



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2025

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THE HONOURABLE MR JUSTICE G.K. ILANTHIRAIYAN

CRL OP No. 5049 of 2025

AND

CRL MP NO. 3250 OF 2025

B.Karthikeyan

Petitioner

Vs

1. The State

Rep.By, The Inspector Of Police,
EOW, Kancheepuram,
Kancheepuram.

2.L. Dhanasekaran

Respondents

PRAYER:- Criminal Original Petition filed under Sec.528 of B.N.S.S., praying to call for the records relating to impugned FIR registered in Cr.No.03/2021 dated 22.04.2021 on the file of the 1st respondent namely the Sub-Inspector of Police, EOW, Kancheepuram and quash all further proceedings

For Petitioner: Mr.R.John Sathyan,
Senior Advocate for Mr. Prakash Adiapadam

For Respondent: Mr. A.Gopinath
Government Advocate
(Crl. Side) for R1

**ORDER**

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This Criminal Original Petition has been filed seeking to quash the FIR registered in Crime No.3 of 2021 for the offences under Section 420 and 406 of IPC and Section 5 of TNPID Act, 1997.

2. The case of the prosecution is that the petitioner was engaged in the real estate business under the name and style of “Vasthu Baghavan Real Estate” in Kancheepuram. He introduced a scheme titled “Vasthu Baghavan Real Estate Sirusemippu Veettumanai Thittam. The second respondent joined in the said scheme and paid a sum of Rs.65,000/- to the petitioner in monthly instalments of Rs.1,000/- each, from 07.01.2012 to 13.05.2017. It is alleged that despite receiving the said amount, the petitioner failed to execute a sale deed in favour of the second respondent as per the agreement. However, neither was the sale deed executed, nor was the amount repaid. Hence, the complaint.



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3. The learned Senior Counsel appearing for the petitioner submitted that even according to the second respondent, he had paid a sum of Rs.65,000/- in 65 instalments to purchase the house plots by entering into an agreement dated 09.06.2010. After completion of all the instalments, if the petitioner failed to execute the sale deed, such failure would not constitute a criminal offence, as the allegations are civil in nature. There was absolutely no intention on the part of the petitioner to cheat the second respondent. Therefore, the offences under Sections 406 and 420 not at all attracted for these transactions. In fact, the second respondent had deposited the amount and they executed the sale deed in respect of their house and some of the instalments were returned which were deposited by them.

4. On instructions, the learned Government Advocate (Crl.Side) appearing for the first respondent submitted that so far 3694 complaints have been received, similar in nature to that of the second respondent. After collection of monthly instalments from the victims nearly Rs.1,89,00,000/-., thereafter, the petitioner absconded and neither deposited the collected amount nor executed any sale deeds in respect of their house plots. Therefore, the

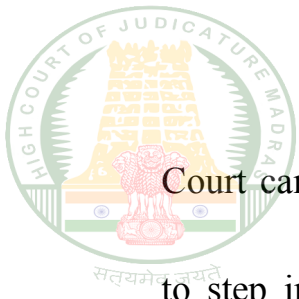


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offence under Section 5 of the TNPID Act clearly attracted and the first respondent rightly registered the FIR. During the course of investigation, the first respondent identified six immovable properties belonging to the petitioner and sent a proposal for the attachment, which is pending consideration before the Government. It cannot be said that at the time of entering into the agreement, the petitioner cheated the victims. After collecting the entire deposits from 394 victims, the petitioner failed to execute any sale deed under the scheme of Vasthu Baghavan Real Estate and also failed to return the amount, which were collected from the victim.

5. Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Crl.Side) appearing for the first respondent. Perused the materials available on record.

6. It is seen from the First Information Report that there are specific allegations as against the petitioner to attract the offence, which has to be investigated in depth. Further the FIR is not an encyclopedia and it need not contain all facts and it cannot be quashed in its threshold. This Court finds that the FIR discloses prima facie commission of cognizable offence and as such this



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Court cannot interfere with the investigation. The investigating machinery has to step in to investigate, grab and unearth the crime in accordance with the procedures prescribed in the Code.

7. The Hon'ble Supreme Court of India passed in the judgment reported in **2019 (14) SCC 350** in the case of ***Sau. Kamal Shivaji Pokarnekar vs. The State of Maharashtra & ors., (Crl.A.No.255 of 2019*** dated **12.02.2019**) held that the learned Magistrate while taking cognizance and summoning, is required to apply his judicial mind only with the view to taking cognizance of the offence whether a *prima facie* case has been made out for summoning the accused person. The learned Magistrate is not required to evaluate the merits of the materials or evidence in support of the complaint, because the Magistrate must not undertake the exercise to find out whether the materials would lead to conviction or not. Only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive, the complaint/FIR can be taken for consideration for quashment. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by Magistrate, it can be considered for quashment. Therefore, it is

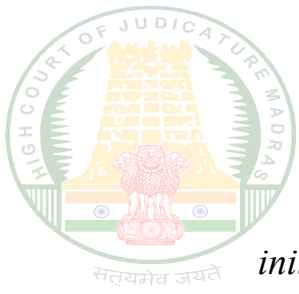


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not necessary that a meticulous analysis of the case should be done before the trial to find out whether the case would end in conviction or acquittal. If it appears on a reading of the complaint and consideration of the allegations therein, in the light of the statement made on oath that the ingredients of the offence are disclosed, there would be no justification to interfere. At the initial stage of issuance of process, it is no open to the Court to stifle the proceedings by entering into the merits of the contentions made on behalf of the accused. Therefore, the criminal complaint cannot be quashed only on the ground that the allegations made therein appear to be of a civil nature. If the ingredients of the offence alleged against the accused are *prima facie* made out in the complaint, the criminal proceeding shall not be interdicted.

8. Further the Hon'ble Supreme Court of India issued directions in the judgment reported in **2021 SCC Online SC 315** in the case of ***M/s.Neeharika Infrastructure Pvt. Ltd., Vs. State of Maharashtra & ors.***, as follows :-

“23.



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vi) *Criminal proceedings ought not to be scuttled at the initial stage;*

vii) *Quashing of a complaint/FIR should be an exception rather than an ordinary rule;*

.....

xii) *The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;*

.....

xv) *When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power*



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under Section 482 Cr.P.C., only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR;”

9. In view of the above discussions, this Court is not inclined to quash the First Information Report. However, the first respondent is directed to complete the investigation in Crime No.3 of 2021 and file a final report within a period of twelve weeks from the date of receipt of copy of this Order, before the jurisdiction Magistrate, if not already filed.

10. Accordingly, this Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petition is closed.

24.02.2025

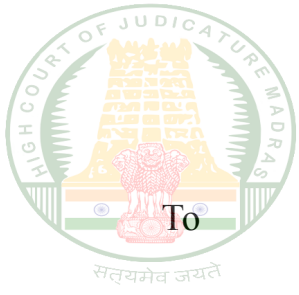
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Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No



To

1. The Inspector Of Police,
EOW, Kancheepuram, Kancheepuram.

2. The Public Prosecutor, High Court, Madras.



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