K.E. Dayalan and Another Vs. The State of Tamil Nadu represented by The Inspector of Police Central Crime Branch Chennai and Another

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Court : Chennai

Decided On : Jul-05-2016

Judge : R. Subbiah

Appeal No. : Criminal Original Petition Nos. 24558 & 24585 of 2015

Appellant : K.E. Dayalan and Another

Respondent : The State of Tamil Nadu represented by The Inspector of Police Central Crime Branch Chennai and Another

Judgement :

(Prayer: Crl.OP No. 24558 of 2015:- Petition filed under Section 482 of Criminal Procedure Code praying to call for the records and quash the proceedings in Crime No.89 of 2015 on the file of the first respondent.

Crl.OP No. 24585 of 2015:- Petition filed under Section 482 of Criminal Procedure Code praying to call for the records and quash the proceedings in Crime No.118 of 2015 on the file of the first respondent.)

Common Order:

1. Crl.OP No. 24558 of 20105 has been filed by the petitioners, who are arrayed accused in Crime No. 89 of 2015. They sought for quashing the first information

report filed against them in Crime No. 89 of 2015. The case in Crime No. 89 of 2015 has been registered at the instance of the second respondent herein for the offences punishable under Section 406, 420 and 506 (i) of IPC.

2. Crl.OP No. 24585 of 2015 has been filed by A-1 and A-3 in Crime No. 118 of 2015. They seek for quashing the proceedings in Crime No. 118 of 2015. The said case was registered at the instance of the second respondent/defacto complainant for the offences punishable under Sections 406, 420, 294 (b) and 506 (i) of IPC.

3. As the issue arise for consideration in both the Criminal Original Petitions are common besides that the counsel on either side have advanced common arguments, these petitions are taken up together and are disposed of by this common order.

4. The case of the prosecution relating to Crime No. 89 of 2015 is as follows:-

The land measuring 8 acres and 11 cents in Survey Nos. 538/2, 535/1 and 538/1 in Ayanambakkam Village, Ambattur Taluk, Thiruvallur District belongs to one A.S. Samikannu and others. They have entered into an agreement of sale on 25.10.2004 for selling the aforesaid lands in favour of the first petitioner namely Dayalan. As per the agreement of sale, it was agreed by both the purchaser and seller that Rs.16,000/- will be the sale price for one cent of land. On the basis of such agreement of sale, the first petitioner Dayalan paid Rs.32,00,000/- (Rupees Thirty Two Lakhs Only) as advance sale consideration by way of cheque between 08.03.2005 to 13.07.2006. One of the conditions incorporated in the agreement of sale is that the sale will be effected after the Urban Land Ceiling proceedings initiated against the lands are resolved. According to the proposed purchaser namely first petitioner, even after two years, the ceiling proceedings have not attained finality. Further, even after two years, he could not mobilise the balance sale consideration of about Rs.42,00,000/-. Therefore, with the consent of the land owners, the first petitioner - Dayalan approached the Defacto complainant namely M/s. Goa Ocenarium Private Limited and requested to purchase the aforesaid lands along with other adjacent lands for Rs.1,69,00,000/-. The defacto complainant, accepting such a proposal, paid the entire sale consideration to the first petitioner by way of cheque as well as cash. However, the first petitioner has failed to complete the sale in favour of the defacto complainant, rather, sold the aforesaid lands, through his power of Attorney Holder Seenivasan, who is arrayed as A-2, in favour of the second petitioner (A-3) herein by way of registered sale deed dated 01.12.2006 registered as document Nos. 13566 of 2006 on the file of Sub-Registrar, Ambattur. When it was questioned by the defacto complainant, the first petitioner threatened them with dire consequences, which resulted in registration of the case.

5. The case of the prosecution, as could be unfolded from the case in Crime No. 118 of 2015 is as follows:-

The first petitioner Dayalan approached the defacto complainant company by representing that he is carrying on real estate business and that his relative Seenivasan (A-2) is the power of attorney holder authorised to sell housing plots bearing Plot Nos. 8, 10, 11, 13, 14, 15, 16, 17, 19, 20 and 31 in Old Survey No.535/2, New Survey No.535/2A in Ayanambakkam Village, Ambattur Taluk, Thiruvallur District. On the strength of such representation, the defacto complainant agreed to purchase the aforesaid plots for a total sale consideration of Rs.35,00,000/-. Upon such consent, the defacto complainant paid the sum of Rs.35,00,000/- by way of two cheques dated 19.12.2006 and 08.02.2007 to the first petitioner-Dayalan. However, even after receipt of the entire sale amount, the first petitioner-Dayalan failed to complete the sale transaction, rather, he sold the lands in favour of the second petitioner (A-3) by way of registered sale deed dated 14.12.2006 registered as document No. 14119 to 14112 of 2006 on the file of Sub-Registrar, Ambattur. On coming to know about such sale, the defacto complainant questioned the first petitioner as to how the lands, which were agreed to be sold them, could be sold to a third person. On being questioned, the first petitioner-Dayalan threatened the defacto complainant with dire consequences. This has resulted in registration of the second case in Crime No. 118 of 2015.

6. The learned Senior counsel appearing for the petitioners/accused would contend that if the case of the prosecution is analysed, it will not constitute any offence, much less the offences punishable under Sections 406, 420, 294 (b) and 506 (i) of IPC. The dispute between the parties is a pure and simple civil dispute

and it has been given a criminal colour at the instance of the defacto complainant. If the defacto complainant, for any reason, is aggrieved by non-adherence of the commitments given by the first petitioner (A-1) in the agreement of sale, it will only entitle him to approach the Civil Forum by filing a suit for specific performance and not by preferring a complaint to the respondent police. Therefore, according to the learned Senior counsel for the petitioners/accused, the registration of the criminal case by the respondents/police, at the instance of the defacto complainant, is an abuse of process of law and it is liable to be quashed by this Court.

7. The learned Senior counsel for the petitioners would contend that Section 420 of IPC deals with cheating with dishonest intention either by inducement or false representation to deliver any property. In order to make out an offence, it has to be established that the accused acted with a deceptive motive by making a false or misleading representation to either deliver or induce to deliver a property. Therefore, in order to make out a case of cheating, there must be a proof of deception either by making false or misleading representation or by concealing material fact. If the case of the prosecution is analysed in entirety, there is neither an allegation of deception by the petitioners/accused nor the petitioners made any false representation with an intention to induce the defacto complainant to deliver the property. Further, there should be a dishonest intention from the earliest point of time when the petitioner alleged to have met the defacto complainant. In the absence of such a proof, the question of deception or cheating does not arise. According to the learned Senior counsel for the petitioners/accused, mere failure to execute the sale deed after receipt of sale consideration cannot and will not be construed as cheating so as to attract the provisions of Section 420 of IPC. In this context, the learned Senior counsel for the petitioners/accused relied on the decision of the Honourable Supreme Court in the case of (Hridaya Ranjan Prasad Verma and others vs. State of Bihar and another) reported in 2000 (4) SCC 168 wherein a distinction has been drawn between a breach of contract and cheating. By placing reliance on the above decision, the learned Senior counsel for the petitioners/accused would contend that mere breach of contract cannot give rise to a criminal prosecution for cheating unless it is coupled with fraudulent or dishonest intention from the origin of the transaction. Mere failure to keep up the promise subsequently with a culpable intention, in the absence of such intention from the

beginning, cannot be construed that the accused is guilty of the offence of cheating. In other words, it must be shown that from the time of the first meeting or representation made by the accused, he acted with a culpable intention or intention to cheat the defacto complainant.

8. In order to buttress his argument, the learned Senior counsel for the petitioners also relied on the decision of the Honourable Supreme Court in the case of (V.V. Jose and another vs. State of Gujarat and another) reported in 2009 (3) SCC 78 to contend that to constitute an offence of cheating, the defacto complainant is required to show that the accused had a fraudulent intention at the time of making promise or representation and in the absence of such culpable intention at the time of making promise, the offence under Section 420 of IPC cannot be attracted. The learned Senior counsel for the petitioners/accused would therefore contend that even according to the case of the prosecution, the accused did not act with a culpable intention to deceive the defacto complainant either with a false promise or misleading representation intentionally. While so, the offence of cheating is not made out against the petitioners/accused.

9. Further, the learned Senior counsel for the petitioners invited the attention of this Court to the provisions of Section 406 of IPC and contend that to attract Section 406 of IPC, it must be established that there is entrustment of property or with any dominion or power over it. According to the learned Senior counsel for the petitioners, the defacto complainant had handed over money to the first accused only for purchase of lands and such payment made towards sale consideration cannot, by any stretch of imagination, be termed as an 'entrustment' within the meaning of Section 405 of IPC. In this context, the learned Senior counsel for the petitioners/accused relied on the decision of the Supreme Court in the case of (Chelloor Mankkal Narayan Ittiravi Nambudiri vs. State of Travancore, Cochin) reported in AIR 1953 SC 478 to contend that to constitute an offence of criminal breach of trust, it is essential that the prosecution must prove that the accused was entrusted with some property or with any dominion or power over it. It also has to be established that in respect of the property so entrusted, there was dishonest misappropriation or dishonest conversion or dishonest use or disposal of such property in violation of law or legal contract by the accused or by some

one through him. According to the learned Senior counsel for the petitioners/accused, the prosecution has miserably failed to make out an offence against the petitioners under Section 406 of IPC and therefore, the entire case of the prosecution is vitiated.

10. As regards the offence under Section 506 (i) of IPC, the learned Senior counsel for the petitioners would contend that a vague and bald allegation has been made as though the petitioners/accused have threatened the defacto complainant with dire consequences. According to the learned senior counsel for the petitioners, to establish the offence under Section 506 (i) of IPC, it must be shown that there was a real and imminent threat and the complaint was given warranting protection from such threat. In this context, the learned Senior counsel for the petitioners relied on the decision of the Supreme Court in (Noble Mohandass vs. State) reported in 1989 Criminal Law Journal 669 to contend that it is not sufficient that there was a mere word uttering that the accused has threatened the defacto complainant with dire consequences rather it must be established that there was an imminent threat at the instance of the accused.

11. The learned Senior counsel for the petitioners/accused also relied on the decision of the Honourable Supreme Court in (International Advanced Research Centre for Powder Metallurgy and New Materials (ARCI) and others vs. Nirma Cerglass Technics Pvt Ltd., and another) (2016) 1 Supreme Court Cases 348 to contend that there is a distinction between breach of trust and cheating and it would depend upon the intention of the accused at the time of alleged inducement. If it is established that the intention of the accused at the time when he made promise and entered into a transaction with complainant to part with his property or money, then the liability is criminal and accused is guilty of cheating. However, if it is established that the representation made by the accused subsequently was not kept, criminal liability cannot be fastened on him and in such circumstances the remedy of the defacto complainant is to approach the Civil Court for remedy against breach of contract.

12. The learned Senior counsel for the petitioners/accused would also contend that the defacto complainant company is a legal entity and can act only through its

duly authorised representative. As per the allegations in the first information report, a resolution of the Board of Directors was passed on 09th January 2015 authorising the complainant to file the complaint. However, the first information report is silent with regard to authorisation of any person by the board of directors of the defacto complainant company to purchase the land for larger consideration of Rs.1.69 crores. The first information report also does not contain any averment to show that the defacto complainant company has ratified the oral arrangement made between the accused and the defacto complainant. In the absence of any authorisation in the form of resolution, the first information report itself is vitiated.

13. Notwithstanding the above, the learned Senior counsel for the petitioners would submit that pending the above Criminal Original Petitions, the petitioners have paid Rs.37.25 lakhs apart from depositing Rs.25 lakhs to the credit of Crime No. 89 of 2015. Therefore, the petitioners have to pay another Rs.65.50 lakhs to the complainant. The petitioners are always ready and willing to pay the balance amount and to settle the dispute peacefully. Therefore, the learned Senior counsel for the petitioners would contend that the transaction between the parties is a civil transaction and it cannot be given a criminal colour at the instance of defacto complainant. In such circumstances, the learned Senior counsel for the petitioners prayed for allowing the Criminal Original Petitions.

14. The learned Public Prosecutor appearing for the prosecution would oppose the Criminal Original Petitions filed by the accused for quashing the first information report. According to the learned Public Prosecutor, during the course of investigation by the investigation officer in this case, several documentary evidences have been collected and the statements of the witnesses were recorded. The evidences so collected has made out a clear case of cheating and dishonest intention on the part of the accused. The defacto complainant has made the payment to the first petitioner-Dayalan through cheque and it has not been disowned by him. The accused have entered into a criminal conspiracy to defraud and cheat the defacto complainant of his lawful money. In support of his contention, the learned Public Prosecutor relied on the decision of the Honourable Supreme Court in the case of (Devender Kumar Singla vs. Baldev Krishnan Singla) 2005 (9) Supreme Court Cases 15 to contend that the essential

ingredients to attract Section 406 and 420 of IPC namely cheating with dishonest intention cannot be proved by direct evidence and it has to be inferred from all the available circumstances including the conduct of the accused in alienating the property to the disadvantage of the defacto complainant. It can be proved by number of circumstances during the trial from which a reasonable inference can be drawn. Therefore, according to the learned Public Prosecutor, the accused have to face the trial and quashing of first information report at this stage is not warranted.

15. The learned Senior counsel appearing for the defacto complainant would vehemently oppose the Criminal Original Petitions seeking to quash the first information report. According to the learned Senior counsel for the defacto complainant, during September 2006, the first petitioner-Dayalan approached the defacto complainant company to sell two pockets of lands by representing that his cousin brother M. Srinivasan is the power agent of the owners who owns the above said lands. Believing such representation to be true, the defacto compalainant company paid Rs.1,69,00,000/- and another sum of Rs.35,00,000/- in respect of the two transactions. However, the first petitioner Dayalan postponed the execution of sale on the ground that there are land ceiling proceedings pending against the lands in question and it has to be resolved. Therefore, the defacto complainant also waited for some time. However, during December 2014, the defacto complainant came to know that the lands, which are agreed to be sold to the defacto complainant, have been sold by the first petitioner-Dayalan in favour of Krishnamoorthy, who is his close relative. Thus, the first petitioner-Dayalan has acted with a deceptive intention to cheat and defraud the defacto complainant company. The first petitioner-Dayalan, without cancelling the agreement entered into with the defacto complainant ought not to have sold the very same lands to Krishnamoorthy and it is nothing but an act of cheating and deception. The first petitioner-Dayalan, having received the entire sale consideration way back in the year 2006, has clandestinely sold the entire lands in favour of D. Krishnamoorthy thereby the defacto complainant was highly prejudiced and subjected to monetary loss. The intention of the accused is clear and manifest that they have entered into a criminal conspiracy to defraud and deceive the defacto complainant of his lawful money. The first petiitoner-Dayalan has not denied the receipt of money from the

defacto complainant. There is no whisper in the Criminal Original Petitions as to what prompted him to sell the land in favour of his nephew D. Krishnamoorthy. Therefore, a clear case of cheating and criminal breach of trust have been made out against the accused for which they have to be prosecuted.

16. According to the learned Senior counsel for the defacto complainant, in the given facts and circumstances of the case, it cannot be said that the accused did not act with any clandestine or malafide intention to cheat the defacto complainant. There was an element of intention to cheat the defacto complainant of their hard earned money. The first petitioner-Dayalan, having received a huge sum of Rs.1,69,00,000/- and another sum of Rs.35,00,000/- ought not to have alienated the lands in question in favour of his nephew D. Krishnamoorthy. The first petitioner Dayalan has received the sum of Rs.1,69,00,000/- as well as Rs.35,00,000/- by means of cheque, demand draft and in cash for which receipts have been duly executed. This amount paid by the defacto complainant has been utilised by the first petitioner Dayalan for his own use and thereby the defacto complainant was subjected to unlawful loss. By virtue of such an act, the first petitioner-Dayalan in conspiracy with the other accused, has successfully created an encumbrance over the lands in question and the defacto complainant, as an agreement holder, is calculatedly deceived. In such a circumstances, the defacto complainant need not approach the Civil Court with a suit for specific performance. It is not as if the accused has intimated the defacto complainant about their failure to perform their part of the obligation warranting the defacto complainant to approach the Civil Court with a suit for specific performance. A suit for specific performance will be maintainable only if the lands covered under the agreement are available for sale and if it is alienated by deceptive means, the only recourse available to the defacto complainant is to approach the respondent police.

17. As regards the argument of the learned Senior counsel for the petitioners/ accused that to attract Section 420 of IPC it has to be established that the accused had acted with dishonest intention from the commencement of the transaction, the learned Senior counsel for the defacto complainant vehemently contended that whether the accused acted with a dishonest intention from the commencement of transaction or not has to be gone into only at the time of trial and it is not a ground

for quashing the first information report registered against them. It is a matter of trial and this Court, based on the materials available, cannot come to a definite conclusion as to whether there was a dishonest intention on the part of the accused to cheat and defraud the defacto complainant from the commencement of the transaction.

18. The leaned Senior counsel for the defacto complainant would further contend that a prima facie case has been made out against the accused to subject them to trial in the criminal case. There are abundant evidence made available in the form of complaints given by the defacto complainant, documentary evidence in the form of cheques, demand drafts, bank statements etc., in the name of the accused evidencing payment, sale deed registered by the first petitioner Dayalan in favour of his nephew Krishnamoorthy, statement of the witnesses etc., and these evidence would abundantly makes out a prima facie case against the accused to face the trial. Therefore, at this stage, according to the learned Senior counsel for the defacto complainant, interference of this Court is not warranted. In support of this contention, the learned Senior counsel for the defacto complainant relied on several decisions. One such decision was rendered by the Honourable Supreme Court in the case of (Rajiv Modi vs. Sanjay Jain and others) (2009) 13 Supreme Court Cases 241 to contend that while exercising jurisdiction under Section 482 of the Code of Criminal Procedure, this Court cannot go into the merits or otherwise of the complaint and if the Court is satisfied that there exist a prima facie case on the basis of the averments made in the complaint, then the accused must be directed to face the trial in the Criminal Case and quashing the first information report is not warranted. The learned Senior counsel for the defacto complainant therefore prays for dismissal of the Criminal Original Petitions seeking to quash the first information report and also to cancel the order of bail granted in favour of the accused.

19. I heard the learned counsel on either side and perused the materials placed on record. These Criminal Original Petitions revolve around two criminal cases registered in Crime No. 89 and 118 of 2015 and in both the cases, the defacto complainant is one and the same. Similarly, the accused in both the cases are one and the same. In both the complaints the dispute revolve around sale of two

pockets of lands situate in Ayanpakkam Village, Ambattur Taluk, Thiruvallur District.

20. It is seen from the records that the case in Crime No. 89 of 2015 was registered on 23.07.2015 for the offence under Sections 406, 420 and 506 (i) of IPC. This case was registered at the instance of the defacto complainant as against (i) Dayalan (ii) Gopalakrishnan (iii) Chandramohan (iv) Samikannu (5) Santhanakrishnan and others. In the complaint, based on which the case in Crime No. 89 of 2015 came to be registered, it was complained by the defacto complainant that the accused received the entire sale consideration on various dates and assured them to execute the sale deed in their favour. The first petitioner/first accused also represented that he is taking all efforts to conclude the proceedings initiated against the subject matter of lands under the Urban Land Ceiling Act and thereafter the sale deed would be executed in favour of the defacto complainant. However, as there was delay in executing the sale deed, the defacto complainant made enquiry with the first petitioner/first accused during December 2014, but they have displayed an indifferent attitude against the defacto complainant. Therefore, on 08.01.2015, the defacto complainant applied for encumbrance certificate and came to know that the property which is covered under the agreement of sale with the defacto complainant has been sold by the first petitioner/first accused in favour of his relative Krishnamoorthy by a registered sale deed and thereby created an encumbrance over the property in question. According to the defacto complainant, the accused Dayalan, after having received the entire sale consideration, has acted in a manner prejudicial to the interest of the defacto complainant and also deceived them of their money with a false promise to sell the lands to them. In such circumstances, the complaint has been given by the defacto complainant company based on which the case in Crime No. 89 of 2015 came to be registered.

21. It is further seen from the records that the case in Crime No. 118 of 2015 came to be registered on 23.09.2015 for the offences punishable under Sections 406, 420, 294 (b) and 506 (ii) of IPC. This complaint was registered against (i) Dayalan (ii) Srinivasan and (iii) Krishnamoorthy. In this complaint, it has been complained that the first petitioner/first accused-Dayalan approached the defacto complainant

by representing that he is doing real estate business and his relative was given the power of attorney to deal with the Plot Nos. 8, 10, 11, 13, 14, 15, 16, 17, 19, 20 and 21 situate in Old Survey No. 535/2, New Survey No.535/2A in Ayanpakkam Village, Ambattur Taluk, Thiruvallur District. On the strength of such representation, the defacto complainant agreed to purchase the above said plots for a total sale consideration of Rs.35,00,000/-. In furtherance of such agreement, on 19.12.2006, a sum of Rs.25,00,000/- was paid to the first petitioner/first accused-Dayalan by means of a cheque. A further sum of Rs.10,00,000/- was paid by way of cheque on 08.02.2007. Thus, a sum of Rs.35,00,000/- was paid by the defacto complainant to the first petitioner/first accused-Dayalan and anticipated that he would execute the sale deed in their favour. However, the first petitioner/first accused-Dayalan has executed a sale deed in favour of his relative M. Srinivasan and D. Krishnamoorthy, who are shown as accused 2 and 3 in this case and thereby cheated the defacto complainant.

22. Earlier, the complaint given by the defacto complainant was closed on 03.04.2015 by the investigation officer on the ground that the dispute involved is civil in nature. As against the same, the defacto complainant has approached this Court and by an order dated 01.06.2015 in Crl.OP No. 8442 of 2015, this Court passed the following order:-

"5. On a reading of the closure report, it is seen that the complaint has been closed on the short ground that the petitioner has not produced any materials to show that he has paid the sum of Rs.1,69,00,000/- to Dhayalan and others as averred in the complaint. But, on a prima facie reading of the complaint itself it is seen that the petitioner has given the complete description about the manner in which he has made the payments to the land owners and the said Dhayalan. Therefore, this Court is of the view that the complaint of the petitioner has been perfunctorily closed without proper investigation.

6. It will serve the interest of justice if the case is investigated by the Assistant Commissioner of Police. It is seen that the report given by the Inspector of Police has been accepted by the Assistant Commissioner of Police, EDF-III, Vepery, Chennai. Under such circumstances, it will be in the interest of justice if the

Commissioner of Police, Chennai is directed to nominate a competent officer in the rank of Assistant Commissioner of Police with irreparable integrity and enquire into the complaint dated 12.03.2015 lodged by the petitioner and if any cognizable offence is made out, the Assistant Commissioner is directed to investigate the complaint and act in accordance with the law as laid down by the Honourable Apex Court in Lalita Kumari vs. Government of U.P. and others (2013) 4 Crimes 243 (SC).

23. Thus, it is evident that this Court did not accept the closure report filed by the Inspector of Police who originally investigated the case and directed the Commissioner of Police to appoint an officer in the Rank of Assistant Commissioner of Police to investigate the case. Only thereafter, the instant cases came to be registered against the petitioners and investigation has been conducted.

24. It is an admitted fact that on 25.10.2004, an agreement of sale was entered into between the first petitioner/first accused-Dayalan and Samikannu and Family as per which it was agreed to sell the lands in question measuring 8 acres and 11 cents at the rate of Rs.16 lakhs per acre. The first petitioner/first accused-Dayalan also paid an advance sale price of Rs.32 lakhs. According to the land owners, out of the 8 acres and 11 cents of land, the lands measuring 6 acres and 63 cents are the subject matter of Urban Land Ceiling Proceedings. Even according to the first petitioner/first accused-Dayalan, he could not mobilise the balance amount payable to the land owners and therefore he approached the defacto complainant with a request to purchase the lands. Accordingly, the defacto complainant agreed to purchase the lands and also paid the entire sale amount to the first petitioner/first accused-Dayalan. The receipt of the sale consideration by the first petitioner/first accused is not in dispute. However, according to the defacto complainant, the first petitioner/first accused-Dayalan, instead of selling the lands to the defacto complainant has sold the lands in favour of his relative and thereby cheated the defacto complainant.

25. The learned Senior counsel for the petitioner vehemently contend that there is no evidence, much less a prima facie case, made out against the

petitioners/accused and therefore the first information reports have to be quashed. In this context, the learned Senior counsel for the petitioners/accused relied on the decision of the Honourable Supreme Court in the case of (State of Haryana and others vs. Bhajan Lal and others) wherein the circumstances under which a criminal complaint can be quashed has been laid down. Useful reference can be made to the relevant portion of the order in para No.102 which reads as follows:-

102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code of Criminal Procedure, which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myraid kinds of cases wherein such power should be exercised:-

(a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(c) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused; (d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155 (2) of the Code;

(e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused."

26. Applying the ratio laid down by the Honourable Supreme Court in the above decision to the facts of this case, in this case, it is admitted that the first petitioner/first accused-Dayalan has entered into an agreement of sale with the defacto complainant company and also received the entire sale amount. While so, it is not known as to what prompted him to sell the property covered in the agreement of sale entered into with the defacto complainant in favour of his relative. Admittedly, the agreement of sale with the defacto complainant has not been cancelled by the petitioner/accused-Dayalan. It is also not his case that the defacto complainant has violated any of the terms and conditions governing the agreement of sale. It is also not known as to whether the petitioner/accused has sent any notice to the defacto complainant complaining non-compliance of any of the terms and conditions of the agreement or informed them about his intention to alienate the lands covered under the agreement of sale entered into with them. Therefore, the circumstances under which the petitioner/accused Dayalan has executed the sale deed with his relative Krishnamurthy has to be established by the prosecution by producing material evidences. Thus, in my considered opinion, a prima facie case has been made out by the defacto complainant warranting registration of first information report against the accused in this case. It is not as though the allegations in the first information report do not constitute any offence or make out a case against the accused. In my considered opinion, a prima facie case has been made out against the petitioners/accused. Therefore, the circumstances as exist in this case, in my considered opinion, do not warrant quashing the first information report registered against the petitioners/accused.

27. In the decision rendered by the Honourable Supreme court in the case of (Rajiv Modi vs. Sanjay Jain and others) (2009) 13 Supreme Court Cases 241, relied on by the learned Senior counsel for the defacto complainant, it was held that while exercising jurisdiction under Section 482 of the Code of Criminal Procedure, this Court cannot go into the merits or otherwise of the complaint and if the Court is satisfied that there exist a prima facie case on the basis of the

averments made in the complaint, then the accused must be directed to face the trial in the Criminal Case and quashing the first information report is not warranted. The ratio laid down by the Honourable Supreme Court squarely applies to the facts of this case inasmuch as this Court finds a prima facie case made out against the petitioners/accused and therefore, the first information report registered against them need not be quashed at this stage.

28. The main argument of the learned Senior counsel for the petitioners/accused is that the offences alleged against them is not made out especially when there is no proof to show that they have acted with an element of cheating from the date of first transaction with the defacto complainant. It is further stated that the subsequent act of the accused to cheat the defacto complainant or to keep up their promise will not give rise to a criminal prosecution. This argument of the learned Senior counsel for the petitioner cannot be countenanced. The Honourable Supreme Court in the case of (Devender Kumar Singla vs. Baldev Krishnan Singla) 2005 (9) Supreme Court Cases 15 relied on by the learned Public Prosecutor, held that the act of cheating with dishonest intention cannot be proved by direct evidence and it has to be inferred from all the available circumstances including the conduct of the accused in alienating the property to the disadvantage of the defacto complainant. It can be proved by number of circumstances from which a reasonable inference can be drawn. In this case, whether the accused acted with an intention to cheat the defacto complainant at the time when they first met the defacto complainant or whether there are circumstances which led to them not to keep up their promise cannot be inferred by this Court at this stage. In this case, the investigation itself has not been completed and therefore, this plea of the learned Senior counsel for the petitioner cannot be gone into by this Court at this stage when the investigation has not been concluded in this case. In any event, such an argument advanced by the learned Senior counsel for the petitioners cannot be a ground for quashing the first information report registered against the accused. The correctness or otherwise of the allegations levelled against the accused can be considered only after the investigation in this case is completed and a charge sheet is filed.

29. The learned Senior counsel appearing for the petitioners/accused also argued that the defacto complainant, being a legal entity, can act only through it's authorised representative however, there is no authorisation given by the Board of Directors of the defacto complainant either to enter into an agreement for purchase of the lands from the first accused/first petitioner or to give a complaint complaining the act of the first accused/first petitioner in alienating the lands to the detriment of the defacto complainant. Therefore, according to the learned Senior counsel for the petitioners/accused, there is also no resolution ratifying the agreement for purchase of the lands and in the absence of such resolution, the registration of the first information report is vitiated. Such an argument advanced by the learned Senior counsel for the petitioners/accused cannot be countenanced. Such argument advanced by the learned Senior counsel for the petitioners/accused can at the best be raised as a defence during the course of trial and it will not be a ground for quashing the first information report registered against the petitioners/ accused.

30. For all the above reasons, all the Criminal Original Petitions are dismissed. Consequently, connected miscellaneous petitions are closed.