IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.NO.539 OF 2022

1.P.K.Ramesh
2.Maria Ramesh

... Petitioners/Accused 1 & 2

Vs.

1. State by;
Inspector of Police, Team V,
Central Crime Branch,
Forgery Wing, Vepery, Chennai.

... 1st Respondent/Complainant

2. Sreedhar Narayanan,
Executive Director,
M/s.Annai Builders Real Estate Pvt Ltd.,
Alpha Centre, 4th Floor,
No.150 and No.151, North Usman Road,
T.Nagar, Chennai-600 017.

... 2nd Respondent/Defacto Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records and may be pleased to quash the FIR in Crime No.126 of 2021, pending investigation, on the file of the Inspector of Police, CCB, Team V, Forgery Wing, Vepery, Chennai.

For Petitioner	:	Mr.N.R.Elango, Senior Counsel for Mr.Ganesh Rajan
For R1	:	Mr.E.Raj Thilak, Additional Public Prosecutor
For R2	:	Mr.Mohamed Rafi

ORDER

This Criminal Original Petition has been filed by the petitioners/A1 & A2 to quash the FIR in Crime No.126 of 2021, on the file of the 1st respondent in view of the compromise arrived between the parties.

2.The gist of the case is that the petitioners are A1 and A2. A3 is their son, now he is in Australia and he is the Director of M/s.Call Express Constructions Private Limited. During the end of the year 2017, the 2nd respondent was introduced to the petitioners as builder and promoter. After few meetings, the petitioners informed that they owned 6 acres of land in Perumbakkam village, which could be developed into residential complexes and further they represented that they are carrying on huge projects in OMR called 'USHERA'. The petitioners informed that the 2nd respondent to invest money to develop the said project and it was agreed that the land will be with the petitioners and the construction and marketing would be undertaken by the 2nd respondent. The profit sharing was also decided to be in the ratio of 70:30. The 1st petitioner informed that even though Perumbakkam property is encumbered with LICHFL (LIC Housing Finance Limited), the whole project will be completed in six months or he will pay LICHFL and clear the property to proceed further without any encumbrance. The 2nd respondent believed the same, entered into a Joint Development Agreement on 12.07.2018 with the petitioners and a power of attorney was also executed. In furtherance to it, totally Rs.18.50/- Crores was transferred to the petitioners by the 2nd respondent. After transfer of money, the attitude of the petitioners changed and they failed to take steps to get planning permission and they have not even paid the LICHFL to clear Perumbakkam property from encumbrance. For default and non payment, LICHFL was contemplating steps to bring the property for auction. Later, it came to know that the petitioners indulged in similar activities and received twenty five Crores by making same fraudulent promise to one Ashok Sachdev. The said Ashok Sachdev initiated criminal proceedings against the petitioners. Hence, the 2nd respondent lodged a complaint before the 1st respondent Police and an FIR in Crime No.126 of 2021, for offence under Sections 420, 465, 468, 409, 34 and 108 IPC was registered.

3.The learned Senior Counsel appearing for the petitioners submitted that in this case, the 1st petitioner was arrested and later enlarged on bail by the learned Principal Sessions Judge, Chennai in Crl.M.P.No.11701 of 2021, dated 26.07.2021, with a condition that the 1st petitioner to deposit a sum of Rs.2 Crores to the credit of Crime No.126 of 2021, before the learned Metropolitan Magistrate, CCB and CBCID Case, Egmore, Chennai. As per the order, on 28.07.2021 vide receipt No.00631, the petitioner deposited Rs.2 Crores by way of two demand drafts each for Rs.75,00,000/- and one demand draft for Rs.50,00,000/-. He further submitted that during investigation, the 2nd respondent initiated arbitration proceedings in O.A.No.45 of 2022, wherein the Former Hon'ble Chief Justice of Jammu and

Kashmir was appointed as sole arbitrator. In the arbitration proceedings, a compromise was entered between the parties and Memorandum of Understanding, dated 17.11.2021 was executed to that effect and a letter, dated 16.11.2021 addressed to the Sub Registrar, Selaiyur, Bharath Madha Street, Tambaram East, Chennai and a letter, dated 17.11.2021 addressed to the 1st respondent Police along with the memo of settlement. Thus, the claim and counter claim of the parties got resolved in the arbitration proceedings.

4.The learned Senior Counsel further submitted that the relationship between the petitioner and the 2nd respondent now restored with peace and harmony. In the Memorandum of Understanding, dated 17.11.2021, it is seen that the case at the instance of said Ashok Sachdev got registered in Crime No.253 of 2019, after enquiry, it was closed by the Central Crime Branch, Chennai finding that it is a civil dispute. Further, Ashok Sachdev approached NCLT, which got dismissed and the proceedings are currently pending before the NCLAT. Apart from that some of the home buyers of USHERA have preferred a complaint before the EOW, Delhi. Further, LICHFL on 20.11.2021 had issued a notice under Section 13(2) of the SARFAESI Act to the petitioners. The learned Senior Counsel further submitted that initially a Memorandum of Compromise was entered between the parties on 26.07.2021. Following the same, another Memorandum of Understanding was entered on 17.11.2021. As per the Memorandum of Understanding, the petitioners agreed to return the Interest Free Deposit amount of Rs.15.92/- Crores paid by the 2nd respondent under Joint Development Agreement, dated 12.07.2018. A part of the amount, which was already repaid is recorded. The balance amount of Rs.7.92/- Crores to be paid within one year from the date of quashing of Crime No.126 of 2021. It was agreed by the 2nd respondent that he will not further pursue the complaint and will not initiate any civil or criminal proceedings subject to the conditions in the Memorandum of Understanding. Further, it was agreed by the 2nd respondent for defreezing the bank accounts of the petitioners (1.Indian Bank-Current Account No.712270990 - M/s.Call Express Construction (India) Private Limited, 2.Indian Bank - Savings Account No.413091739 - Dr.Maria Ramesh, 3.Indian Bank - Savings Account No.413094843 - Mr.P.K.Ramesh, 4.Indian Bank - Current Account No,712268198 - M/s.Call Express Engineering Private Limited, 5.Axis Bank - Current Account No.912020049726280 - M/s.Call Express Constructions (India) Private Limited.) and also agreed for the petitioners to receive back the amount of Rs.2/- Crores, which is deposited by the 1st petitioner, as per the bail order in Crl.M.P.No.11701 of 2021, dated 26.07.2021.

5.The learned Senior Counsel further submitted that the Look Out Circular issued against the petitioners forbidding the movements of the petitioners to be quashed. Thus, in view of the compromise, all the issues between the petitioners and the 2nd respondent got resolved, hence, he prayed for quashing of FIR in Crime No.126 of 2021 and all the corollary issues initiated pursuant to the FIR.

6.The learned counsel for the 2nd respondent confirmed the compromise entered between the petitioners and the 2nd respondent. He further submitted that following the Memorandum of Understanding dated 17.11.2021, another Memorandum of Understanding entered on 25.12.2021 between the petitioners and one Sreedhar. As per MOU, dated 25.12.2021, the petitioners to make arrangements to refund the amount of Rs.5.35/- Crores and execute sale deed for flats B3 and C3 in USHERA project with corresponding UDS. He further submitted that the petitioners to strictly abide by the conditions in the Memorandum of Understanding, without any delay and deviation.

7.The learned Additional Public Prosecutor appearing for the 1st respondent Police submitted that on the complaint of the 2nd respondent, an FIR in Crime No.126 of 2021 registered against the petitioners/A1 & A2 and their son A3, who is presently in Australia. After registration of FIR, the petitioners were arrested and remanded to Judicial custody. Thereafter, the 1st petitioner was granted bail by the learned Principal Sessions Judge, Chennai, by order, dated 28.07.2021 with a condition to deposit a sum of Rs.2/- Crores to the credit of Crime No.126 of 2021. As per the order, the 1st petitioner deposited the amount in Crime No.126 of 2021, on the file of the Metropolitan Magistrate Court, CCB/CBCID, Egmore, Chennai, vide receipt No.00631. He further submitted that the Deputy Commissioner of Police, Central Crime Branch-II, Vepery Chennai on 15.06.2021 in R.C.No.69/CCB/Camp/2021 had sent a communication to the Assistant Director/SIC, R.K.Puram, New Delhi to issue Look Out Circular against the petitioners and their son and forbid their movement vide Passport Nos.Z2382902, Z2382903 and Z2382901.

8.The learned Additional Public Prosecutor further submitted that on 17.11.2021, a settlement was entered between the parties and the same informed to the 1st respondent Police. The 2nd respondent confirmed that he is not interested in further pursuing the FIR in Crime No.126 of 2021 and he is willing to withdraw the same. Further, the bank account of the petitioners (1.Indian Bank-Current Account No.712270990 – M/s.Call Express Construction (India) Private Limited, 2.Indian Bank – Savings Account No.413091739 – Dr.Maria Ramesh, 3.Indian Bank – Savings Account No.413094843 – Mr.P.K.Ramesh, 4.Indian Bank – Current

Account No,712268198 - M/s.Call Express Engineering Private Limited, 5.Axis Bank - Current Account No.912020049726280 - M/s.Call Express Constructions (India) Private Limited.) were freezed during investigation.

9.This Court considered the rival submissions and perused the materials available on record.

10.The issue between the parties is a business transaction. As per the Joint Development Agreement, the petitioners to develop the property in Perumbakkam Village into residential flats in the name of USHERA. For the property, a loan was obtained from the LICHFL by the 2nd respondent, which got encumbered. On the strength of the Joint Development Agreement on 12.07.2018, huge amount was transferred by the 2nd respondent and thereafter, some misunderstanding arouse between the parties in implementation of the agreement. The 2nd respondent felt cheated, since after the original Memorandum of Understanding, subsequent Memorandum of Understanding was executed which completely diluted the powers and rights of the 2nd respondent. The 2nd respondent was later relegated to a nominal party. This happened after transfer of huge sums of money. Thereafter, the petitioners not shown interest in implementing the Joint Development Agreement to proceed with the progress of the project. The LICHFL loan was not discharged and CMDA approval was not obtained and there was considerable delay. Hence, the 2nd respondent lodged a complaint before the 1st respondent Police. After registration of FIR in Crime No.126 of 2021, arbitration proceedings was initiated by the 2nd respondent, wherein Memorandum of Understanding entered between the parties and recorded. Now, the issues got resolved on the satisfaction of the parties. The 2nd respondent agreed to withdraw the complaint against the petitioners and gave withdrawal letter and reiterated the same by filing affidavit before the 1st respondent Police. The 1st respondent Police verified the identity of the parties and also verified the compromise arrived between them.

11.Under such circumstances, no useful purpose will be served in keeping the First Information Report pending, even though, the offences involved are not compoundable in nature. In the light of the guidelines given by the Hon'ble Supreme Court reported in 2017 9 SCC 641-(Parbathbhai Aahir @ Parbathbhai Vs. State of Gujrath), and after exercising due caution as advised by the Hon'ble Suprme Court in The State of Madhya Pradesh v. Dhruv Gurjar and Another reported in (2019) 2 MLJ Crl 10), this Court in exercise of its jurisdiction under Section 482 Cr.P.C., quashes the First Information Report in Crime No.126 of 2021, on the file of the 1st respondent Police and all the corollary issues between the parties pursuant to the Crime No.126 of 2021.

12.The amount of Rs.2/- Crores which is deposited by the 1st petitioner to the credit of Crime No.126 of 2021, on the file of the Metropolitan Magistrate, CCB CBCID Court, Egmore, Chennai is hereby directed to be returned to the 1st petitioner, on filing of appropriate petition by the 1st petitioner. The 2nd respondent has not objection for the same.

13.The prohibitory orders passed by the 1st respondent Police to freeze the bank accounts viz., 1.Indian Bank-Current Account No.712270990 - M/s.Call Express Construction (India) Private Limited, 2.Indian Bank - Savings Account No.413091739 - Dr.Maria Ramesh, 3.Indian Bank - Savings Account No.413094843 - Mr.P.K.Ramesh, 4.Indian Bank - Current Account No,712268198 - M/s.Call Express Engineering Private Limited, 5.Axis Bank - Current Account No.912020049726280 - M/s.Call Express Constructions (India) Private Limited, is hereby quashed. The concerned Bank Managers are directed to defreeze the above said bank accounts and not impose any restriction and permit the petitioners to have free transactions.

14.Since the FIR in Crime No.126 of 2021 itself is quashed, this Court quashes the Look Out Circular issued against the petitioners/A1 & A2 and A3 (Passport Nos.Z2382902, Z2382903 and Z2382901). The petitioner to have unhindered access to travel, without any restrainment.

15.This Criminal Original Petition is allowed, accordingly. The learned Senior Counsel submitted that the petitioner is voluntarily willing to donate a sum of Rs.2,50,000/- (Rupees two lakhs fifty thousand only) to the Madras Advocate Cooperative Society Limited, Madras for the welfare of its members. Hence, the petitioners are directed to donate Rs.2,50,000/- (Rupees two lakhs fifty thousand only) to the credit of of the Madras Advocate Cooperative Society Limited, Madras in Account No.484022647, Indian Bank, Madras High Court Branch, Madras.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

vv2

To

1. The Inspector of Police, Team V,
   Central Crime Branch,
   Forgery Wing, Vepery, Chennai.

2. The Public Prosecutor,
   High Court, Madras.

3. The Secretary,
   Madras Advocate Cooperative Society Ltd.,
   Madras.

Copy To

The Metropolitan Magistrate Court,
CCB/CBCID,
Egmore, Chennai.

+3ccs to M/s.Ganesh Rajan, Advocate, S.R.No.3742

Crl.O.P.No.539 of 2022

CA(CO)
RLP(10/02/2022)