



Crl.RC.No.1430 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

DATED : 15.04.2025

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.RC.No.1430 of 2024 and
Crl.M.P. Nos.12028 and 12031 of 2024 and
Crl.M.P.No.475 of 2025

1. V.Gunasekaran
2. G.Prasad Raghavan

... Petitioners

Vs.

State by
Station House Officer
CBCID Police Station,
Puducherry
Crime No.32 of 2022

... Respondent

Prayer: Criminal Revision Case filed under Section 397 read with 401 Cr.P.C. to set aside the dismissal order of the discharge petition passed by the Chief Judicial Magistrate at Puducherry in Crl.M.P.No.11118 of 2023 in C.C.No.588 of 2023 dated 15.03.2024.



WEB COPY



Crl.RC.No.1430 of 2024

For Petitioners : Mr.S.Xavier Felix

For Respondent : Mr.K.S.Mohandass

Additional Public Prosecutor (Puducherry)

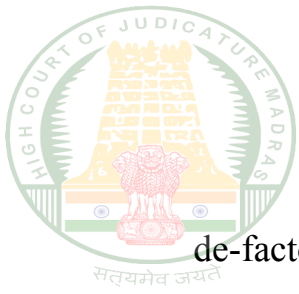
Assisted by Mrs.N.Danalatchumy

Advocate

ORDER

This Criminal Revision Case has been filed by the petitioners to set aside the dismissal order of the discharge petition passed by the Chief Judicial Magistrate at Puducherry in Crl.M.P.No.11118 of 2023 in C.C.No.588 of 2023 dated 15.03.2024.

2. The case of the prosecution is that the first petitioner/A1 approached the de-facto complainant with an offer to sell a property and received a sum of Rs.92,00,000/- from the de-facto complainant and executed un-registered sale agreement on 13.05.2015 and thereafter, he failed to execute the sale deed and, he executed a document in favour of his son/second petitioner/A2 and thereby cheated the de-facto complainant. Hence, based on the complaint given by the



Crl.RC.No.1430 of 2024

de-facto complainant, the respondent-Police registered a case against the first petitioner in Crime No.32 of 2022 and after completion of investigation, they filed the charge sheet implicating the second petitioner also as A2 for the offences under Sections 420, 406, 294(b), 506(i) IPC read with Section 34 IPC and the same was taken on file in C.C.No.588 of 2023 on the file of the Chief Judicial Magistrate, Puducherry. Pending C.C., the petitioners filed a discharge petition in Crl.M.P.No.11118 of 2023 under Section 239 Cr.P.C. However, during enquiry, the learned counsel for the petitioners did not press the claim of discharge in favour A1/first petitioner and restricted the petition only for A2/second petitioner. The learned Magistrate, after enquiry, dismissed the said petition by order dated 15.03.2024. Hence, the present revision is filed by the accused.

3. The learned counsel for the petitioners submitted that at the time of entering into the agreement between the petitioner and the de-facto complainant, the second petitioner was a juvenile. The trial Court failed to



CrI.RC.No.1430 of 2024

consider the same. He also placed reliance of the decision of the Hon'ble

WEB COPY

Supreme Court in the case of ***Om Prakash aliaas Israel alias Raju alias Raju***

Das Vs. Union of India and Another reported in ***2025 SCC Online SC 47***.

4. There is no quarrel with the proposition laid down by the Hon'ble Supreme Court. However, in this case, the complainant has stated that the cause of action arose only on 17.06.2022 and at that time, the second petitioner/A2 was not a juvenile. Admittedly, on 17.06.2022, the second petitioner had attained majority and he was aged above 20 years. Therefore, the decision referred to by the learned counsel for the petitioner is not applicable to the present case on hand and the grounds taken by the petitioners cannot be taken into consideration.

5. Now the only question is as to whether the cause of action took place at the time of oral agreement or at the time of purchasing the property by the second petitioner/A2 on 17.06.2022, which can be decided only during trial and not at this stage. The Honb'le Supreme Court time and again has held that



CrI.RC.No.1430 of 2024

the defence of the accused can be decided only after trial and not at the time of framing of charges or deciding the petition for discharge.

6. At the time of deciding the petition under Section 239 Cr.P.C., the Court has to look into the charge sheet filed by the Investigating Officer under Section 173 Cr.P.C. and the statements recorded from the witnesses under Section 161 Cr.P.C. and also the documents annexed thereon and the Court need not look into the defence taken by the accused. The Court cannot conduct a roving enquiry to testify the veracity of the documents while deciding the petition under Section 239 Cr.P.C.

7. Though the learned counsel for the petitioners stated that none of the witnesses have spoken about the overt-act as against the second petitioner to attract the offences under Sections 450 and 420 IPC, on a reading of the entire materials and the allegations in the charge sheet and the statements of the witnesses, there are prima facie materials to proceed with the case further as against the petitioners. Therefore, the prosecution has to be given an



Crl.RC.No.1430 of 2024

opportunity to substantiate their charge(s) with available materials which can be decided only after trial and not at this stage.

8. Therefore, this Criminal Revision Case is dismissed. Consequently, the connected Miscellaneous Petitions are closed.

15.04.2025

Index : Yes / No
Speaking Order : Yes / No
Neutral Citation Case : Yes/No
ksa-2

To

1. The Chief Judicial Magistrate at Puducherry
2. The Station House Officer
CBCID Police Station
Puducherry
3. The Public Prosecutor (Pondicherry),
High Court of Madras



WEB COPY



Crl.RC.No.1430 of 2024

P.VELMURUGAN. J.

Ksa-2

Crl.RC.No.1430 of 2024

15.04.2025

-