

Sri Krishna Tiles And Potteries ... vs Inspector Of Police, Team-Iv, Central ... on 24 February, 2006

Equivalent citations: [2007]135COMPCAS292(MAD), 2006(2)CTC642

ORDER

M. Jeyapaul, J.

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1. The criminal original petition is filed seeking quashment of the criminal proceedings in Crime No.576 of 2005 on the file of the Inspector of Police, Team-IV, Central Crime Branch, Egmore, Chennai-600 008.

2. The petitioners have been booked for the offences under Sections 379, 468, 471, 420 and 506(ii) of the Indian Penal Code, based on the reference made by the learned Additional Chief Metropolitan Magistrate, Egmore, Chennai-600 008, on the complaint presented by the second respondent herein under Section 200 of the Code of Criminal Procedure.

3. The averment in the complaint preferred by the second respondent is as follows:-

The first accused is M/s. Sri Krishna Tiles and Potteries (Madras) Pvt. Ltd., the second accused is A.R.Santhanakrishnan, Director of the first accused-company, the third accused is Mrs.Radhika Santhanakrishnan, yet another Director of the first accused-company and the fourth accused is Chandrasekaran, working as Commercial Manager of M/s.Sai Sri Krishna Properties and Facilitators (P) Ltd.

4. M/s.Sri Krishna Tiles and Potteries (Madras) Pvt. Ltd., is the owner of property to an extent of 34.04 acres in Thirumangalam Village, Anna Nagar (West), Chennai. The first accused-company entered into a Memorandum of Understanding with the complainant on 2.7.2001, as per which the first accused-company entrusted the land for development with the complainant. The complainant started developing the properties through his partnership firm 'M/s.Sai Sri Krishna Properties'. 'M/s.Sai Sri Krishna Properties' was converted to a private limited company, in which the complainant was the Managing Director and the third accused was the Director. An agreement was entered into between the said 'M/s.Sai Sri Krishna Properties' and 'Sri Krishna Tiles and Potteries (Madras) Pvt. Ltd.', on 24.6.2002. The newly floated 'M/s.Sai Sri Krishna Properties' was appointed as a Facilitator by the accused Nos.1 to 3 for developing the properties after obtaining approval from Chennai Metropolitan Development Page 713 Authority (C.M.D.A.). Since the accused Nos.1 to 3 were not in a position to obtain approval from C.M.D.A., the project could not be completed at the earliest.

5. Pursuant to the above agreements, the complainant entered into an agreement to sell and an agreement to construct with 146 purchasers and received a sum of Rs.2,54,67,091/- as sale advance. The complainant had invested a total sum of Rs.3 crores approximately including the said sum of Rs.2,54,67,091/- for the purpose of developing the project and maintaining the property. The complainant had returned a sum of Rs.21,71,360/- to 47 allottees out of the 146 allottees. A sum of Rs.2,29,71,775/- has to be refunded by the complainant to the remaining 99 allottees. The accused Nos.1 to 3 are also negotiating with the allottees for refunding the advance sale consideration received from them. The purchasers informed the complainant that the agreement between the accused Nos.1 to 3 and the complainant's private limited company had been terminated by mutual consent. The complainant was shocked to see that the records and the accounts relating to the said private limited company were found missing at its Office. The third accused had illegally taken away all the records and accounts relating to the said private limited company, including the originals of the aforesaid two agreements dated 24.6.2002. Refunds have also been made to few of the purchasers with a mala fide intention of cheating the complainant. The complainant never entered into any mutual agreement for termination of the aforesaid agreements. The accused Nos.1 to 3 have fabricated a termination agreement as if it had been signed by the complainant. On complainant's enquiry, the accused Nos.1 to 3 are threatening to kill him.

6. In the petition seeking quashment, the accused have contended as follows:-

Though the complainant committed as per Memorandum of Understanding that he will deposit Rs.2.5 crores for development of the project, he did not do so. As per the terms and conditions of the Memorandum of Understanding, it will get rescinded if the said amount was not deposited by the complainant within one month from the date of Memorandum of Understanding. The Memorandum of Understanding has become a void agreement as the said amount was not deposited. By way of abundant caution, the Memorandum of Understanding was terminated as on 4.8.2001. As the Board of M/s.Sai Sri Krishna Properties and Facilitators (P) Ltd, decided to remove the complainant from his office as Managing Director, a resolution to that effect was passed on 7.7.2005 in a board meeting conducted to the effect that the complainant was ousted from his office as Managing Director.

7. The petitioners with a good intention in order to avoid any unwanted complications, made arrangements for repayment of the funds collected by the complainant. The second and third accused also made arrangements by pledging their own personal properties and the advance received for allotment of flats was repaid. There cannot be a case of theft as against a partner or a director of the company with regard to its own property. The complainant will have to remedy his grievances invoking Sections 627 to 630 of the Companies Act. The allegations made by the complainant will not attract the penal provisions of the Indian Penal Code. Therefore the accused seek for quashment of the criminal proceedings.

8. The first respondent/Inspector of Police in his counter has submitted as follows:-

The investigation reveals that the complainant had spent nearly a sum of Rs.3 crores for the development of the property by doing enormous earthwork, laying of roads etc. After the complainant asked for the records of the company, the accused have taken away all the records, books of accounts, returns, statutory registers, agreements etc. The complainant filed a petition before the Company Law Board in C.P.No.44 of 2005 praying to set aside the allotment of shares and appointment of Additional Directors. The accused filed a counter along with two documents forging the signatures of the complainant and the Postal Authority. It is found that the Postal seal on the document does not tally with the seal of the Postal Department. The Forensic Science Department has given a report that the writings of the complainant in the documents dated 29.1.2004 and 5.12.2004 are forged. The accused are also involved in several other cases pending before the Central Crime Branch (Economic Offences Wing), Chennai.

9. Learned counsel for the petitioners would submit that the complainant was not a party to the termination agreement and his signature also did not find a place in the said agreement and that therefore, the question of fabrication of the said document does not at all arise. It is curious to allege that one of the Directors of the Company has taken away the original documents and records from the Company. The amount which has been received by the complainant from the intending purchasers was completely accounted by the company. Further, the return of the money received as advance from the prospective purchasers will not lead to commission of offence. It is his further submission that the complaint as such has been filed just to harass the petitioners without any basis.

10. Per contra, learned counsel for the complainant would submit that as the complaint reflects commission of theft of documents, forgery of certain records and criminal intimidation, the case has been rightly taken up by the first respondent-police for investigation.

11. Learned Government Advocate (Criminal Side) would submit that during the course of investigation, it is found that the seal of the Postal Department found on a particular document did not tally with the Postal seal. He would further submit that the writings of the complainant in certain documents are found to be not that of him.

12. In the complaint, four types of allegations have been made. The first allegation is that Mrs.Radhika Santhanakrishnan, the third accused in this case had illegally taken away all the records and accounts relating to M/s.Sai Sri Krishna Properties and Facilitators (P) Ltd. The second allegation is that the accused have fabricated a termination agreement as Page 715 if the same had been signed by the complainant. The third allegation is that the advance amount received from the prospective purchasers was returned behind the back of the complainant in order to cheat him and the last allegation is "on complainant's enquiry, the accused 1 to 3 are threatening to kill him".

13. M/s.Sri Krishna Tiles and Potteries (Madras) Pvt. Ltd., wherein the second and third accused are the Directors, has entered into a Memorandum of Understanding with the complainant, M.Viswanathan on 2.7.2001 for the purpose of development of 308 grounds belonging to the first accused company. In paragraph-10 of the Memorandum of Understanding, it has been clearly

mandated as follows:-

Of the above M.Viswanathan hereby agrees that at least Rs.2.50 lakhs towards part of the land cost will be mobilised and remitted to M/s.Sri Krishna Tiles and Potteries (Madras) Pvt. Ltd., within 30 days from the date of this Memorandum of Understanding and the balance in progressive lots within the mutually agreed period as mentioned hereinabove. In the event of M.Viswanathan failing to do so, M/s.Sri Krishna Tiles and Potteries (Madras) Pvt Ltd., may, at its option, either give further 15 days period to complete the matter depending upon the extent of performance by M.Viswanathan till then, or proceed straight away to terminate this Memorandum of Understanding forthwith, and thereafter M.Viswanathan shall not be entitled to any sum of money whether towards commission or otherwise from M/s.Sri Krishna Tiles and Potteries (Madras) Pvt. Ltd., and shall further be responsible for returning the entirety of the money to third parties from whom amounts have been collected and deposited.

Then a partnership deed was entered into between the second accused and the complainant on 9.7.2001 for the very same purpose of construction, development, marketing and sale of the property referred to above and a partnership firm in the name and style of M/s.Sai Sri Krishna Properties and Facilitators (P) Ltd. was formed by the second accused and complainant by virtue of the partnership deed dated 9.7.2001.

14. The said partnership firm M/s.Sai Sri Krishna Properties and Facilitators (P) Ltd., was taken over by a new company formed in the name and style of M/s.Sai Sri Krishna Properties and Facilitators (P) Ltd., by the third accused and the complainant. The Articles of Association of M/s.Sai Sri Krishna Properties and Facilitators (P) Ltd., contemplates removal or dismissal of a Managing Director or a Director (in-charge) from the Office. The minutes of the meeting held by the Board of Directors of M/s.Sai Sri Krishna Properties and Facilitators (P) Ltd., on 27.10.2004 would show that Mr.S.Natarajan and Mr.S.Ramasamy have been inducted as Directors of the said Company. Subsequently in the Meeting of the Board of Directors of M/s.Sai Sri Krishna Properties and Facilitators (P) Ltd., held on 7.7.2005, considering the detrimental activity of the complainant, M.Viswanathan to the interest of the company, he had been terminated from the Office of the Managing Director and ordered to continue as the Page 716 Director of the company. In the said Board Meeting except the complainant, the other three Directors viz., the third accused Mrs.Radhika Santhanakrishnan and the newly inducted Directors viz., S.Natarajan and S.Ramasamy have participated.

15. In the meeting of the Board of Directors of M/s.Sai Sri Krishna Properties and Facilitators (P) Ltd., that was held on 11.7.2005, in the presence of the third accused and the newly inducted Directors viz., S.Natarajan and S.Ramasamy, the agreement dated 24.6.2002 entered into between M/s.Sri Krishna Tiles and Potteries (Madras) Pvt Ltd., and M/s.Sai Sri Krishna Properties and Facilitators (P) Ltd., was proposed to be terminated by a deed of termination, assigning the entire liability arising out of the said agreement to M/s.Sri Krishna Tiles and Potteries (Madras) Pvt. Ltd.

The said minutes was signed by the Chairperson, the second accused herein.

16. The complainant was not a party to the deed of termination dated 11.7.2005. Only M/s.Sri Krishna Tiles and Potteries (Madras) Pvt Ltd., the second accused A.R.Santhanakrishnan, the third accused Mrs.Radhika Santhanakrishnan and M/s.Sai Sri Krishna Properties and Facilitators (P) Ltd., were parties to the said agreement. This is the agreement which is alleged to have been fabricated with the signature of the complainant. The said document does not bear the signature of the complainant, but it bears only the signature of the third accused and the new director viz., S.Natarajan and the fourth accused viz., Chandrasekaran. Therefore the allegation that the deed of termination was fabricated with the signature of the complainant does not have any leg to stand upon. 17. The Articles of Association empowers the Directors to change the Managing Director as and when required. The complainant had been removed in the Board Meeting that was held on 11.7.2005. The question as to whether the complainant had been properly terminated from the position as Managing Director can be agitated before the Civil Forum.

18. The third accused Mrs.Radhika Santhanakrishnan is one of the partners of M/s.Sai Sri Properties and Facilitators (P) Ltd. She has taken the reins of the administration of the Company. As the complainant was removed from the position of Managing Director of M/s.Sai Sri Krishna Properties and Facilitators (P) Ltd., there is nothing wrong in one of the Directors of the company, who has taken the reins of the administration, taking possession of the documents of the company. Such an exclusive possession, by no stretch of imagination, will amount to theft of the records of the company.

19. The total amount received from the prospective purchasers and the existing liability have been clearly incorporated in the deed of termination agreement. The entire liability of M/s.Sai Sri Krishna Properties and Facilitators (P) Ltd., has been taken over by the first accused Company. There is nothing wrong in settling the advance amounts received from the prospective purchasers as the entire scheme promoted by the company did not take off Page 717 as expected. If the amount had not been settled, the accused would have definitely faced criminal proceedings at the instance of the prospective purchasers. Therefore, the question of cheating, as alleged by the complainant, does not arise for consideration in this case. Very bald allegation has been made that on enquiry the accused 1 to 3 threatened to kill him. Such a stock version cannot be given much credence at all.

20. A deed of compromise alleged to have been entered into on 8.10.2005 between the accused and the complainant was disputed by the accused. In fact, the Director General of Police was addressed by the accused bringing to his notice of the coercion brought on the accused by the police officers to issue two cheques for huge amount in favour of the complainant in the guise of compromise.

21. The fresh allegation found in the counter filed by the first respondent-police that the seal of the Post Office found on the document filed by the accused before the Company Law Board was forged and two other documents pressed into service by the accused before the very same Company Law Board were also fabricated, do not have any bearing on the contentions found in the complaint. In fact it has no nexus with the tenor of the complaint. It appears that the second respondent-police is making some attempt to fix the accused in this case as the accused have unmasked the atrocious

involvement of the Police Officers in coercing the accused to come out with a compromise formulae agreeing to repay huge amount to the complainant.

22. The Hon'ble Supreme Court in *M. Krishnan v. Vijay Singh and Anr.* (2001 (4) Crimes 65) has observed that in a case where there is allegation regarding forging of documents and acquiring gains on the basis of such forged documents, the proceedings could not be quashed on the simple ground that a civil suit with respect thereto has already been filed. 23. Here in this case, there is no forgery of documents referred to in the complaint. The first respondent invents certain documents to show that those documents were not in the handwriting of the complainant. Further, there is no allegation that by using such forged document, the accused has acquired gains. Therefore the above authority will not apply to the facts and circumstances of this case.

24. It has been held in the authority in *Shiv Bahadur Singh v. State of Vindh-Pra* that if a document is established to have been anti-dated, the accused can be found guilty of forgery. There is no allegation in the instant complaint that any of the document was anti-dated by the accused. The above authority also will not apply to the case on hand.

25. The grievance if any of the complainant will have to be redressed only through the Civil Forum or through the Company Law Board. He cannot prosecute the counter-party with bald allegations without any basis. The complainant, having been upset over the termination of his Office as Managing Director of M/s.Sai Sri Krishna Properties and Facilitators (P) Ltd., has chosen to give a complaint against the accused just to harass Page 718 them. The process of Criminal Court cannot be permitted to be misused like this. The civil dispute between the parties has been given a criminal colour misusing the whole process of criminal law. Therefore, the complaint given by the complainant as against the petitioners will have to be quashed.

26. In the result, the criminal proceedings in Crime No.576 of 2005 on the file of the Inspector of Police, Team-IV, Central Crime Branch, Egmore, Chennai-600 008 stands quashed and the criminal original petition stands allowed. Consequently, connected criminal miscellaneous petitions stand closed.