



WEB COPY



Crl.O.P.No.2823 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.03.2026

CORAM:

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

Crl.O.P.No.2823 of 2021 and
Crl.MP.Nos.1562 & 1564 of 2021

Heerachand Surana

... Petitioner

Vs.

1.B.Vivek
2.The Inspector of Police,
Muthiyalpet Police Station,
Pondicherry
(2nd respondent impleaded as per order made
in Crl.MP.No.2897 of 2021 in Crl.OP.No.2823
of 2021)

... Respondents

Prayer: Criminal Original petition filed under Section 482 of Cr.P.C.
praying to call for the records relating in CC.No.42 of 2017 dated
24.01.2013 on the file of the Judicial Magistrate-II, Pondicherry and
quash the same.

For Petitioner : M/s.Vedavalli Kumar

For Respondents

For R1 : Mr.T.M.Naveen

For R2 : Mr.A.Alexander,
Government Advocate(Pondicherry)



WEB COPY



Crl.O.P.No.2823 of 2021

ORDER

This criminal original petition has been filed praying to quash the proceedings in CC.No.42 of 2017 dated 24.01.2013 on the file of the Judicial Magistrate-II, Pondicherry.

2. The case of the prosecution is that the petitioner had invited the first respondent with an offer to sell flats. The first respondent entered into a construction agreement on 14-04-2006 for building 2 flats bearing No.S-6 and T-5 in Block 'B' in the apartments to be developed by the petitioner. The petitioner had executed a sale deed on 10-03-2006 in favour of the first respondent vide document Nos. 1170 and 1171 of 2006 with the District Registrar, Pondicherry conveying the undivided share for a consideration of Rs.1 lakh each. The petitioner had acknowledged the receipt of Rs.2 lakhs vide receipt dated 22.02.2016. As per the agreement dated 14-04-2006, the cost of the construction of the flat was agreed as Rs.6,92,000/- and Rs.7,30,000/- for the said flats as per equated payments as per the payment schedule. The complainant made payments of a total sum of Rs.12,90,000/- and he had approached the accused on several occasions to finish and hand over the flats, but they ended in vain. Further, on 15-11-2012, the complainant had requested the accused to hand over the flats through registered post. The said letter was received



Crl.O.P.No.2823 of 2021

by the accused, but he had not replied to the same. Therefore, the complainant lodged a police complaint before the Inspector of Police, Muthiyalpet Police Station, Pondicherry on 08-12-2012. Since no further action was taken on the complaint, complaint was given to Superintendent of Police on 19-12-2012. Since no further action was taken, he had moved before Judicial Magistrate at Pondicherry a private complaint against the petitioner/accused and the Judicial Magistrate forwarded the complaint under Section 156(3) of Cr.P.C. with a direction to register FIR and to investigate. Pursuant to the said order, FIR in crime No.17 of 2013 was registered under sections 406, 420 IPC on 24-01-2013 by the Inspector of Police, Muthiyalpet Police Station, Pondicherry. On filing charge sheet, the same was taken cognizance by the trial court in CC.No.42 of 2017.

3. While pending trial, the petitioner filed this criminal original petition praying to quash the proceedings in CC.No.42 of 2017. On the representation made by both the counsel for the petitioner and the first respondent, this Court referred the matter for mediation for amicable settlement. In fact, before the mediation centre, they arrived at a settlement agreement dated 10.11.2023. However, as per the terms and conditions of the said settlement agreement, the petitioner failed to act

Page 3 of 8



Crl.O.P.No.2823 of 2021

upon.

WEB COPY

4. The learned counsel appearing for the petitioner represented that the petitioner could not comply with the terms and conditions of the settlement agreement dated 10.11.2023.

5. Heard the learned Counsel appearing on either side and perused the materials placed on record.

6. It is seen that on the complaint lodged by the first respondent, the second respondent registered a criminal case in Crime No.17 of 2013 for the offences under Sections 406 & 420 of IPC. After completion of investigation, the second respondent filed final report and the same was taken cognizance in C.C.No.42 of 2017 by the trial Court and it is pending. To quash the said criminal proceeding, the petitioner filed the present petition.

7. 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



Crl.O.P.No.2823 of 2021

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 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 Section 161 of Cr.P.C./180 of the Bharatiya Nagarik Suraksha Sanhita, 2023. (any one)

8. Fruther, 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 Section 482 of Cr.P.C./528 of the Bharatiya Nagarik Suraksha Sanhita, 2023.(any one)

9. 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



Crl.O.P.No.2823 of 2021

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 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.

10. Further this Court cannot observe at this stage that the initiation of criminal proceeding itself is malicious. Whether the criminal proceeding is malicious or not, is not required to be considered at this stage. The same is required to be considered at the conclusion of the trial. Therefore, the ground raised by the petitioner to quash the proceedings in CC.No.42 of 2017 cannot be entertained.

11. In view of the above discussion, this Court is not inclined to quash the impugned proceedings. However, the petitioner is at liberty to

Page 6 of 8



Crl.O.P.No.2823 of 2021

raise all the grounds before the trial Court. The trial Court is directed to complete the trial within a period of three months from the date of receipt of this Order.

12. Accordingly, the Criminal Original Petition stands dismissed.

Consequently, connected miscellaneous petitions are also closed.

24.03.2026

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



WEB COPY



Crl.O.P.No.2823 of 2021

G.K.ILANTHIRAIYAN, J.

lok

To

- 1.Judicial Magistrate-II, Pondicherry
- 2.The Inspector of Police,
Muthiyalpet Police Station,
Pondicherry

Crl.O.P.No.2823 of 2021

24.03.2026