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Crl.O.P.No.3847 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2026

CORAM:

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

Crl.O.P.No.3847 of 2023

and

Crl.M.P.No.2430 of 2023

1.B.Suresh Babu

2.Revathy

.... Petitioners

Vs

1.The State,

By Inspector of Police,

Kuniyamuthur Police Station,

Coimbatore City,

Coimbatore – 3.

2.E.V.Vijayakumari

.... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of Code of Criminal Procedure, to call for the records culminating in FIR in Crime No.37 of 2023 on the file of the first respondent herein and to quash the same.

For Petitioners : Mr.R.Srinivas
for Mr.M.Santhanaraman

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

For R2 : Mr.Srivasta
for Mr.S.V.Praveen Rathinam



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ORDER

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This Criminal Original Petition has been filed seeking to quash the FIR registered in Crime No.37 of 2023 on the file of the first respondent.

2. The petitioners are arrayed as A1 and A2. Based on the complaint lodged by the second respondent, the first respondent registered an FIR in Crime No.37 of 2023 for the offences punishable under Sections 406 and 420 of IPC. The allegation in the complaint is that the second respondent had entered into a joint Development Agreement with M/s.Thasami Builders Private Limited for the construction of 33 villa houses, 32 line houses, 104 double bedroom flats and 56 triple bedroom apartments in the land owned by the second respondent and his family members, comprised in S.F.No.137/2B, 2C, 141/1A, 141/2 and other survey numbers, situated at Sundakamuthur Village, Coimbatore District. However, the said project was delayed land and consequently, on 04.04.2010, a deed of assignment was executed, whereby all the rights were assigned in favour of M/s.Terra Space Enterprise Private Limited (hereinafter referred to as “the developer”), in which the petitioners are the Managing Directors. Accordingly, a Memorandum of Understanding was entered into between the parties on 04.04.2010. As per the terms of the Memorandum of Understanding, the land owners agreed to assign 72% of undivided share in favour of the developer out of the total extent of 9.25 acres.



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Accordingly, a Power of Attorney was executed in favour of the developer and registered vide document No.236 of 2010. However, the project was not completed within a stipulated time and as such, the second respondent cancelled the Power of Attorney.

3. It is further alleged that a fresh agreement dated 28.05.2015 was entered into between the parties, thereby the earlier arrangement was extended under a new Memorandum of Understanding, and a fresh Power of Attorney was executed in favour of the developer, registered vide document No.2564 of 2015. Under the amended Memorandum of Understanding, the developer agreed to allot an additional 10,000 sq.ft. of build up area to the land owners and also fixed a revised deadline for completion of the entire project. It is stated that the building approval lapsed on 11.02.2017, and thereafter, a fresh Memorandum of Understanding dated 03.07.2019 was executed for getting fresh plan approval under the Memorandum of Understanding. As per the said Memorandum of Understanding, the developer agreed to complete the entire project on or before 15.06.2022 and also agreed to pay compensation if any delay. However, the developer failed to complete the construction within the stipulated time and therefore, issued a legal notice dated 31.03.2022 to the land owners seeking to finalise the accounts and requesting extension of time to complete the project. Further, the second petitioner executed a sale deed in



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respect of “A” Block, to an extent of 56,371 sq.ft, in favour of the first petitioner, which has caused huge loss to the second respondent. It is further alleged that the developer applied for construction of 80 flats instead of 56 flats, failed to obtain tax assessment and electricity service connections for the additional flats, and did not return the original documents to the landowners. Further, it is alleged that no receipts were issued for the corpus fund paid by the second respondent towards the apartments.

4. The learned Senior Counsel appearing for the petitioners submitted that a reading of the FIR would make it clear that the transactions in question pertain to a property development agreement and are purely civil in nature. According to the learned Senior Counsel, the allegations made in the FIR do not attract the essential ingredients of the offences under Sections 406 and 420 of IPC. All the disputes pending between the land owners and the developer are purely civil dispute. He further submitted that the petitioners have completed the construction. However, certain aspects such as assessment of property tax for a few flats, transfer of names in respect of some flats, and issuance of receipts for the corpus fund amounting to Rs.5,75,000/- received from the second respondent are stated to be pending. Even assuming that such allegations are true, they would not attract the offences under Sections 406 and 420 of IPC. He also submitted that the Power of Attorney executed in favour of



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the developer empowered them to execute sale deeds and accordingly, a sale deed was executed in favour of one of the Directors of the developer Company.

Such execution is in accordance with the terms of the Power of Attorney and also the Memorandum of Understanding, and therefore, it would not attract any offence against the petitioners. If at all any grievance over the execution of the sale deed and Memorandum of Understanding, the second respondent ought not to have approached the civil Court. The second respondent already approached the Civil Court in O.S.No.911 of 2025 on the file of the V Additional District Judge, Coimbatore and it is pending for adjudication. Therefore, the FIR is nothing but a clear abuse of process of law and is liable to be quashed.

5. Per contra, the learned counsel appearing for the second respondent submitted that all the allegations are civil in nature. The developer had executed a sale deed in favour of one of its Director. It would amount to clear cheating and criminal breach of trust. Further, the petitioners violated the terms and conditions of Memorandum of Understanding and as such, the offence under Sections 406 and 420 of IPC are clearly made out. That apart, the matter is at the stage of FIR and investigation, and therefore, the same ought not to be quashed at the threshold and requires a detailed investigation.



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6. The learned Government Advocate (Crl.Side) appearing for the first respondent submitted that the FIR was registered on 03.02.2023 in Crime No.37 of 2023 for the offences under Sections 406 and 420 of IPC and the investigation is pending. During the course of investigation, it was found that the developer executed a sale deed in favour of one of its Directors, which prima facie attracts the offences under Sections 406 and 420 of IPC. That apart, the petitioners violated several conditions of the Memorandum of Understanding. Hence, at this stage, the FIR cannot be quashed and the investigation must be proceeded in depth.

7. Heard the learned counsel appearing on either side and perused the materials available on record.

8. Admittedly, the petitioners are Directors of M/s.Terra Space Enterprise Private Ltd. The second respondent and others owned several properties and entered into a Joint Development Agreement with one M/s.Thasami Builders Private Limited. However, it was not materialized and as such, the entire work was assigned in favour of the developer. Accordingly, they executed a Memorandum of Understanding and later it was amended by amended Memorandum of Understanding dated 30.07.2019. As per the terms of the said agreements, the developer was entitled to 72% of undivided share to



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deal with the properties out of the total extent of 9.25 acres of land in various survey numbers. Accordingly, the second respondent executed a Power of Attorney in favour of the developer which was registered as document No.2564 of 2015. Accordingly, the developer executed a sale deed dated 11.05.2022 vide document No.3700 of 2022 in favour of its one of the Directors.

9. The only allegations as against the petitioners is that the there was a delay in completion of construction and they did not issue receipts for the corpus fund collected for the apartment owners' association, thereby they violated the terms and conditions of the Memorandum of Understanding. As per the Memorandum of Understanding and the Power of Attorney, the sale deed was executed in favour of one of its Directors. Therefore, all the allegations are completely civil in nature and it would not attract any of the offence as alleged by the first respondent.

10. The learned Senior Counsel appearing for the petitioners vehemently contended that when the power holder executed a power of attorney in favour of the power holder itself would amount to cheat. In this regard, the learned Senior Counsel relied upon the Judgment of this Court in ***Crl.O.P.No.25316 of 2018*** in the case of ***Sumathi Vs. State rep. by The Inspector of Police, District Crime Branch, Anti-Land Grabbing Special Cell,***



Nagapattinam by Judgment dated **20.07.2022**, in which this Court held that as per the Power of Attorney Act, the General Power of Attorney, who got a deed in his favour by the Principal can execute a sale deed to any person nominated by the Principal or to any person as per the clause contained in the Power Deed. This Court further held as follows :

9. It remains to be stated in the decision rendered in C.Selvan and another Vs. P.C.ramasamy and 13 others, in S.A.Nos.647 and 912 of 2014 dated 05.04.2022, I had occasion to consider a similar situation wherein following the decision in Abdul Muthalip Vs.V.Samsudeen, (2009 (4) LW 650), held that when a party had executed power deed, while the same is in existence, an Agent can execute a sale deed in favour of any other person and that even an agent can purchase the property and the principal cannot repudiate it merely because it is for the agent's benefits. Hence, a power agent in view of the power under the General Power of Attorney Deed, can execute the sale deed to anyone, including friends and family members and also to herself and the same is not violative of the Power of Attorney Act.

10.Section 417 of IPC, reads as follows :

417. Punishment for cheating .- Whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year, or with fine of with both.

11.Further, as a land owner after 29.03.2006 sale deed, the petitioner had executed the sale deed in favour of



Anitha on 09.09.2009 and therefore, even the second document cannot amount to cheating as defined under Section 417 of IPC and hence, I find that a General Power of Attorney who executes sale deed pursuant to a General Power of Attorney Deed to anyone is empowered to sell the land either to her family members or to herself. Merely because the power agent had sold the land in exercise of such a power, the same cannot be termed as a 'cheating', no a 'land grabbing' as defined in the legal terms and hence, I find that there is no element of cheating involved in the transaction effected by the petitioner/accused, much less, it does not fall within the definition of land grabbing and hence, I find that it is open to the 2nd respondent/defacto complainant to agitate the matter before the Civil Court which he has already done by filing a suit in O.S.No.81 of 2015 before the Principal Sub Court, Mayiladuthurai and hence, I find that a case of civil nature has been given a criminal colour so as to coerce the accused."

11. In view of the above, the offences under Sections 406 and 420 would not attract as per the allegations levelled as against the petitioners. That apart, the second respondent rightly approached the Civil Court in O.S.No.911 of 2025 on the file of the V Additional District Judge, Coimbatore, for the following reliefs :

(a) Decree, declaring the sale deed dated 11.05.2022 bearing document No.3700 of 2022 registered in the office of the Sub Registrar, Madukkarai executed by 2nd defendant in favour



of the 1st defendant as null and void and not binding on the plaintiffs.

(b) Decree, declaring the construction agreement dated 11.05.2022 bearing doc. No.3699 of 2022 registered in the office of the Sub Registrar, Madukkarai executed between the defendants 1 and 2 as null and void and not binding on the plaintiffs.

(c) decree of permanent injunction against the defendants in any way alienating or encumbering the suit property, restraining them in any way interfering with the peaceful possession and enjoyment of the suit property by the plaintiff.

(d) decree of mandatory injunction against the 2nd defendant directing them to handover all the original title deeds relating to the suit properties and mentioned above.

(e) order directing the defendant to pay the cost of the suit and

(f) any other relief as this Honourable Court may deem fit and proper in the circumstances of the case and render justice.

12. The present FIR is nothing but a clear abuse of process of law, wherein an attempt has been made to give a criminal colour to what is essentially a civil dispute. In this regard, it is relevant to rely upon the judgment of the Honourable Supreme Court of India in the case of ***M/s. Indian Oil Corporation Vs. NEPC India Limited and others [(2006) 6 SCC 736]***, held that the civil liability cannot be converted into criminal liability and it is necessary



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to take notice of a growing tendency in business circle to convert purely civil dispute in criminal case. This is obviously on account of prevalent impression that civil law remedies are time consuming and do not adequately protect the interest of lender/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable breakdown of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claim which do not involve any criminal offence by applying pressure through criminal prosecution should be deprecated and dishonoured.

13. In the case of ***G.Sagar Suri Vs. State of Uttar Pradesh [2000 (2) SCC 636]***, the Honourable Supreme Court of India held as follows:-

“It is to be seen if a matter, which is essentially of civil nature, has been given a cloak of criminal offence, criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal Court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this Section has to be exercised to prevent abuse of the process of any Court or otherwise to secure the ends of justice.”



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14. In view of the above, the present FIR cannot be sustained and is liable to be quashed. Accordingly, the FIR registered in Crime No.37 of 2023 on the file of the first respondent is hereby quashed and the Criminal Original Petition stands allowed. Consequently, connected miscellaneous petition is closed.

04.03.2026

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

1.The Inspector of Police,
Kuniyamuthur Police Station,
Coimbatore City,
Coimbatore – 3.

2.The Public Prosecutor,
High Court, Madras.



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G.K.ILANTHIRAIYAN, J.

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