



CNR: KAHC010090452020

NC: 2026:KHC:44638
CRL.P No. 1438 of 2020

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF AUGUST, 2026

BEFORE

THE HON'BLE MR. JUSTICE RAVI V HOSMANI

CRIMINAL PETITION NO. 1438 OF 2020

BETWEEN:

1. SMT. MOHAN KUMARI
W/O DR. S. MAHALINGAM
AGED ABOUT 56 YEARS,
2. KUM. KAVYA LAKSHMI
D/O DR. S. MAHALINGAM
AGED ABOUT 24 YEARS,

BOTH ARE RESIDING AT
R/AT NO.4, ASHRAYA RESIDENCY
3RD CROSS, B.T.M LAYOUT
BANGALORE - 560 068.

...PETITIONERS

(BY SRI. MAHESH B.J, ADVOCATE)

AND:

1. STATE OF KARNATAKA BY SHO
PUTTENAHALLI PS
BANGLAORE - 560 076,
REPTD. BY GOVT. PLEADER
HIGH COURT BUILDINGS
BANGALORE - 560 001.
2. MR. CHAKRAPANI M.S.
S/O LATE SRINIVASACHAR N.V.

Digitally signed
by
ANNA PURNA G
Location: High
Court of
Karnataka



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AGED ABOUT 62 YEARS,
R/AT NO.6/1
YASHO SUDHARSHANA CHAKRA
LAKSHMI NIVASA, 8TH CROSS
1ST MAIN, NEW EXTENSION,
BANGALORE - 560 068.

...RESPONDENTS

(BY SRI. SURYA MUKUNDARAJ L, ASPP FOR R1;
SRI. T. SREENIVASA, ADVOCATE FOR R2 (ABSENT))

THIS CRL.P IS FILED U/S.482 OF CR.P.C PRAYING TO SET ASIDE THE ORDER DATED 19.10.2019 IN C.C.NO.29518/2019 (PCR NO.11871/2018) AND QUASH THE ENTIRE PROCEEDINGS AGAINST THE PETITIONER IN C.C.NO.29518/2019 PENDING ON THE FILE OF THE XXX ADDITIONAL CHIEF METROPOLITAN MAGISTRATE, BENGALURU.

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE RAVI V HOSMANI

ORAL ORDER

Challenging order dated 19.10.2019 passed by XXX ACMM, Bengaluru, in C.C.no.29518/2019 (PCR no.11871/2018) and for quashing of entire proceedings, this Petition is filed.

2. Sri B.J.Mahesh, learned counsel for petitioner submits that petitioners were accused no.2 and 3 in PCR.no.11871/2018 filed by respondent no.2 alleging that accused no.1 to 3 had approached complainant by claiming that



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Educational Institutions established by them were running well and having great prospect required finance for expansion of infrastructure. They had assured complainant that money lent would be treated as an investment and either returned within one year with 12% interest or complainant would be taken as a profit sharing business partner proportionate to investment. By said assurance, accused induced complainant to pay a sum of Rs.10,00,000/-. It was stated that an amount of Rs.1,11,111/- was received in cash on 28.01.2016 in temple, Rs.7,30,000/- was transferred online in two tranches and remaining amount of Rs.1,58,889/- was paid in cash on 20.02.2016. Thereafter, when amount was not returned and complainant visited institution, it was found out that accused did not have any recognition to run any of Courses or proper staff or students and that money borrowed was not utilised for improvement of infrastructure but diverted to other activities and in guise of investment accused had cheated many other individuals.

3. On repeated requests and demand, accused had agreed to repay and as a first instalment issued cheque for Rs.60,000/- drawn on State Bank of Travancore, which when



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presented, returned with endorsement '*Insufficient Funds*' and separate proceedings were initiated for offence punishable under Section 138 of Negotiable Instruments Act, 1881 (***NI Act***).

4. It was alleged that above facts would indicate that accused had intention to cheat complainant from inception and failure to pay as well as issuance of cheque without sufficient balance substantiated offences and sought for initiation of proceedings.

5. It was submitted that by order dated 10.09.2018, learned Magistrate had directed investigation by Puttenahalli Police Station. After completion of investigation, chargesheet was filed. Under impugned order, dated 19.10.2019, learned Magistrate had taken cognizance for offence punishable under Section 420 read with 34 of IPC against accused and assailing same, this petition was filed.

6. Two contentions were urged. Firstly, it was submitted that petitioners-accused no.2 and 3 were not Managing Trustees, but only Trustees and they had no role in



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Management. As such, initiation of proceedings against them would be an abuse. Secondly, grievance in entire prosecution material was non-repayment of amount borrowed, which at best gave rise to a claim before Civil Court. It was contended that in proceedings initiated under N.I. Act, complainant had cleared amount covered under cheque and therefore, continuation of above proceedings would amount to abuse of process.

7. In support of his submission, learned counsel relied upon decision of Hon'ble Supreme Court in case of ***Binod Kumar & Ors. v. State of Bihar & Another*** reported in ***(2014) 10 SCC 663*** by submitting that Hon'ble Supreme Court had held therein that bald statements that there was non-repayment of amount borrowed would not be sufficient for invocation of Section 420 of IPC, and therefore, sought for quashing.

8. On other hand, Sri Surya Mukundaraj L., learned Additional S.P.P. opposed petition. It was submitted that complaint disclosed clear allegations of dishonest intention to cheat by accused, by claiming that amount was needed for



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development of infrastructure of Educational Institution and which did not have permission/sanction.

9. In course of investigation, statements recorded of C.Ws.2 to 4 corroborated complaint averments and implicated all accused. It was further submitted that accounts statement as well as issuance of cheque etc., would also support prosecution material and constitute *prima facie* case against accused for trial. Therefore, order taking cognizance was justified and grounds urged were in nature of defence and would be a matter for trial. On said grounds sought for dismissal.

10. Respondent no.2-complainant is served. There is no representation for respondent no.2-complainant.

11. Heard learned counsel and perused material on record.

12. This petition is by accused no.2 and 3 challenging order taking cognizance for offence punishable under Section 420 read with Section 34 of IPC as well as challenging entire proceedings. Main grounds urged are that dispute is purely



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civil in nature that petitioners were not Managing Trustees and there were no clear allegations against petitioners in prosecution material.

13. A perusal of private complaint filed by respondent no.2, reveals assertion that all accused had approached complainant and assuring that money was required for expansion of infrastructure and that educational institutions were running well and having great prospects, induced complainant to invest money by assuring good returns and thereafter failing to return money and issuing cheque for part amount towards refund, knowing fully well that there was insufficient fund. In course of investigation, mahazar is drawn and statements of eye-witnesses, C.Ws.2 to 4 were recorded.

14. A perusal of statements of eye-witnesses C.Ws.2 to 4, would indicate that accused Mahalingam, his wife Smt.Mohan Kumari and daughter Kavya Lakshmi had together assured complainant in their presence that their educational institutions were running well and they were Founders/Managing Trustees; Rs.10,00,000/- was needed for expansion of infrastructure and claimed that said amount would be returned within six months



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with 12% interest and collected initial amount of Rs.1,11,111/- in Saibaba Temple in their presence. There is also statement that when they accompanied complainant to educational institutions, Educational Institutions were found to be running without any permission substantiating that inducement of complainant to part with money was with dishonest intention and failure to repay substantiating same. Prosecution has also collected accounts statement indicating transactions of transfer of money from complainant. After filing of chargesheet, Court would require to examine prosecution material on face value whether would indicate sufficient case for trial against accused.

15. Reliance on decision in ***Binod Kumar's*** case would be of no use as allegation in said case was mainly about non-repayment of money borrowed and which would not constitute all these essential ingredients for offence under Section 420 of IPC. It is trite to state that main ingredient for invocation of Section 420 of IPC would be dishonest intention which requires to be established from inception.

16. In instant case, statement by complainant as well as C.Ws.2 to 4 is about accused inducing complainant to part



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with money on ground that it was needed for expansion of infrastructure of educational institution, by claiming educational institutions were running well and had good prospect, which would *prima facie* supply necessary essential ingredients. It is settled law that mere existence of civil remedy would not bar criminal prosecution in case all essential ingredients of offences are made out, which as noted above are found to be *prima facie* satisfied. Hence, no good grounds to interfere. Petition is ***dismissed.***

**Sd/-
(RAVI V HOSMANI)
JUDGE**

HNM
List No.: 1 Sl No.: 4