

(2009) 07 MAD CK 0059

In the Madras High Court

Case No : Criminal OP. No. 29064 of 2005 and Cr.MP. No's. 8386 and 8387 of 2005

P. Swarnalathan and Others

APPELLANT

Vs

GKP Enclave Residents Welfare Association

RESPONDENT

Date of Decision : 22-07-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 120(B), 420

Citation : (2009) 07 MAD CK 0059

Hon'ble Judges : Aruna Jagadeesan, J

Bench : Single Bench

Advocate : J. Pothiraj, for the Appellant; R. Rajarajan, for the Respondent

Final Decision : Dismissed

Judgement

Aruna Jagadeesan, J.—The Petitioners are arrayed as A1 to A6 in CC. No. 1039/2005 on the file of the learned Judicial Magistrate III,

Coimbatore and they are facing trial for the alleged offences under Sections 120(B) and 420 of IPC.

2. The brief facts are given below:

The husband of the 1st Petitioner by name G.K. Perumal and the father of the 1st Petitioner by name G.R. Ranganathan started a construction

Company and constructed flats situated in S.Nos. 238/5 and 238/6 in Nanjundapuram Road, Ramanathapuram, Coimbatore measuring a total

extent of 47950 sq.ft. dividing into three separate apartments such as King's Avenue, Queen's Avenue and Prince Avenue. They have sold 32

flats and the entire transaction were based on the terms and conditions as well as the agreement.

3. According to the complainant Association, the accused issued advertisements

and published leaflets on 22.5.1997 and on various dates falsely declaring that the complaint mentioned property was promoted by a Company styled as ""GKV Groups Construction & Property Developers (P) Limited"" and on enquiry with the Registrar of Companies, Coimbatore, it is found that no such Company had ever existed. They have further averred that the accused made promises in the said documents that the facilities such as, children's park, indoor games, badminton court, intercom for each flat, three passenger lifts, generators, dish antenna, landscaped garden with water falls, covered car parks and 24 hours securities would be provided. It was also promised that the structure of the buildings would be of very high quality and believing the said promises made by the accused, the members of the complainant Association have paid the sale consideration to the accused, who have executed sale deeds in favour of the members of the complainant Association. But till date, it is alleged that the accused have not provided the above mentioned amenities as promised by them. That apart, the columns, beams and the walls in the common area are full of cracks and the members of the complainant Association live in perennial fear that it may even endanger the life of the building.

4. It is further averred that with the assistance of an independent civil engineer engaged by the complainant, the stability of the buildings was assessed and he had given a report dated 01.10.2004 that the cracks may lead to the collapse of the buildings. Though the complainant requested the accused several times to fulfill the promises made by them, the accused never cared to honour the said promises, which necessitated the complainant Association to file this complaint. It is specifically averred that the Petitioners were the owners and promoters of the complainant mentioned properties.

5. According to the Petitioners, the averments in the complainant would only go to show that there was a dissatisfaction about the construction, which is essentially of a civil nature and the allegations prima facie do not attract any of the offences as alleged in the complaint and hence, the cognizance taken by the learned Magistrate is not sustainable.

6. Mr. J.Pothiraj, the learned Counsel for the Petitioners submitted that they have filed a civil suit in OS.No.307/2004 on the file of the Principal

District Munsif, Coimbatore and obtained an order of interim injunction, which was also made absolute. According to him, the Respondent is

giving a criminal colour to a civil dispute and without agitating the right before the civil forum, they have abused process of law by launching the

criminal proceedings against the Petitioners.

7. On the other hand, Mr. R.Rajarajan, learned Counsel for the Respondent would contend that the allegations made in the complaint prima facie

make out an offence punishable u/s 420 of IPC, as the Respondent Association believing the promises made by the Petitioners and two other

accused, entered into a contract and they were deceived by the Petitioners by not fulfilling the promises. Further, the building has developed

cracks, thus endangering the life of the members of the complainant association and therefore, they are liable to be prosecuted for the offences as

alleged.

8. The Honourable Supreme Court in the case of Indian Oil Corporation Vs. NEPC India Ltd. and Others, has observed that a criminal

prosecution or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law may also involve a criminal offence. As

the nature and scope of a civil proceedings are different from a criminal proceedings, mere fact that the complaint relates to a commercial

transaction or breach of contract, for which civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings.

The Honourable Supreme Court further observed that the test is as to whether the allegations in the complaint disclose a criminal offence or not.

9. The submission made by the learned Counsel for the Petitioners that the allegations made in the complaint does not disclose any criminal offence

at all, much less an offence either u/s 120B or 420 of IPC and it is purely of a civil nature has no merits, as the allegations satisfy the ingredients of

the offence as alleged. When there are prima facie materials available, the petition for quashing the criminal proceedings cannot be entertained.

While considering the facts of the present case, I am of the considered opinion that this case is not a one of those extreme cases, where criminal

prosecution can be quashed by the court at the very threshold.

10. The defence raised by the Petitioners is required to be considered at a later stage only at the time of trial and not at this stage. The Petitioners

will have ample opportunity to raise all the issues urged in this petition at a appropriate later stage, where such pleas would be and could be properly analysed and scrutinized.

11. In view of the aforesaid reasons, I am not inclined to interfere with the criminal proceedings at this stage. Hence, this Criminal Original Petition is dismissed. Consequently, the connected MPs are closed.