IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order Reserved on: 16.11.2017

Order Pronounced on: 07..12..2017

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Crl.R.C.No.506 of 2014

Parameswaran [A2]

... Petitioner

-Versus-

1.State Rep. by
The Station House Officer,
Cuddalore N.T.P.S.,
[Crime No.623 of 2010]

2.Manthri Kumar [De facto complainant]

... Respondent

Revision Case filed under Sections 397 r/w 401 of Cr.P.C. to call for the entire records relating to the case in C.C.No.241 of 2013 and set aside the order dated 27.03.2014 passed in Crl.M.P.No.5609 of 2013 in C.C.No.241 of 2013 by the learned Judicial Magistrate-II, Cuddalore.

For Petitioner	:	*Mr.N.R.Elango, Senior Counsel for Mr.R.Meenal*
For Respondents	:	*Mr.R.Sekar, Govt. Advocate (Criminal Side) for R1*
		Mr.A.Ramesh, Senior Counsel for Mr.A.Nagarajan for R2

ORDER

Challenging the order dated 27.03.2014 made in Crl.M.P.No.5609 of 2013 in C.C.No.241 of 2013 by the learned Judicial Magistrate-II, Cuddalore, dismissing the petition filed by the petitioner under Section 239 of Cr.P.C. to discharge him from the charges, the present revision has been filed.

2. The petitioner is A2 in CC No.241 of 2013 on the file of the learned Judicial Magistrate-II, Cuddalore. There is another accused by name Murugan (A1), Son of Arumugam. A1 stood charged for offence under Section 465, 468, 471 and 420 of IPC whereas A2, the petitioner herein stood charged for offence under Section 420 r/w 109 of IPC.

3. The case of the prosecution in brief is that the 2nd respondent herein [hereinafter referred to as "the de facto complainant "] is the owner of a property situated near Cuddalore bus stand. He proposed to construct a row of shops in the above landed property. A1 approached the de facto complainant and requested him to let out a commercial space in the shops on lease to him for the purpose of running a textile business. A1 offered to pay a sum of Rs.10,00,000/- as advance. On 05.03.2007, A1 and

the de facto complainant entered into an agreement of lease in writing and A1 had paid Rs.10,00,000/- as advance to the de facto complainant under the agreement. Subsequently, A1 thought of running a hotel business instead of textile business. He, therefore, made a request to the de facto complainant that he wanted to run a hotel business in the premises that was being proposed to let out and wanted the de facto complainant to alter the constructions to suit his convenience. While so, there arose a dispute between A1 and the de facto complainant. Therefore, the de facto complainant decided to cancel the lease agreement. In this regard, the de facto complainant sought the advise of one Shri.Ravindran (L.W.2), who, in turn, informed that his Auditor, the petitioner herein was the Auditor for A1 also and assured the de facto complainant that he would settle the dispute through the petitioner. Then, both the de facto complainant and L.W.2 approached the petitioner and the petitioner, in turn, contacted A1 and informed them that A1 had agreed for cancellation of lease agreement subject to payment of Rs.3,00,000/- over and above the advance amount of Rs.10,00,000/-. The petitioner assured the de facto complainant that he would get the lease agreement cancelled and return the original lease agreement. In the above circumstances, on 22.08.2003, the de facto complainant, L.W.2 and L.W.3, who was an Advocate by profession, went to the office of the petitioner along with a deed of cancellation of lease agreement, which was already prepared by the de facto complainant with a cash of Rs.13,00,000/- Thereafter when the de facto complainant contacted A1 over phone from his office and A1 assured him that he would come and collect the cancellation deed and cash from the petitioner. The de facto complainant therefore handed over the deed of cancellation and also the cash to the petitioner. The de facto complainant waited there for the arrival of A1 till noon. In the mean time, the petitioner has gone for lunch after having handed over the cash and the document to his Manager one Shri.Baskar (L.W.9) and asked him to get the signature of A1 on the deed of cancellation and hand over the cash to him. At that time, the petitioner has assured the de facto complainant that he would get the things done. After two days, when the de facto complainant met the petitioner, he handed over the deed of cancellation duly signed by A1 and also returned the original lease agreement. But, subsequently, the de facto complainant came to know that A1 had handed over a forged deed through A2 and he retained the original deed in his possession thereby A1 along with A2 cheated him. Later on, A1 had also filed a suit for mandatory injunction against the de facto complainant before the Additional District Munsif, Cuddalore.

4. While so, when the de facto complainant met the petitioner, he assured him that he would get back the original deed from A1, but he did not do so. In the above circumstances, he filed the complaint based on

which the 1st respondent registered a case in Crime No.623 of 2010 for offence under Section 463, 465, 468 and 420 of IPC and on completing investigation, a final report came to be filed against A1 and the petitioner(A2) and thelearned Magistrate took congizance of offences in C.C.No.241 of 2013 which is now pending for trial.

5. The petitioner/A2 has been charged for an offence under Section 420 r/w 109 of IPC in the final report. Pending trial, the petitioner has fled an application seeking to discharge him from the above charge. The learned Magistrate dismissed the application thereby refusing to discharge the petitioner from the charge as there are *prima facie* materials against him. Aggrieved by the same, A2 is before this court with the present revision.

6. I have heard the learned senior counsel appearing for the petitioner/A2 and the learned senior counsel appearing for the 2nd respondent/de facto complainant and also the learned Government Advocate (Criminal Side) appearing for the State/1st respondent

7. The learned senior counsel for the petitioner would submit there is no material available on record to make out a *prima facie* case against the petitioner. The petitioner involved in the dispute settlement process,

only as requested by the de facto complainant through one of his friends for a mediation, as a mediator and received a sum of Rs.13,00,000/- on behalf of A1 and also the deed of cancellation, which was already prepared by the de facto complainant, thereafter, he handed over the same to A1 for his execution. The learned senior counsel would further submit that there is nothing on record to *prima facie* conclude that the petitioner abetted A1 to cheat the de facto complainant.

8. The learned senior counsel for the petitioner in an attempt to convince this court would add that the complaint itself has been filed with a mala fide intention and no *prima facie* case for offence of forgery has been made out as the hand writing expert's opinion is against the prosecution. Thus, according to him, allowing the criminal proceedings to continue further would be an abuse of process of the court.

9. Per contra, the learned senior counsel appearing for the 2nd respondent would contend that it is only this petitioner who assured the de facto complainant that he would get back the original lease agreement cancelled and he alone contacted A1 and informed the de facto complainant that A1 had agreed to cancel the lease agreement on condition that the de facto complainant should pay a sum of Rs.3,00,000/- over and above the advance amount already paid under the lease

agreement. According to the learned counsel, the de facto complainant paid the cash to A2 and also handed over the deed of cancellation prepared by him to the petitioner for the signature of A1. Thereafter, the petitioner handed over the deed of cancellation of lease agreement and the original lease deed allegedly returned by A1 and it was this deed, which was later on found to be forged. But, subsequently, using the original lease agreement, A1 filed a suit against the de facto complainant alleging that he did not receive back the advance amount from the de facto complainant. According to the learned senior counsel, the statements of witnesses recorded under Section 161 of Cr.P.C. make out a prima facie case that the petitioner along with A1 has cheated the de facto complainant and the petitioner has abetted A1 to commit an offence of cheating. The conduct of the petitioner would create a strong suspicion that he has also involved in the crime which is sufficient to proceed further against the petitioner also. Apart from that the petitioner himself filed an application expressing his willingness to become an approver in this case. This would further strengthen the case made out by the prosecution. The learned Magistrate after having considered the materials available on record had come to the conclusion that there is a *prima facie* case made out against the petitioner and dismissed the discharge application which does not require any interference at the hands of this court.

10. I have considered the rival submissions and perused the records carefully.

11. The petitioner has been charge sheeted for offence under Section 420 r/w 109 of IPC. It is an admitted fact that the de facto complainant and A2 entered into a lease agreement, in writing, in respect of a commercial space in the building that was proposed to be constructed by the 2nd respondent and A1 had paid a sum of Rs.10,00,000/- as advance under the agreement. Though A1 initially thought of starting a textile business in the premises, later on, he decided to start a hotel business. When A1 expressed his change of mind to the de facto complainant, there arose dispute between them. It is also not in dispute that when a dispute arose between the de facto complainant and A1, it was this petitioner, who acted as a mediator between the petitioner and the de facto complainant and a settlement was arrived at between the de facto complainant and A1, whereby the de facto complainant had agreed to pay Rs.3,00,000/- over and above the advance amount received under the lease agreement and A1 agreed to cancel the lease agreement on such payment being paid. The de facto complainant paid the amount to the petitioner as requested by A1 and also handed over the deed of cancellation of lease agreement and the petitioner assured the de facto complainant that he would get the signature of A1 and return the same to him along with the original

agreement of lease.

12. Now the allegation made in the complaint is that the original agreement of lease which was received from A1 through the petitioner/A2 was, later on, found to be forged one and A1 retained the original lease agreement in his possession and had instituted a suit against the de facto complainant alleging that he never received the advance amount from the de facto complainant and sought for a decree for mandatory injunction to enforce the lease agreement, thereby A1 committed forgery of the signature of the de facto complainant and at the instigation of A2, A1 cheated him.

13. From a perusal of the entire materials, it could be seen that no material available against the petitioner even to remotely come to a prima facie conclusion that the petitioner abetted A1 to cheat the de facto complainant. The statement of the de facto complainant before the police under Section 161 of Cr.P.C. reads as follows:-

> "///// gpwF ,uz;lhtJ ehs; Mol;lh; gunk!;tud; mYtyfk; brd;W Mol;lh; gunk!;tudplk; nfl;lnghJ mth; ,uz;L gj;jpu';fis KUfd; bfhLj;jjhf brhy;yp vd;dplk; bfhLj;jhh;/ ehd; me;j gj;jpu';fis ghh;j;j nghJ ntz;Lbkd;nw vd;id Vkhw;w ntz;Lk; vd;w vz;zj;jpy; nghypahd gj;jpuk; jahh; bra;J bfhLj;jpUf;fpwhh;fs; vd;gJ bjhpa te;jJ/ nkw;go Mol;lh; gunk!;tudplk; nfl;l nghJ KUfdplk; nfl;L xhp$pdy; gj;jpuj;ij

th';fp jUtjhf brhd;dhh;/ Mdhy; ,Jehs; tiuapy; th';fp jutpy;iy/ ,jw;fpilapy; vd;id Vkhw;wp KUfd; jd;dplk; itj;J ,Ue;j eh';fs; 05/03/2007k; njjp bra;J bfhz;l xg;ge;j gj;jpuj;ij itj;J flY}h; khtl;l TLjy; chpikapay; ePjpkd;wj;jpy; vd; kPJ tHf;F bjhlh;e;J me;j tHf;F epYitapy; cs;sJ/ ////"

14. From the above statement of the de facto complainant, it could only be seen that immediately on coming to know about the forgery allegedly committed by A1, the de facto complainant approached the petitioner and informed about the alleged forgery committed by A1 and the petitioner, in turn, assured him that he would get back the original lease agreement from A1, but, he did not do so.

15. One Shri.Ravindran[L.W.2], who said to have introduced the de facto complainant to the petitioner has also stated in his statement before the police that when he approached the petitioner some time after the dispute has been settled by way of mediation and informed him about the alleged forgery committed by A1, he told him that he would get back the original deed from A1, but, he did not take any steps to get the original lease agreement from A1. Yet another witness-Shri.Balasubramanian (LW3), an Advocate by profession has stated that he was present at the time when the de facto complainant handed over the cash to A2 at his office along with a deed of cancellation of lease agreement prepared by

him for the signature of the A1. He further stated that after a few days, the de facto complainant informed him that both A1 and A2 cheated him. One Shri.Rajendran, who was examined as L.W.4; Shri.Briyan as L.W.5, Shri.Ganapathy as L.W.6, Shri.Radha Krishnan, as L.W.7, Shri.Jagannathan as L.W.8 by the prosecution have only stated that they were informed by the de facto complainant that A1 and A2 had created a forged deed and cheated him. Admittedly, they do not have any personal knowledge about the alleged forgery nor cheating of A1 and A2. They were only hearsay witnesses.

16. Yet another important witness is Shri.R.S.Bhaskar, who was examined by the police as L.W.9, was the Manager in the Office of A2. According to him, after having received the cash from the de facto complainant, the petitioner handed over the same to him and left the office for lunch after giving a direction to him to hand over the cash to A1. Thereafter, A1 came to his office and received the cash and also signed in the deed of cancellation of lease agreement and handed over the same to him. He, in turn, handed over the same to the petitioner. He has also given a statement under Section 164 of Cr.P.C. before the Judicial Magistrate in this regard.

17. It is the consistent statement of all the witnesses before the

police that there was a dispute between A1 and the de facto complainant with regard to leasing out of a commercial space and in order to resolve the dispute, the de facto complainant approached A2 through Shri.Ravindran (L.W.2) as A1 being the client of A2 and the petitioner acted as a mediator. In the settlement talks, A1 agreed for cancellation of lease agreement on condition that the de facto complainant should pay a sum of Rs.3,00,000/- over and above the advance amount. Thereafter, the de facto complainant went to the office of the petitioner along with L.W.2 and L.W.3 and handed over the cash along with a deed of cancellation of lease agreement for due execution by A1. When A2 called on A1 over phone in their presence, A1 told him that he was not in a position to come to his office immediately and told him to handover the cash to the petitioner along with cancellation deed for his execution and assured him that he would come and collect the cash from the petitioner after due execution of cancellation deed. The de facto complainant handed over the cash and the deed of cancellation to the petitioner. Then, the petitioner left for lunch. According to L.W.9 some time thereafter, A1 came to his office and duly executed the cancellation deed after having received the cash and handed over the lease agreement to him and in turn, he handed over the same to the petitioner. Thereafter, the petitioner handed over them to the de facto complainant. With the above materials, the petitioner has been charged for offnece under Section 420 r/w 109 of IPC on the allegation that he only abetted A1 to cheat the de facto complainant.

18. Though the learned senior counsel for the petitioner would submit in an attempt to impress upon this court that the very complaint is mala fide as it could be seen from the forensic lab report which proved that there was no difference in the admitted signatures and the disputed signatures, this court do not want to venture into the same at this stage as it is for the learned Magistrate to decide the issue during trial.

19. It is the well settled law that at the stage of framing the charges, the court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The Court is not required to appreciate the evidence and arrive at the conclusion that the materials produced are sufficient or not for convicting the accused. If the court is satisfied that a prima facie case is made out for proceeding further, then a charge has to be framed.

20. In **Sajjan Kumar v. CBI, (2010) 9 SCC 368**, para 19, the Hon'ble Supreme Court has held as follows:-

> "**19.** It is clear that at the initial stage, if there is a strong suspicion which leads the court to think that there is ground for presuming that the accused

has committed an offence, then it is not open to the court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is only for the purpose of deciding prima facie whether the court should proceed with the trial or not. If the evidence which the prosecution proposes to adduce proves the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial."

Further, in para 21, it has been held by the Hon'ble Supreme Court as under:-

"**21.**On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:

(*i*) The Judge while considering the question of framing the charges under Section 227 CrPC has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

(*ii*) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.

(*iii*) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(*iv*) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(*v*) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(*vi*) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(*vii*) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal."

21. Keeping the above principles in mind, let me now consider as to whether the materials available on record make out a prima facie case against the petitioner/A2 to proceed further in the case. The answer, in the considered opinion of this court, is 'No'. The reasons are as follows.

22. The crux of the allegation against the petitioner is that he abetted the petitioner to cheat the de facto complainant. On the above allegation, the petitioner has been charge sheeted for offence abetment of cheating punishable under Section 420 r/w 109 of IPC.

23. Section 107 of IPC speaks of abetment to commit offence which reads as follows:-

> "107. **Abetment of a thing.—**A person abets the doing of a thing, who—
>
> (First) - Instigates any person to do that thing; or
>
> (Secondly) - Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or
>
> (Thirdly) - Intentionally aids, by any act or illegal omission, the doing of that thing. Explanation 1.—A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing. Illustration A, a public officer, is authorized by a warrant from a Court of Justice to apprehend Z. B, knowing that fact and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C. Explanation 2.—Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitate the

commission thereof, is said to aid the doing of that act."

24. Thus, in order to constitute abetment, the abettor must be shown to have intentionally abetted the commission of the crime and there has to be an intentional aiding or abetment or instigation. These can either be proved or can be inferred from the act or conduct of the accused or from other relevant circumstances of the case. In the instant case, there is absolutely nothing on record to prima facie infer that the petitioner has intentionally aided or abetted A1 to commit the offence of cheating. Such intention cannot be inferred from the mere fact that on coming to know that he has been cheated by A1 when the de facto complainant approached the petitioner, he promised the de facto complainant that he would get back the original deed from A1 and return to him, but, he failed to do so. Mere failure on the part of the petitioner to fulfill the promise would not constitute an offence of abetment of cheating. Whereas the learned Magistrate without considering the available material in a proper perspective had erroneously come to the conclusion that there were materials showing *prima facie* case against the accused to proceed further which in the considered opinion of this court is not legally sustainable and thus, there is no point in allowing the trial court to frame charges against

the petitioner and proceed further in the absence of any prima facie material against him. Therefore, the order of the learned Magistrate is required interference at the hands of this court as there is absolutely no material on record to prove the charges.

25. **In the result,** Criminal Revision is allowed and the petitioner [A2] is discharged from the charges. Since the offence is of the year 2007 and the calendar case has been pending from 2013, the trial court is directed to proceed with the trial against A1 and complete the trial as expeditiously as possible, preferably, within a period of six months from the date of receipt of a copy of this order. It is made clear that the learned Judicial Magistrate, who tries the case against A1, shall not influence by any of the observations made herein-above at the time of trial.

07..12..2017

kmk

To

1.The Judicial Magistrate-II, Cuddalore.
2.The Station House Officer, Cuddalore N.T.P.S., Cuddalore.
3.The Public Prosecutor, High Court, Chennai.

V.BHARATHIDASAN.J.,

kmk

Crl.R.C.No.506 of 2014

07..12..2017