court to settle the dispute did not end up fruitfully, that the complainants parted with their hard earned money of nearly Rs.13.50 Crores, that they are virtually left in the streets and that the complaints that were prosecuted before the NCDRC, New Delhi will not have any bearing since the present complaint on the file of the first respondent touches upon the criminality/criminal intent on the part of the accused persons, for which, they have to face criminal trial. Accordingly, he sought for dismissal of this petition.

8. This Court has carefully considered the submissions made by



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the learned counsel on either side and the materials available on record.

9. There are prima facie materials to show that the complainants/respondents 2 and 3 parted with nearly Rs.13.50 Crores with the fond hope that the project will be completed and that their respective flats will be delivered. This amount was paid in the year 2015. However, as on date, neither this amount was repaid back nor the flats were handed over to them. There are prima facie materials to show that the petitioner is also a director in the two companies namely accused Nos.1 and 2 and that she actively participated in the business along with her husband (A3). The statements of the complainants, which were recorded under Section 161(3) of the Criminal Procedure Code also implicated the petitioner and the role played by her. Certain documents, which were also placed before this Court at the time of hearing, also prima facie establish that the petitioner had participated in the running of the business. In view of the same, the petitioner cannot contend that she has been unnecessarily implicated in this case.



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10. The fact that huge sums of money were received from the complainants with a promise to deliver the flats and that thereafter, neither the flats were delivered nor the money was repaid back, prima facie, reflects the criminal intent on the part of the accused persons to cheat respondents 2 and 3. This is not a case, which is purely civil in nature and there is criminality that can be ascribed against the accused persons considering the facts and circumstances of this case. Filing of the complaints before the NCDRC, New Delhi, by itself, is not a bar to maintain a criminal complaint and the same act on the part of the accused persons can give rise to both a civil remedy as well as a criminal action. The law on this issue is too well settled.

11. Earlier, this Court had given an opportunity to the accused persons to settle the dispute with the complainants. However, the accused persons did not utilize this opportunity. Ultimately, the money, that was parted in the year 2015 by the complainants, has left them high and dry. This Court does not find any genuineness on the part of the petitioner and the other accused persons, as they do not have the mind to own up to their responsibility and to settle the amount to the complainants.



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12. This Court also carefully went through the cognizance order passed by the Court below. It is not necessary for the Court below to pass a detailed order while taking cognizance. The absence of recording reasons while taking cognizance, by itself, will not render the cognizance order illegal. The Magistrate is only required to go by the allegations contained in the complaint and see if prima facie case is made out. In view of the above discussions, this Court does not find any ground to interfere with the cognizance order dated 09.3.2023 passed by the Court below.

13. For the foregoing reasons, the above criminal original petition is dismissed. Consequently, the connected Crl.M.Ps. are also dismissed. It is left open to the petitioner to raise all the grounds in support of her defence before the Court below. The observations made in this order will not have any bearing on the Court below from independently applying its mind on its own merits and in accordance with law.

10.1.2024

Neutral Citation : Yes
Speaking Order : Yes



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N.ANAND VENKATESH,J

RS

To

- 1.The Metropolitan Magistrate for
Exclusive Trial of CCB Cases
(Relating to Cheating Cases in
Chennai) & CBCID Metro Cases,
Egmore, Chennai-8.
- 2.The Inspector of Police,
Central Crime Branch
(EDF-1, TEAM 1), Chennai-7.
- 3.The Public Prosecutor,
High Court, Madras.

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