

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2016

CORAM:

THE HON'BLE MR.JUSTICE C.T. SELVAM

Crl.R.C.No.885 of 2016

State by

The Inspector of Police,
Central Crime Branch, Team - VI,
Egmore, Chennai - 8.

... Petitioner

Vs.

1. A.Murugesan
2. V.Kaliaperumal
3. M.Senthilkumar
4. M.Arivuselvi

... Respondents

Criminal Revisions filed under Sections 397 and 401 Cr.P.C. against the order of learned Additional Chief Metropolitan Magistrate, Egmore, Chennai passed in Crl.M.P.No.1461 of 2006 in C.C.No.20924 of 2005 on 08.12.2006.

For Petitioner : Mr.K.Madhan
Government Advocate(Crl. Side)

For Respondents : Mr.S.Krishnaswamy

O R D E R

These revision challenges the order of learned Additional Chief Metropolitan Magistrate, Egmore, Chennai passed in Crl.M.P.No.1461 of 2006 in C.C.No.20924 of 2005 on 08.12.2006.

2. Heard learned Government Advocate [Crl. Side] for the petitioner and learned counsel for respondents.

3. Upon the complaint of one Palanivel a case in Crime No.136 of 2004 was registered under sections 420 r/w. 34 IPC. The case of the prosecution is that the said Palanivel was led by A2 to A1, an Ex.M.P. He gave Rs.7 lakhs to A1 on the promise that he would get a Special Officers job in Annamalai University. Neither was a job arranged nor was the money returned and hence the offence of cheating stood committed. A2 is a friend of A1 while A3 and A4 are A1's son and daughter.

4. On completion of investigation, charge sheet has been filed and the same has been taken on file in C.C.No.20924 of 2005. The accused/respondents filed CrI.M.P.No.1461 of 2006 under section 239 Cr.P.C. for discharge. The court below has allowed such application reasoning that

"8. The counsel for the petitioner/accused has argued that there is no evidence for cheating and this is clear case of civil dispute, there is no evidence to show that the other petitioners namely, A2, A3, A4 who are friend, son and daughter of the 1st petitioner respectively are involved in the dealings, because, from the statement of the defacto-complainant it is clear that he has approached the 1st petitioner who is Ex.M.P. only to get a job at Annamalai University for that, he has given Rs.7 lakhs. He has also obtained promissory note for the amount given by him. Hence, there is no prima facie offence against the other petitioners.

9. It is said that the Defacto-complainant is a M.Sc. Graduate. He knows that he is giving money for illegal purpose i.e., to get a job through corruption. The defacto-complainant himself has committed a wrong. Further the contention of the petitioner is that he obtained loan from the defacto complainant for agricultural purpose. For that, he has given promissory note to the defacto-complainant. This was admitted by the Defacto-complainant himself. But, this was not brought into the charge sheet by the prosecution. Further, there is no evidence regarding whether the defacto-complainant has filed civil case against the promissory note executed by the petitioner. In this connection, the counsel for the petitioners/accused has drawn attention of this court to the following judgement given by the Apex Court :-

"1. A.Criminal complaint can be quashed where the allegations made in 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 the case alleged against the accused.

2. Any effort to settle civil disputes and claims, which do not involve any

criminal offence, by applying pressure through Criminal prosecution should be depreciated and discouraged.

2006(6) Supreme 66 SUPREME COURT OF INDIA

Hence, the contention that the petitioner/A1 has received Rs.7 lakhs for getting appointment in Annamalai University is not believable. As rightly pointed out by the counsel for the petitioners/accused, a civil dispute is made to appear as an offence u/s.420 IPC. Further, there is no evidence to show that the other petitioners namely, A2, A3, A4 have also promised to the defacto complainant that they would get him job. Considering the facts and circumstances of the case and on perusal of all documents, this court decides that the charge against the petitioners/accused the groundless and hence the petitioners/accused - A1 Murugesan, A2 Kaliaperumal, A3 Senthilkumar ad A4 Arivuselvi are discharged from the offence and the case in terms of section 239 Cr.P.C."

5. In an appropriate case a complaint of cheating may be preferred even where the original intent of both parties was wrongful. However, on the facts of the instant case, a most reasoned approach has been adopted by court below and this Court finds no reason to interfere with the order under challenge.

6. The Criminal Revision Petition shall stand dismissed. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

vrc

To

The Additional Chief Metropolitan Magistrate,
Egmore, Chennai.

+lcc to Mr.S.Krishnaswamy, Advocate, S.R.No.66893

Cr1.R.C.No.885 of 2016

SS(CO)

CA(04/04/2017)