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Crl.RC.No.2275 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.07.2024

CORAM:

THE HON'BLE **MR.JUSTICE M.DHANDAPANI**

Crl.RC.No.2275 of 2023

and

Crl.MP.No.33 of 2024

S.S.Kirubakaran

...Petitioner

Vs.

1. S.K.Gowri Shankar
2. S.K.Srinivasan
3. S.K.Thandayuthapani @ Jeyavelu
4. S.K.Jayalalitha
5. The State rep. By,
The Inspector of Police,
CCB Team XV, Chennai.

...Respondents

Criminal Revision case filed under Section 397 and 401 of Cr.P.C. to set aside the order passed by the Learned III Additional Judge, (FAC) II Additional City Civil Court, Chennai dated 19.10.2023 in Crl.R.C.10 of 2022 in Crl.M.P.14173 of 2020 in C.C.8594 of 2019 Learned CCB and CBCID Metropolitan Magistrate, Egmore, Chennai.

For Petitioner : Mr.J.Kingsly Solomon

For Respondents : Mr.N.Baskaran, for R1 to R4
: Mr.A.Gopinath, GA (Crl. Side), for R5



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ORDER

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This Criminal Revision case has been filed seeking quashment of the order dated 19.10.2023 made in Crl.R.C.10 of 2022 in Crl.M.P.14173 of 2020 in C.C.8594 of 2019 by the learned CCB and CBCID Metropolitan Magistrate, Egmore, Chennai.

2. The case of the petitioner is that, the petitioner is the de-facto complainant and he filed a complaint in Crime No.338 of 2012 for the offences under section 420, 464, 465, 468, 471 and 506(ii) r/w 120B of IPC stating that, when he was searching for a suitable land in Chennai to build a house for establishing a small company, he came in contact with the accused 2 and 7 and they stated that they jointly entered into a sale agreement with the owner of a property comprised in S.No.606 measuring an extent of about 5650 sq.ft., and the total sale consideration of the said property is Rs.1,50,00,000/- and the petitioner being satisfied with the property, paid the said sale consideration in four parts in three different modes and thereafter, a sale agreement was entered between the accused 2 and 7 as first party and the petitioner, his wife and son as



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second party and at the time of registration, the other accused persons were also present in the office and the accused 3 to 6 executed sale deed in favour of the petitioner. While such being the case, when the petitioner returned from USA after visiting his son, he found a board erected in the above said property stating that the property belongs to the Housing Board. Immediately thereafter, when the petitioner contacted the accused persons for return of sale consideration of Rs.1,50,00,000/- paid by the petitioner, they refused to return the amount and further, threatened the petitioner. Hence, the complaint. Thereafter, the accused 3 to 6 / the respondents 1 to 4 herein filed a petition u/s. 239 of Cr.P.C. in Crl.MP.No.14173 of 2020 in CC.No.8594 of 2019, seeking to discharge them from all the charges framed against them, which was dismissed by the trial court, vide order dated 29.10.2021. Aggrieved by the same, the accused 3 to 6/respondents 1 to 4 herein filed Crl.RC.No.10 of 2022 and the learned III Additional Judge, (FAC) II Additional City Civil Court, Chennai had mechanically allowed the same, vide impugned order dated 19.10.2023, by setting aside the order dated 29.10.2021 and the accused persons were discharged from the charges framed against them.



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Challenging the same, the petitioner has filed the present revision.

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3. Learned counsel for the petitioner submits that it is the respondents 1 to 4 in connivance with the A-2 and A-7, who sold the property to the petitioner, which property, admittedly belonged to the Tamil Nadu Housing Board. Though the first appellate court had recorded the said finding, however, erroneously it had acquitted the same reasoning that it was only A-2 and A-7, who had cheated the petitioner. Therefore, the said order discharging the A-3 to A-6 deserves to be set aside.

4. On the above contention heard the learned counsel appearing for respondents 1 to 4, who submitted that the court below had appreciated the materials and found that cheating was done only by A-2 and A-7 and the respondents 1 to 4 were not involved and, therefore, discharged them, which cannot be found fault with. Therefore, they sought for dismissal of the present revision.



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5. This Court gave its careful consideration to the submissions placed on behalf of the parties and perused the materials available on record.

6. Even a bare perusal of the order reveals that though A2 and A-7 had cheated the petitioner, however, respondents 1 to 4, who were A-3 to A-6, had partaken in the cheating by selling the property fraudulently to the petitioner when the property admittedly belonged to the Housing Board. Though they claim ignorance, it would not be justiciable for this Court to discharge respondents 1 to 4 at this point of time, as the complicity of respondents 1 to 4 in the offence would be known only at the time of trial and discharging them even at the very threshold would not be in the interest of the petitioner. Further, when there is clear admission that respondents 1 to 4 had put up construction in the property and were residing there, which has been recorded by the appellate court, it was not right on the part of the appellate court to discharge respondents 1 to 4 as it would otherwise cause great prejudice and hardship to the petitioner. Therefore, the impugned order passed by the first appellate



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court deserves to be set aside.

7. For the reasons aforesaid, this revision is allowed by setting aside the order passed by the III Addl. Judge, (FAC) II Addl. City Civil Court, Chennai in Crl.RC.No.10/2022 in Crl.MP.No.14173/2020 and the order passed by the Court of Metropolitan Magistrate, CCB & CBCID, Egmore, Chennai in Crl. M.P. No.14173/2020 in C.C. No.8594/2019 in Cr. No.338/2012 is confirmed. The petitioner as also the respondents 1 to 4 are at liberty to canvass all their grievances before the trial court at the time of trial.

8. This Criminal Revision Case stands allowed in the aforesaid terms. Consequently, the connected miscellaneous petition is closed.

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Index : Yes/No
Speaking order : Yes/No
NCC : Yes/No

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1. The Inspector of Police,
CCB-Team XV, Chennai.
2. The Public Prosecutor,
Madras High Court.
3. The III Additional Judge, (FAC) II Additional City Civil Court,
Chennai.
4. The CCB and CBCID Metropolitan Magistrate,
Egmore, Chennai.

M.DHANDAPANI, J.

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