



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.09.2017

CORAM :

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Crl.R.C.(MD) No.103 of 2014

and

M.P(MD)No.1 of 2014

and Crl.M.P(MD)No.4093 of 2016

WEB COPY

1.Vijaya

2.K.Parashakthi

... Petitioners

Vs.

1.The State represented by
The Inspector of Police,
District Crime Branch,
Dindigul District.
(Crime No.79 of 2010)

2.Mangammal

... Respondents

Petition filed under Sections 397 read with 401 Cr.P.C, to call for the entire records pertaining to the order passed by the learned Judicial Magistrate No.II, Dindigul in Cr.M.P.No.322 of 2014 in C.C.No.18 of 2012 vide his order dated 31.01.2014 and set aside the same in so far as the decision of the said learned Judicial Magistrate to frame charges as against the petitioners under Section 120 (B) and 420 IPC and consequently discharge the petitioners from the above said charges.

For Petitioners	: Mr.R.Anand
For 1 st Respondent	: Mr.C.Mayilvahana Rajendran Additional Public Prosecutor.
For 2 nd Respondent	: Mr.V.R.Venkatesan

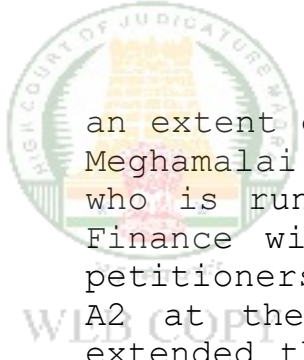
ORDER

The petitioners are A-5 and A-6 in C.C.No.18 of 2012, on the file of the Judicial Magistrate No.II, Dindigul. Totally there are eight accused in the case. All of them stood charged for the offence under Sections 120 (B), 406, 420 465, 467 and 468 IPC. Earlier, all the petitioners filed a petition to discharge them from the charges. The Court below partly allowed the petitioners' application and discharged them from the charges for the offence under Sections 406, 465, 467 and 468 IPC and dismissed their application in respect of the charge for the offence under Section 120 (B) and 420 IPC. Now, challenging the same, the present revision has been filed.

2.The case of the prosecution, in brief, is as follows:-

<https://hcservices.ecourts.gov.in/hcservices2>

A-1 and A-2 in this case are said to be the Directors of one Western Ghat Hill Plantation Company alleging that they are owning

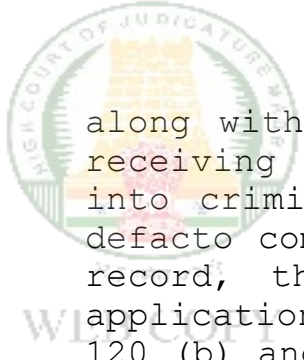


an extent of 28077 hectares of land in Survey Nos.1425 and 1426 in Meghamalai Village, Andipatti Taluk, approached the complainant who is running finance company in the name and style of Iswarya Finance with a request to extend some financial assistance. The petitioners A5 and A6 being the wives also accompanied with A1 and A2 at the time of borrowal of money. The defacto complainant extended the loan to the tune of Rs.1.50 Crores to A1 and A2. But after some time, when the defacto complainant demanded the repayment of the loan, A1 and A2 agreed to sell an extent of 7.2 acres of land to the defacto complainant and also entered into an sale agreement with defacto complainant, the amount borrowed by them to the extent of Rs.1.50 Crores has been shown as an advance amount. After executing the sale agreement, A1 and A2 said to have executed a power deed in favour of one Dakshin Promoters Private Limited. After coming to know about the same, the defacto complainant questioned the accused. At that time, A1 and A2 have given a cheque to the defacto complainant, when the same was presented for collection, the cheque was returned stating that A-1 did not have any amount in his account. In the above circumstances, the defacto complainant filed a complaint before the first respondent police, based on the same, a crime has been registered and after investigation, a charge sheet has been filed for the above mentioned charges against the eight accused. Thereafter, the petitioners along with some other accused filed a discharge petition before the Court below. The Court below partly allowed the application as mentioned in paragraph No.1 of this order. Challenging the part of the order dismissing the discharge petition, the present revision has been filed.

3.I have heard Mr.R.Anand, learned counsel appearing for the petitioners, Mr.C.Mayilvahanarajendran, learned Additional Public Prosecutor appearing for the first respondent and Mr.V.R.Venkatesan, learned counsel appearing for the second respondent.

4.Learned counsel appearing for the petitioners would submit that there is nothing on record to show that the petitioners have cheated the defacto complainant and they have also entered into the criminal conspiracy with the other accused for cheating the defacto complainant. Even from the statement of the defacto complainant, it is only A-1 and A2 were sought loan from the defacto complainant and they have only executed a sale agreement and the cheque was issued only by A1 and A2. Even as per the statement of defacto complainant, these petitioners only went along with A1 and A2 at the time of receiving loan amount. The trial Court also considered the statement and discharged the petitioners from the part of the charges but dismissed the petition in respect of the charges under Section 120(b) and 420 IPC without considering the materials available on record in its proper perspective.

5. Mr. C. M. V. Venkatesan, learned counsel appearing for the defacto complainant would submit that from the statement of defacto complainant, it could be seen that these petitioners also went



along with A-1 and A2 and they were also present at the time of receiving loan from the defacto complainant and they also entered into criminal conspiracy with A1 and A2 and thereby cheated the defacto complainant. Considering the entire materials available on record, the trial Court has rightly dismissed the petitioners application from discharging them from the charges under Section 120 (b) and 420 IPC and there is no irregularity and illegality in the order passed by the Court below.

6.I have considered the rival submissions made on either side and perused the materials available on record carefully.

7.From the perusal of the records, it could be seen that it is A1 and A2 who are the husband of the petitioners earlier approached the defacto complainant and sought for loan for their business development and they also promised the defacto complainant that they will return money along with interest. At that time, both the petitioners being wives of the A1 and A2 went along with the accused. Thereafter, when the defacto complainant has demanded money, A1 and A2 have executed a sale agreement wherein they shown the loan amount as advance. But when the sale agreement was in force A2 entered into agreement executed power deed in favour of third parties by name Dakshin Promoters Private Limited and thereafter, A1 and A2 also issued cheque for repayment of loan which was dishonoured. From the statement of defacto complainant and others, it could be seen that the petitioners only accompanied A1 and A2 while receiving the money from the defacto complainant. It is quite natural that the petitioners being wives of A1 and A2, they might have accompanied the accused. From that it cannot be stated that the petitioners also entered into criminal conspiracy with A1 and A2 and cheated the defacto complainant. From the materials available on record, it could be seen that the entire allegation is made out only against A1 and A2, absolutely there is no material available on record to make out a prima facie case against the petitioners for the offence under Sections 120 (b) and 420 IPC. The Court below without considering the entire materials available on record has erroneously dismissed the application.

8.In the above circumstances, the said order is liable to be set aside. The petitioners are discharged from all the charges and the trial Court is directed to proceed with the trial in respect of other accused. Since the matter is pending from the year 2012, the trial Court is directed to proceed with the trial and complete the same within a period of six months from the date of receipt of a copy of this order.

9.In fine, the Criminal Revision Case is allowed. Consequently, M.P(MD)No.1 of 2014 and CrI.M.P.(MD)No.4093 of 2016 are closed.

Sd/-

Assistant Registrar(co)



To

1.The Judicial Magistrate No.II, Dindigul.

2.-Do-Through The Chief Judicial Magistrate, Dindigul.

3.The Inspector of Police,
District Crime Branch,
Dindigul District.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

COPY TO:

The Section Officer,
Criminal Section, Madurai Bench of Madras High Court, Madurai.

+1cc to M/S.V.R.VENKATESAN, Advocate SR.No.78462

+1cc to M/S.R.ANAND, Advocate SR.No.78400

SMS

MAS/KK/SAR2:26.09.2017:4P-8C

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