



Crl.O.P.No.15131 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.03.2025

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No. 15131 of 2023

and

Crl.M.P.Nos.9444 & 9445 of 2023

1. G.Saminathan

2. S.Radhika Malini

.... Petitioners

Vs

1. The State represented by
The Sub Inspector of Police,
Central Crime Branch,
EDF-III, Team-XXB,
Vepery, Chennai – 600 007.
Crime No.181 of 2021

2. Vummidi Ananath,
Joint Managing Director,
Representing M/s.Barath Building
Construction (India) Pvt Ltd.,
New No.20, Old No.23/2,
Mylai Ranganathan Street,
T.Nagar, Chennai – 17.

.... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of Code of Criminal Procedure, to call for the records in C.C.No.2776 of 2023 pending on the file of the Metropolitan Magistrate for Special Court CCB, CBCID, Egmore, Chennai and quash the same as against the petitioners.



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For Petitioners : Mr.R.Vivekananthan
For R1 : Mr.R.Vinothraja
Government Advocate (Crl.Side)
For R2 : Mr.A.Arumugam
for Mr.S.Saravanan

ORDER

This Criminal Original Petition has been filed seeking to quash the proceedings in C.C.No.2776 of 2023 pending on the file of the Metropolitan Magistrate for Special Court CCB, CBCID, Egmore, Chennai.

2. The case of the prosecution is that the second respondent is engaged in the business of property development. The petitioners, viz., A1 and A2, were the owners of vacant land bearing Old Plot No.B-1, New Plot No.30A, admeasuring 0.50 acres and Old Plot No.B-2, New Plot No.31, admeasuring 0.50 acres, totalling 43,560 sq.ft. comprised in Survey No.602/113 situated at Sholinganallur Village and Taluk, Kancheepuram District. The said land forms part of a layout known as Classic Retreat located at 1st MainRoad, Sholinganallur, Chennai, and was originally purchased under sale deeds dated 31.05.1996 and 12.08.1996.



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3. It is further alleged that in April 2012, the second respondent entered into an unregistered Joint Development Agreement dated 23.05.2012 with the petitioners for the development of the said property into residential flats. A refundable security deposit of Rs.3 Crores was paid by the second respondent through two cheques. A general power of attorney was executed in favour of the second respondent's company. However, the CMDA approval was later rejected. When the second respondent requested a refund, the petitioners refused and subsequently cancelled the power of attorney on 05.01.2018 and executed a sale deed in favour of one Banumathi/A3. Hence, the complaint.

4. The learned counsel appearing for the petitioner would submit that after completion of the investigation, the first respondent filed a final report and the same has been taken cognizance by the Trial Court in C.C.No.2776 of 2023. There are totally three accused, in which the petitioners are arrayed as A1 and A2. The petitioners had entered into Joint Venture Agreement with the second respondent on 23.05.2012 for the development of the property owned by the petitioners. As per the agreement, the second respondent was to construct a group of residential flats subject to obtaining necessary approval. Further, a sum of Rs.3 Crores was to be paid by the second



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respondent in favour of the petitioners as a refundable security deposit.

However, the planning permission was rejected on 26.08.2013. Therefore, the project was stalled. Subsequently, the petitioners had also taken the Demand Draft for a sum of Rs.3 Crores and sent a legal notice to the second respondent along with a copy of the Demand Draft. However, the second respondent refused to receive the same.

5. That apart, the Joint Venture Agreement contains an arbitration clause. In accordance with the said clause, the sole Arbitrator was appointed and arbitration proceedings were duly initiated in O.P.No.71 of 2020. The Arbitrator, by an award dated 12.04.2023, directed the second respondent to return all the original deeds in respect of the subject property and also directed the petitioners to return a sum of Rs.3 Crores without interest to the second respondent. Simultaneously, the second respondent also filed the present complaint. The entire dispute arises out of a commercial transaction governed by a civil contract, and no ingredients of a criminal offence are made out. Especially the offences under Sections 406 and 420 are not at all attracted as against the petitioner.



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6. A perusal of the counter affidavit filed by the second respondent and the submissions made by the learned counsel appearing for the second respondent reveals that though the petitioners owned the subject property, the land in question was part of an unapproved layout. Knowing the fact that the said land was unapproved one, the petitioners entered into a Joint Venture Agreement with the second respondent and received a sum of Rs.3 Crores as a refundable security deposit.. The planning permission was rejected by the Principal Secretary, CMDA, Chennai, on the ground that the layout was unapproved layout and had been developed after 31.12.1989. Therefore, the planning permission was rejected and regularization was also not granted. Thereafter, though the planning permission was rejected on 26.08.2013, on the request made by the second respondent on several occasions, the petitioners failed to return the security deposit. Subsequently, on 05.01.2018, the petitioners unilaterally cancelled the power of attorney executed in favour of the second respondent vide document No.116 of 2018 without any notice or without consent from the second respondent.

7. In fact, the second respondent, after Joint Venture Agreement, developed the said property by putting up compound wall in and around the subject property by spending around Rs.1.50 crores. Suppressing these facts,

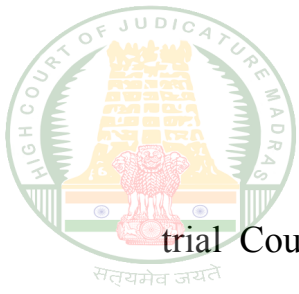


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the petitioners, after unilaterally cancelling the power of attorney, on the very

same day i.e., 05.01.2018, sold out the subject property to the third party registered vide document No.117 of 2018. Only after effecting the sale, the petitioners, in order to escape from the clutches of law, had sent a legal notice along with the copies of Demand Drafts for a sum of Rs.3 Crores. Immediately, the second respondent also made a reply on 17.01.2018. Therefore, from the very inception, the petitioners had intention to cheat the second respondent by entering into a Joint Venture Agreement in respect of the unapproved land, despite being fully aware that planning permission would not be granted. Even then the petitioners entered into a Joint Venture Agreement and received a sum of Rs.3 Crores as refundable security deposit. Therefore, the offences under Sections 406 and 420 of IPC are clearly made out by the petitioners.

8. The Hon'ble Supreme Court of India in the judgment reported in **2019 (4) SCC 351** in the case of **Devendra Prasad Singh Vs. State of Bihar & Anr., (Crl.A.No.579 of 2019 dated 02.04.2019)** while dealing with the petition to quash the entire criminal proceedings held that the High Courts have no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their statements and therefore, there was no *prima facie* case made out as against the accused. It could be done only by the



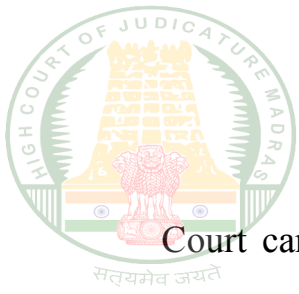
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trial Court while deciding the issues on the merits or/and by the Appellate

Court while deciding the appeal arising out of the final order that the charge sheet has been laid on the basis of the inconsistency statement under 180 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

9. Further, the Hon'ble Supreme Court of India in the judgment reported in **2019 (10) SCC 686** in the case of **Central Bureau of Investigation Vs. Arvind Khanna, (Crl.A.No.1572 of 2019** dated 17.10.2019) held that the High Courts cannot record the findings on the disputed facts. The defence of the accused is to be tested after appreciation of evidence by the trial Court during the trial. Therefore, this Court has no power to consider the disputed facts under 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

10. The Hon'ble Supreme Court of India in another judgment dated **02.12.2019** passed in **Crl.A.No.1817 of 2019** in the case of **M.Jayanthi Vs. K.R.Meenakshi & anr**, held that while considering the petition for quashment of complaint or charge sheet, the Court should not embark upon an enquiry into the validity of the evidence available. All that the Court should see is as to whether there are allegations in the complaint which form the basis for the ingredients that constitute certain offences complained of. Further, the



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Court can also see whether the preconditions requisite for taking cognizance have been complied with or not and whether the allegations contained in the complaint, even if accepted in entirety, would not constitute the offence alleged. Whether the accused will be able to prove the allegations in a manner known to law would arise only at a later stage i.e., during trial.

11. Further this Court cannot observe at this stage that whether the initiation of criminal proceeding itself is malicious or not. The same is required to be considered at the conclusion of the trial. Therefore, the ground raised by the petitioner to quash the final report/charge sheet cannot be entertained to quash the entire proceedings.

12. In view of the above discussion, this Court is not inclined to quash the proceedings in C.C.No.2776 of 2023 on the file of the Metropolitan Magistrate for Special Court CCB, CBCID, Egmore, Chenani. The petitioner is at liberty to raise all the grounds before the trial Court. The personal appearance of the second petitioner is dispensed with and she shall be represented by a counsel after filing appropriate application. However, the second petitioner shall be present before the Court at the time of furnishing of copies, framing charges, questioning under Section 351 of BNSS and at the time of passing



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judgment. However, the trial Court is directed to complete the trial within a

period of six months from the date of receipt of copy of this Order.

13. Accordingly, the Criminal Original Petition stands dismissed.

Consequently, connected miscellaneous petitions are also closed.

28.03.2025

Index : Yes/No
Neutral citation : Yes/No
Speaking/non-speaking order
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To

1.The Metropolitan Magistrate for Special court CCB, CBCID,
Egmore, Chennai.

2. The Sub Inspector of Police,
Central Crime Branch,
EDF-III, Team-XXB,
Vepery, Chennai – 600 007.

3.The Public Prosecutor,
High Court, Madras.



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