



CrI.RC(MD) No.512 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **10-02-2026**

CORAM:

THE HONOURABLE MR JUSTICE MOHAMMED SHAFFIQ

CRL RC(MD). No.512 of 2019

P.Liyagath ali

... Petitioner/Defacto-complainant

Vs.

1. The Inspector of Police
District Crime Branch,
Thanjavur District.
(Crime No.4 of 2015)

2. N.Samsudeen
S/o.Nahoor Meeran

3.A.Kader Ali Batcha
S/o.Abdul Raseeth

4.H.Abudhahir
S/o.Kaja Mohideen

... Respondents

PRAYER :- This Criminal Revision Case is filed under Section 397 r/w 401 of Cr.P.C, to call for the records of the Learned Judicial Magistrate No.II, Kumbakonam passed in RCS No.242 of 2018 dated 21.06.2018 and set aside the order dated 21.06.2018 and pass such other or further orders.

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For Petitioner : Mr.M.Jeyakumar
for
M/s.MA.Karunanithi
For Respondent
No1. : Mr.A.Thiruvadikumar
Additional Public Prosecutor
For Respondent
No2. : M/s.Arul Jenifer
for
M/s.KBS Law Office
For Respondent
Nos.3 & 4 : Mr.M.Solaisamy

ORDER

Heard Mr.M.Jeyakumar, learned counsel for petitioner and Mr.A.Thiruvadikumar, learned Additional Public Prosecutor, M/s.Arul Jenifer, learned Counsel for Respondent No.2 and Mr.M.Solaisamy, learned Counsel for Respondent Nos.3 & 4.

2. The present Criminal Revision Case is filed challenging the order passed by the Judicial Magistrate No.II, Kumbakonam in RCS.No. 242 of 2018 dated 21.06.2018, confirming closure of complaint filed by the petitioner by Deputy Superintendent of Police, District Crime Branch, Thanjavur vide final report dated 30.04.2016 as “Mistake of Law”.



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3. Brief facts of the case as follows:

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During 2013, Petitioner/defacto-complainant was working in Dubai along with three accused/respondents 2, 3 and 4. All four i.e., petitioner and respondents 2 to 4 (accused) are from Thanjavur district and have known each other for a while. Accused No. 1, Samsudeen, borrowed 2,87,000 Dirhams, equivalent to approximately Rs. 53,56,783/-, from petitioner/complainant. With regard to the said sum, A1 issued two post-dated cheques dated 21.09.2013 and 26.09.2013. When petitioner deposited the said cheques with RAK Bank in Dubai, it was returned due to insufficient funds. Petitioner later realized that the two cheques belonged to Accused No.3 and signed by Accused No.2 on the basis of a Power of Attorney issued in his favour by Accused No.3. In the meanwhile, all three accused returned to India from Dubai, while petitioner/de-facto complainant continued to work in Dubai.

4. It is also stated that De-facto Complainant/Petitioner originally submitted a complaint on 17.02.2015 to the Dubai Police against dishonour of cheques issued by the accused. Dubai Police issued



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a Certificate to petitioner in this regard. In response to a question regarding the status of the proceedings before the Dubai authorities, it was stated that the matter has not progressed further. Petitioner then filed a complaint against all three accused alleging that they had committed offences punishable under Sections 120(B), 406 and 420 of IPC and registered a case in Crime No.04 of 2015, dated 19.01.2015. Upon completion of the investigation, the first respondent submitted the final report whereby the complaint was closed on the ground of “Mistake of Law”.

5. A reading of the Closure Report indicates that first respondent arrived at conclusion that the matter ought to be closed as a ‘mistake of law’ primarily for two reasons. Firstly, it concerns dishonour of cheques, thus remedy would be under the Negotiable Instruments Act, a special enactment governing such matters. Secondly, it was found that, since the alleged offence was committed outside India, i.e., in Dubai, the first respondent may not have jurisdiction. It would be evident from the following portions of the closure report:



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"Therefore, the complainant had originally presented a petition on 17.02.2015 to Dubai Police for the same instance of bouncing of those two Dubai based bank cheques presented by the accused, for which the Dubai police had also given a certificate to Liyakath Ali. Therefore, the two cheque leaves of Dubai based RAK bank are the subject matter of this case.

Under such circumstances, the police is forbidden in India from taking cognizance of instances involving cheques dishonoring from the bank, as there is a specific Act available in India to deal with such Cheque bouncing cases. But, in this case registered in Thanajavur DCB Cr.No.04 of 2015 under Section 120(b), 406, and 420 of IPC, it is crystal clear that the cheques issued by the accused, were actually belonged to the RAK bank of Dubai and that the same foreign cheques were issued by the accused and later dishonored by the RAK Bank only on the land of Dubai, i.e., outside the territory of Indian Union, for which the legal system in India authorizes only the "Payee" or the "Holder in due course of the cheques" to file private cases, under the Negotiable Instruments Act, before the appropriate Courts.

Other than this legal issue in India, it also came to light from the investigation of this case that the complainant had already presented a report to Dubai Police, who has issued a certificate on 17.02.2015 that the Dubai Police registered the event against the



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accused person as issuing a cheque without sufficient balance with bad faith.

In the light of the above mentioned facts and circumstances of this case, I am referring this case as "Mistake of Law" and submitting the Final Report (FR.03 of 2016) along with RC 03/2016 before this Hon'ble Court. It is therefore, prayed that this case may kindly be closed as Mistake of Law. The served RC notice is herewith enclosed."

6. Aggrieved by the said report, petitioner filed a petition before the Judicial Magistrate No. II, Kumbakonam, in R.C.S. No. 242 of 2018, same was rejected vide impugned order, concurring with the final report and holding that the issue was civil in nature. The relevant portion of the said order is extracted hereunder:

“5. புகார்தாரரின் புகார் மனுவை பரிசீலித்தால் புகார்தாரருக்கும் எதிரிகளுக்கும் இடையே கடன் பரிமாற்றம் இருந்துள்ளதை அறிய முடிகிறது. புகார்தாரர் கொடுத்த கடன் பணத்தை திரும்ப பெற முடியவில்லை எனில் உரிமையியல் வழக்கு தான் தொடர முடியும், குற்றவியல் நடவடிக்கை எடுக்க இயலாது. பணம் கொடுக்கல் வாங்கலில் குற்றவியல் ரீதியான நடவடிக்கைக்கு உள்ளாக்க முடியாது.



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காசோலைகளை பெற்றுக்கொண்டு கடன் கொடுத்துள்ள நிலையில்

உரிமையியல் சார்ந்த வழக்கு தான் தொடர முடியும் எனவே புலன்

விசாரணை அதிகாரியின் இறுதியறிக்கையில் எந்தக் குறைபாடும் இல்லை.

புலன் விசாரணை அதிகாரி முறையாக புலன் விசாரணை

செய்து இறுதியறிக்கை தாக்கல் செய்துள்ளார்.

6. ஆகையால் மேற்சொன்ன காரணங்களினால் புகார்தாரர் தரப்பு ஆட்சேபணை தெரிவிக்கப்பட்டு, புலன் விசாரணை அதிகாரி தாக்கல் செய்த Mistake of Law இறுதியறிக்கையை ஏற்றுக் கொண்டு நீதிமன்றம் உத்தரவிடுகிறது.□

7. Aggrieved, petitioner has preferred this Criminal Revision Case.

8. At the outset, learned counsel for 1st respondent submitted that since the place of occurrence of the alleged offence is outside India, the provisions of the Indian Penal Code would not apply. He further submits that since this is an offence relating to dishonor of cheques, petition under Section 420 of IPC is not maintainable; if the petitioner is



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aggrieved, he ought to seek redressal of his grievance only under Negotiable Instruments Act. He further submitted that the disputes are essentially civil in nature, thus the impugned order rejecting the protest petition, does not warrant any interference.

9. The learned counsel for the petitioner placed reliance on Sections 3 and 4 of the IPC. He would submit that Indian Penal Code applies to offenses committed by any citizen, including in a place beyond the territory of India. He further submits that merely because a particular act falls under the provisions of the Negotiable Instruments Act, it does not impose a bar against invoking IPC, nor does it absolve the petitioner if the act otherwise satisfies the ingredients of offence under Section 420 of the IPC. It may not be appropriate to submit that, merely because a particular transaction involves civil disputes or has elements of civil disputes, the provisions of IPC would be inapplicable.

10. Now let us examine the question whether provisions of Indian Penal Code would apply to offences committed beyond India.



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11. Before proceeding further, it may be relevant to refer to Article 245 of Constitution of India, which provides that no provision of law shall be called in question or declared invalid only on the ground that it has extraterritorial operations. The relevant portion of the Article 245 of Constitution of India is extracted hereunder:

"245. Extent of laws made by Parliament and by the Legislatures of States.—

(1) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State.

(2) No law made by Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation."

12. It is settled principle of common law that all crimes are local unless they are intended by Parliament to be extra-territorial i.e, having effect outside the territory of the Legislature. Section 3 and 4 make a departure to the said rule relating to situs of crime based on common law. It may thus be relevant to refer to Sections 3 and 4 of



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Indian Penal Code which expressly provide for extra-territorial operation.

The said provisions reads as under:

"3. Punishment of offences committed beyond, but which by law may be tried within, India.

Any person liable, by any to be tried for an offence committed beyond (India) shall be dealt with according to the provisions of this Code for any act committed beyond [India] in the same manner as if such act had been committed within [India].

4. Extension of Code to extra-territorial offences.—*The provisions of this Code apply also to any offence committed by—*

(1) any citizen of India in any place without and beyond India;

(2) any person on any ship or aircraft registered in India wherever it may be.

(3) any person in any place without and beyond India committing offence targeting a computer resource located in India."

13. From a reading of Section 3 and 4 of IPC, it appears that Section 3 and 4 of IPC relate/provide for extra-territorial operation of the Penal Code. These two sections relate to substantive law and do not relate to procedure. The said Sections postulate the existence of a law,



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that an act constituting an offence in India shall also be an offence when committed outside India.

13.1 Section 3 postulates that before any person can be tried in India for an offence committed beyond India, there must be in existence a law making him liable to be so tried. Section 4 of IPC as also Section 188 Cr.P.C. make a conscious departure from common law rule that all offences are local unless made otherwise by Parliament. Section 4 of IPC shows the extent to which the Penal code applies to offence committed outside India and Section 188 of the Cr.P.C., confers jurisdiction on the Court within whose jurisdiction the accused is found.

14. It thus appears that there has been a complete misdirection in law, particularly with respect to the finding in the final/closure report and the impugned order affirming the same that the complaint suffers from “Mistake of Law” inasmuch as the offence occurred outside India, without examining the applicability of Sections 3 and 4 of IPC to the complaint.



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15. Secondly, the contention in a case relating to dishonor of cheques, remedy is only under Negotiable Instruments Act and Section 420 of IPC may have no applicability is again contrary to the law laid down by the Supreme Court reported in the case of ***Sangeetaben Mahendrabhai Patel vs State of Gujarat and others*** reported in (2012) 7 SCC 621, wherein, it was held that though there may be some overlapping of facts, a case may fall both under Negotiable Instruments Act and Section 420 of IPC. Ingredients of two offences are entirely different. Important distinction between an offence under Section 138 of NI Act and Section 420 of IPC is relevance of *mens rea* under Section 420 of IPC and its irrelevance under the Negotiable Instruments Act. The relevant portion of the said judgment is extracted hereunder:

“38. ... There cannot be such a requirement in the offences under IPC. The case under N.I. Act can only be initiated by filing a complaint. However, in a case under the IPC such a condition is not necessary.

39. There may be some overlapping of facts in both the cases but ingredients of offences are entirely different. Thus, the subsequent case is not barred by any of the aforesaid statutory provisions.”



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16. In view of the above, this Court finds that the second contention urged also lacks merit.

17. As regards the third submission, viz., these matters are all civil in nature, it is contended that the order of the Judicial Magistrate No. II, Kumbakonam, rejecting the protest petition does not warrant any interference. In support of this contention, the learned Counsel for the first respondent brought to the notice of this Court that a joint compromise memo had been entered between the petitioner and respondent Nos.3 & 4, pursuant to which, this Court, by order dated 02.12.2016 in Crl.OP.(MD).No.22936 of 2016, quashed the proceedings in Cr.No.4 of 2015 insofar as respondent Nos.3 and 4 are concerned.

18. It is submitted by the learned counsel for respondent that as evident from the agreement and compromise memo, the money due to the petitioner had already been repaid by Respondent Nos.3 and 4, and that



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the continuation of proceedings against Accused would only result in unjust enrichment of petitioner. He would submit that there is only one transaction, viz., grant of loan by the petitioner to Samsudeen i.e., A1. There is no money granted by way of loan or borrowed by Accused Nos. 3 and 4 though all these agreements are dated the same day. This Court finds that these are *prima facie* disputed questions of fact thus ought to be established on trial. The impugned order proceeds to affirm the closure report on the basis that it suffers from mistake of law, *inter alia*, also for the reason that the dispute in question is civil in nature.

19. The complaint was made *inter alia* alleging commission of offence under Section 420 of IPC. Before proceeding further, it may be relevant to understand the ingredients constituting the offence under Section 420 of IPC. In this regard, it may be relevant to refer to the decision of the Hon'ble Supreme Court in ***Lalit Chaturvedi v. State of Uttar Pradesh***¹, wherein the Hon'ble Supreme Court quoting an earlier decision in ***Mohammed Ibrahim v. State of Bihar***², wherein, referring to

1 2024 SCC OnLine SC 171

2 (2009) 8 SCC 751



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Section 420 of the IPC, it was observed that the offence under the said

Section requires the following ingredients to be satisfied:

“18. Let us now examine whether the ingredients of an offence of cheating are made out. The essential ingredients of the offence of “cheating” are as follows:

(i) deception of a person either by making a false or misleading representation or by dishonest concealment or by any other act or omission;

(ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived; and

(iii) such act or omission causing or is likely to cause damage or harm to that person in body, mind, reputation or property.”

20. While it is true that a breach of contract may not give rise to a criminal prosecution, however the above rule is not without exception, one such exception being that it is shown that fraudulent or dishonest intention existed right at the beginning of the transaction as explained in ***Kunti vs. State of Uttar Pradesh***. In this regard, it may be relevant to note that in ***Kunti vs. State of Uttar Pradesh***¹, the Hon’ble

¹ (2023) 6 SCC 109



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Supreme Court referred to *Sarabjit Kaur vs. State of Punjab*¹ wherein it was observed that a breach of contract does not give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown to exist right at the beginning of the transaction, thus if fraudulent or dishonest intent is shown to exist at the beginning of the transaction merely because civil elements to the dispute exist would not exclude applicability of criminal laws, more particularly Section 420 of IPC in the present case.

21. I think it is important to bear in mind that there can be situations where the allegation may constitute both civil and criminal wrongs as held in *Thermax Limit vs. K.M.Johny*², wherein the Hon'ble Supreme Court held that Courts should be watchful of the difference between civil and criminal wrongs, though there can be situations where the allegation may constitute both civil and criminal wrongs. Further, there has to be a conscious application of mind on these aspects.

1 (2023) 5 SCC 360

2 (201) 13 SCC 412



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22. On a reading of the impugned order, this Court finds that no enquiry whatsoever has been made to find if the ingredients essential to constitute the offence of cheating *prima facie* exist or not. This Court thus finds that the impugned order is made/passed in a perfunctory manner by the Trial Court and thus the matter is remanded back to the Judicial Magistrate No.II, Kumbakonam, who would pass orders afresh taking into account all relevant material, uninfluenced by any observation made herein.

23. With the above observations, this Criminal Revision Case is disposed of. No costs.

10-02-2026

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To:
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1. The Judicial Magistrate No.II,
Kumbakonam.
2. The Inspector of Police,,
District Crime Branch,
Thanjavur District.
(Crime No.4 of 2015)
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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MOHAMMED SHAFFIQ, J

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ORDER
IN

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