

IN THE COURT OF THE I ADDL.C. M. M, Bengaluru

Present: Smt. Hema Pastapur
B.A.,LL.B.,
I Addl C. M. M, Bengaluru.

C.C.No.5473/2012

Dated this the 6th day of February 2017

Complainant:- State by Central Crime Branch (Special Enquiry),
N.T. Pet, Bengaluru.
(By Learned Senior Assistant Public Prosecutor)

VS

Accused:- 3. P.Subramanya s/o Pulanarasimhalu, age:63 years,
r/o No.3/32/4, C.B. road, Chittoor, Andhrapradesh,
5. Nagaraju H.M. s/o Muniyappa, age: 48 years,
r/at No.12/3/208, 5th cross, Basaveshwaranagar,
Bengaluru,
9. Smt.Parvathi w/o Ashokkumar, age: 48 years,
r/o No.125,6th cross, Bapuji Layout, Vijayanagar,
Bengaluru 560040,

11. Krishnamurthy Malladi s/o Devendra,
age: 72 years, r/at new No.12, old no.54, 1st Link
Street, Raghavendra Colony, Ashoknagar, Chennai,
Tamilnadu,
14. D.Ramachandra s/o Late Vasupu, age: 69 years,
r/o Sri Padma, no.12/10, 17th 'E' main,
67th cross, 5th Block, Jedahalli, Rajajinagar,
Bengaluru,
18. C.Ashwathnaryana s/o Late Chikkappaiah, age:43
years, r/at no.639, Sulibele main road,
Devanahalli town,
19. M.Shashidhar s/o Muniyappa, age: 38 years,
Venkateshwara Engineering college, Vidyanagar,
Airport road, Bengaluru.

(Shri C.V.R, Advocate for accused no.3 and 11,
Shri K.N.S, Advocate for accused no.5, Shri D.S.B,
Advocate for accused no.9, Shri S.Y.P, Advocate for
accused no.14 and Shri Babajan, advocate for accused
no.18 and 19)

**COMMON ORDERS ON APPLICATIONS FILED BY THE
ACCUSED NO.3, 5, 9, 11, 14, 18 AND 19 UNDER SECTION 239
OF CODE OF CRIMINAL PROCEDURE.**

That, the said accused have filed the said applications with a prayer to discharge them from the offence punishable sections 420 and 411 r/w section 34 of the Indian Penal Code and under section 192(A)(5) of the Karnataka Land Revenue Act and under sections 3 and 4 of the Karnataka Money Lenders Act, 1961 and under sections 38, 39 and 41 of the Karnataka Prohibition of Charging Exorbitant Interest Act, 2004.

1. That, the Police Inspector of CCB (S.E), Bengaluru, has filed the Final report against the accused for the offence punishable under sections 420 and 411 r/w section 34 of the Indian Penal Code and under section 192(A)(5) of the Karnataka Land Revenue Act and under sections 3 and 4 of the Karnataka Money Lenders Act, 1961 and under sections 38, 39 and 41 of the Karnataka Prohibition of Charging Exorbitant Interest Act, 2004.

2. It is allegation of the prosecution that, the accused no.1 and 2 with their common intention to make wrongful gain and to cheat the public in large have illegally opened the offices in the name and style

of M/s Presidency Group and Aishwarya Project at no.895/1, Skanda, 14th cross, Mahalakshmi layout, Bengaluru, No.717, Purnashashi Complex, 2nd floor, Modi Hospital road, West of Chord road, Basaveshwarnagar, Bengaluru 79 and no.604, Vaishnavi Paradise, Sangam Circle, 8th block, Jayanagar, Bengaluru and no.218/83, 2nd floor, Ramachandra Arcade, Balaji Medical, South End Road, Basavanagudi Bengalur and gave the advertisements in news papers and offered the public for allotting the sites at various places in various residential layouts formed by them under various projects and CWs1, 11 to 89 by seeing the said advertisements have approached the accused no.1 and 2 and at that time both the accused have assured them for providing the sites in said layouts and have collected from them more than five crores of rupees, but, thereafter, have failed to convert the agricultural lands into non-agricultural lands and have also failed to provide the sites as assured by them to the investors and have also failed to return their amount.

It is allegation of the prosecution that, the accused no.3 to 17 by investing their amount in aforesaid projects of the accused no.1 and 2 have started doing the money lending business illegally by

imposing the exorbitant interest and grabbed the properties of the public. It is further allegation of the prosecution that, the accused no.18 and 19 have received the amount from the accused no.1 and 2 for providing them the lands for their aforesaid projects and thereafter, have failed to provide the lands to them.

3. That, the accused no.3 and 11 in their said application have contended that they have not committed any offence as alleged by the prosecution and they have been falsely implicated in present case and the police have not produced any document to show that they have cheated the public. That, the accused no.3 and 11 have further contended that if there are any transaction between them and accused no.1 and 2, then they are all in civil nature.

4. That, the accused no.5 in his said application has contended that he has not committed any offence as alleged by the prosecution and he has been falsely implicated in present case and the police in Final report have not mentioned how much of amount he received from the accused no.1 and have also not mentioned the description and location of the lands alleged to be secured by him infavour of the accused no.1 and 2 for their alleged projects. That, the accused no.5

has also contended that he has not sold any land illegally to any person and the alleged offences are in civil nature and there no materials to establish that he has committed the alleged offences.

5. That, the accused no.14 in his said application has contended that he has not committed any offence as alleged by the prosecution and he has been falsely implicated in present case and in present case the provisions of the Karnataka Money Lenders Act, will not attract applicable and the charges leveled against him are baseless.

6. That, the accused no.18 and 19 in their said applications have contended that they have not committed any offence as alleged by the prosecution and they have been falsely implicated in present case and the entire allegations are only against the prime accused no.1 and 2. That, the accused no.18 and 19 have further contended that, there are no past criminal antecedents against them and on plain reading of the complaint it appears that the dispute is with regard to property and the same is civil in nature.

7. That, the accused no.9 in her said application has contended that she and her brother have invested sixty lakhs of rupees in alleged projects of the accused no.1 and 2 and the police have

implicated them in present case only on voluntary statements of the accused no.1 and 2 and the accused no.1 and 2 in their said statements have implicated her even in absence of any overact against her. That, the accused no.9 has further contended that she had lodged the complaint against the accused no.1 in Mahalaxmi Layout Police Station for the offence punishable under sections 420 and 406 of the Indian Penal Code and the Investigation officer filed the Final report against the accused no.1 and the same is pending for adjudication on the board of Hon'ble IV ACMM, Bengaluru, in C. C. No.13578/2014. That, the accused no.9 has further contended that she had also lodged the private complaint no.6947/2012 against the accused no.1 and 2 for cheque bounce on the board of Hon'ble XVI ACMM, Bengaluru. That, the accused no.9 has further contended that she had also instituted on the board of Hon'ble III Additional Senior Civil Judge, Mysuru the original suits no. 158/2013 and 159/2013 for the relief of specific performance of contract.

It is pertinent to note here that, the accused no.9 has further specifically contended that on 17.02.2010 she entered into contract with M/S Royal Enclave, represented by its partner-the accused no.1

pertaining to the sites bearing no.140, 141 and 142 in the layout known as Royal Enclave in sy.no.45/1 measuring 05 acre 13 guntas situated at Martaikyaranihalli village, Mysuru Taluk and District. That, the accused no.9 has further contended that she is not a party to sale deeds produced by the police. That, the accused no.9 has further contended that the Final report do not reveal any ipso-fact material to show that she has committed the alleged offences.

8. That, the prosecution refuting all contentions of the said accused filed its objections to the aforesaid applications and has specifically contended that from the records it prima-facie appears that the said accused have committed the alleged offences and the truth will come out at the time of trial. It is pertinent to note here that, the prosecution in view of its aforesaid contentions has prayed for rejecting the aforesaid applications.

9. That, I have heard the arguments and perused the materials placed on record. That, the following points arise for My consideration and determination:-

1. Whether the accused no.3, 11, 5, 9, 14, 18 and 19 have made out the grounds that they are liable to be discharged from the alleged offences?

2. What order?

10. That, My answer to the aforesaid points are as under:-

Point No.1:- In the **NEGATIVE**

Point No.2:- As per the final order for the following:-

REASONS

11. **Point No.1**:- It is pertinent to note here that, as stated above both the parties have placed their contentions before the court and the same have not been reiterated here to avoid repetition of facts.

12. It is pertinent to note here that, that accused no.19 in support of his contentions has placed his reliance on following decisions:-

1. **International Advanced Research Centre For Powder Metallurgy And New Materials(ARCI) And Others –vs- Nimra Cerglass Technics Private Limited and Another, reported in (2016) 1 Supreme Court Cases 348, wherein it has held that in order to bring a case for offence of cheating, it is not merely sufficient to prove that a false representation was made, but, it is further necessary to prove that the representation was false to the knowledge of accused and was made in order to deceive complainant.**

2. R. S. Nayak –vs- A. R. Antulay, reported AIR 1986 SUPREME COURT 2045 wherein it has held that, the obligation to discharge the accused under section 239 of the Code of Criminal Procedure, arises when the Magistrate considers the charge against the accused to be groundless.

3. Bapi Das Roy –Vs- The State of Jharhand, reported in 2013 Cri.L.J.(NOC)372(JHAR) wherein it has held that, if there is no allegation of fraudulent and dishonest against the petitioner then he is entitled to be discharged from the alleged offences.

4. Ashok B. Dani –Vs- State of Karnataka, reported in 2015(1) AKR 317, wherein it has held that in absence of any reliable evidence, petitioner is entitled to be discharged from alleged offences.

5. Jagadish Chandra Nijhawan –Vs- S. K. Saraf, reported in AIR 1999 SUPREME COURT 217 wherein it has held that order by Magistrate discharging appellant on ground that dispute between parties was of civil nature-not illegal.

6. Yogesh @ Sachin Jagdish Joshi –Vs- State of Maharashtra, reported in AIR 2008 SUPREME COURT 2991 wherein it has held that the test to determine a prima-facie case depends upon the facts of each case and in this regard it is neither feasible nor desirable to lay down a rule of universal application.

7. That, the accused no.19 has furnished the Xerox copy of commentary on section 239 of the Code of Criminal Procedure.

13. It is pertinent to note here that, the accused no.9 in support of her contentions has placed before this court

i. the xerox copy Agreement of sale dated:-17.10.2010 to show that on 17.02.2010 she entered into contract with M/S Royal Enclave, represented by its partner-the accused no.1 pertaining to the sites bearing no.140, 141 and 142 in the layout known as Royal Enclave in sy.no.45/1 measuring 05 acre 13 guntas situated at Martaikyaranihalli village, Mysuru Taluk and District.

ii. the Xerox copies complaint to show that she had lodged the complaint against the accused no.1 in Mahalaxmi Layout Police Station for the offence punishable under sections 420 and 406 of the

Indian Penal Code and the Investigation officer registered the case in Crime number 240/2012 and filed the Final report against the accused no.1 and the same is pending for adjudication on the board of Hon'ble IV ACMM, Bengaluru, in C. C. NO.13578/2014 and Spot panchama.

iii. the Xerox copy of Kannada Prabha News Paper to show that the Hon'ble III Additional Senior Civil Judge, Mysuru, had issued the Paper publication against the accused no.1 in O.S. NO.'s 158/2013 and 159/2013.

It is pertinent to note here that, I have gone through the said decisions and the documents relied by the accused persons.

14. It is pertinent to note here at this juncture it is very much necessary to through the essential requisites of section 239 of the Code of Criminal Procedure. It is significant to note here that, section 239 of the Code of Criminal procedure, contemplates under what circumstances the accused is entitled to be discharged from the alleged offences. It is pertinent to the said section runs as under:-

"if upon considering the police report and the documents sent with it under section 173 and making such examination,

if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing”.

It is pertinent to note here that, on plain reading of the said section it clearly appears that the obligation to discharge the accused arises only when the court considers the charge against the accused to be groundless. It is pertinent to note here that, the phrase **groundless** means **without basis or foundation**. It is pertinent to note here that, while deciding the application filed under section 239 of the Code, the Court has to consider is the allegation/charge groundless?. It is pertinent to note here that, if there is no ground for presuming that the accused has committed an offence, the charges must be considered to be groundless and the same is necessarily depends on the facts and circumstances of each case. It is significant to note here that, the real test for determining the charge should be considered groundless is that whether the materials are such that even if unrebutted make out no offence. It is to be noted here that, if

there is strong suspicion and prima-facie material, then charge should be framed.

15. It is pertinent to note here that, in the instant case the accused no.3, 11, 5, 9, 14, 18 and 19 have contended that they have not committed any offence as alleged by the prosecution and whereas, the prosecution has contended that from the records it prima-facie appears that the said accused have committed the alleged offences. It is pertinent to note here that, at this stage it cannot be said that the accused have not committed the alleged offences and the truth will come out at the time of trial only and the participation of the said accused persons in trial is very much necessary. It is pertinent to note here that, mere production of the document, will not vitiate the case of the prosecution. It is pertinent to note here that, this is not the stage for weighing the pros and cons of all the implications. It is pertinent to note here that, in the instant case from the records it prima- facie appears that the accused no.3, 11, 5, 9. 14, 18 and 19 have committed the alleged offences. It is to be noted here that, in view of My above findings and without much discussion, I hold that the accused no.3, 11, 5, 9. 14, 18 and 19 have failed to make out the

grounds that they are liable to be discharged from the alleged offences. In view of the same, point no.1 is answered in the **NEGATIVE.**

16. **Point No.2:-** That, as discussed on point no.1, I proceed to pass the following:-

ORDER

That, the applications filed by the accused no.3, 11, 5, 9, 14, 18 and 19 under section 239 of Code of Criminal Procedure, are hereby rejected.

(Typed and corrected by me and then pronounced in open Court on this the 6th day of February 2017).

(Hema Pastapur)
I Addl. C. M. M, Bengaluru

