

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 28.08.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

Crl.OP.No.10079 of 2013

and

M.P.No.1 of 2013

1. Mathew Scaria
2. K.S.Sacaria
3. Mohan Varghese
4. K.K.Varkese
5. Mathew Oomen
6. Mathew Ninan @

Tarun Mathew Ninan

... Petitioners

Vs.

Shanthi

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, prayed to call for the records in C.C.No.99 of 2006 on the file of the learned Judicial Magistrate No.VII, Coimbatore and quash the same in so far as the petitioners herein are concerned.

For Petitioners : Mr.R.Thiagarajan

For Respondent : No Appearance

ORDER

This petition has been filed by the accused 6, 10, 11, 12, 13 and 15 to quash the proceedings in C.C.No.99 of 2006 on the file of the learned Judicial Magistrate No.VII, Coimbatore.

2. The learned counsel for the petitioners has submitted that the petitioners herein are the partners of the accused No.1 namely Cardamam Marketing Corporation. He further submitted that the respondent herein has filed a private complaint stating that the accused No.1 along with the other accused persons have committed an offence punishable under Sections 420 r/w 120 of I.P.C. He further submitted that based on the said complaint, the learned Judicial Magistrate No.VII, Coimbatore, has taken the case on file in C.C.No.99 of 2006 and issued summons to the accused persons including the petitioners herein. He further

submitted that after receipt of summons, some of the accused viz., Accused Nos.1, 3, 7, 8 and 9 have filed CrI.O.P.No.13434 of 2006 to quash the proceedings against them. He further submitted that this Court by the Order dated 02.03.2012 has allowed the petition and quashed the proceedings against the accused Nos.1, 3, 7, 8 and 9. He further submitted that the petitioners herein are only the partners of the Accused No.1. He further submitted that since, the proceedings against the accused No.1 itself was quashed, the petitioners herein are entitled for the same benefits and hence he prayed to quash the proceedings against the petitioners also.

3. Eventhough notice was served on the respondent, the respondent neither appeared in person nor through counsel. Hence, after hearing the arguments of the learned counsel for the petitioner and perusing the records, order is being passed in this petition.

4. It is seen from the records that the respondent herein has filed a private complaint stating that the accused Nos.2 to 15 are the partners of the accused No.1 and accused No.16 is the employee of the accused No.1. She has stated in the complaint that the accused No.16 met her and induced her to invest the amount in the first accused firm and accordingly, she has invested a sum of Rs.10,00,000/- with the first accused firm. She further stated that the accused No. 1 to 16 promised her that her amount will be returned in safe with interest. She further stated that subsequently, the accused did not repay the amount and hence they have to be punished for the offence under Section 420 r/w 120 of I.P.C.

5. The accused Nos.1, 3, 7, 8 and 9 have filed a petition under Section 482 of Cr.P.C in CrI.OP.No.13434 of 2006 to quash the proceedings in C.C.No.99 of 2006 on the file of the learned Judicial Magistrate No.VII, Coimbatore. This Court after hearing both sides and perusing the materials in Paragraph Nos. 16 to 20 has observed as follows:

"16. In Ajay Mitra - Vs- State of M.P and others (AIR 2003 SC 1069), which arose out of a contract pertaining to commercial transaction, the Hon'ble Supreme Court has taken into consideration Bhajan Lal's Case (AIR 1992 SC 604) and other decisions and it has been held that the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, did not constitute any offence as against the appellants therein. Accordingly, the appeals are allowed and the proceedings against the accused therein were quashed.]

17. In the considered opinion of this court, the ratio laid down in the above said decisions are squarely applicable to the facts of this case. In order to hold a person guilty of cheating, it is necessary to show that the concerned person/accused had fraudulent or dishonest intention at the inception and only in that event, the ingredients of the offence of cheating have been made out. Mere failure to keep up the promise subsequently, in the absence of such a culpable intention to cheat the person at the inception, cannot lead to the inference that the person has committed the offence of cheating.

18. Except the averment made in para-15 of the complaint, nothing has been stated in the complaint as to how the petitioners/accused have conspired together and with an intention to cheat the respondent/complainant at the inception itself. The averments made in the complaint would, prima facie, disclose that with a view to harass the petitioners/accused, the averments have been made in para-15 of the complaint.

19. Even assuming, without admitting that the averments made in the complaint can be taken as true on its face value, still the ingredients of the offence of Section 420 r/w 120-B IPC have not been made out against the petitioners. In the considered opinion of this Court, the continuance of the present proceedings would lead to miscarriage of justice and, therefore, it is liable to be quashed.

20. In the result, this petition is allowed and the private complaint in C.C.No.99 of 2006 pending on the file of the Judicial Magistrate No.7, Coimbatore, insofar as the petitioners/A-1, A-3, A-7, A-8 and A-9 are quashed. Consequently, connected miscellaneous petition is closed."

6. The petitioners herein are on the same footing with that of the accused Nos. 3, 7 to 9. Hence, the aforesaid Order will apply to the present petitioners also. Therefore, the proceedings against the petitioners herein in C.C.No.99 of 2006 on the file of the Judicial Magistrate No.VII, Coimbatore has to be quashed.

7. In the result, this petition is allowed. The proceedings in C.C.No.99 of 2016 on the file of the Judicial Magistrate No.VII are quashed in so far as the petitioners herein are concerned. Consequently, connected petition is closed.

Sd/-
Assistant Registrar(CO)

// True Copy//

Sub Assistant Registrar

vv

To

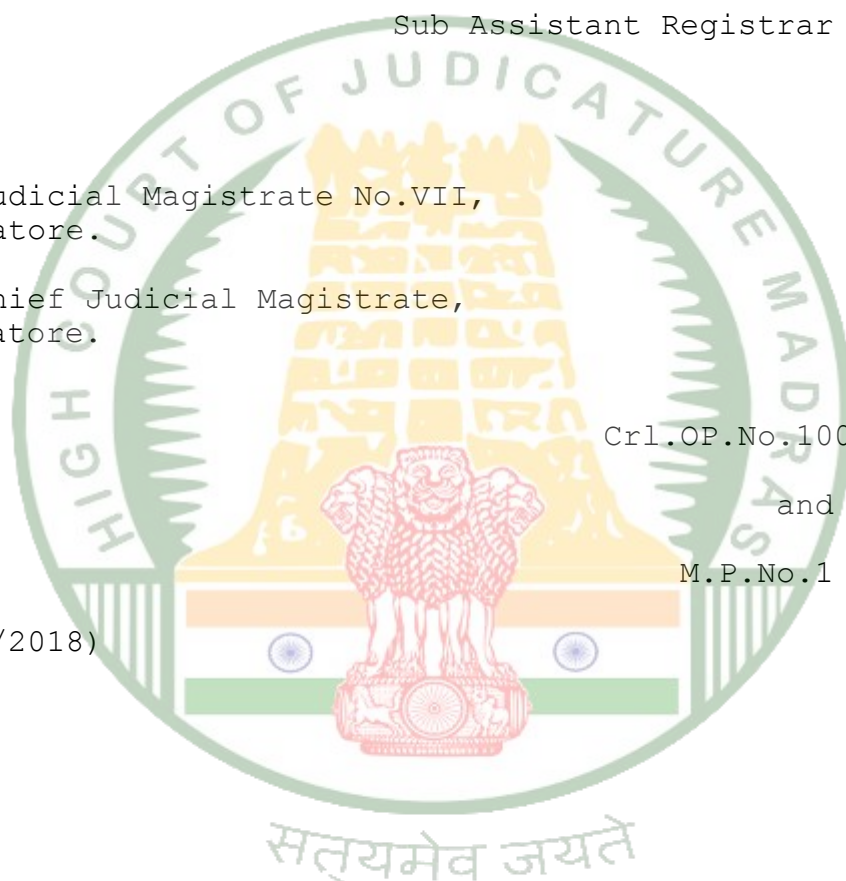
1. The Judicial Magistrate No.VII,
Coimbatore.
2. The chief Judicial Magistrate,
Coimbatore.

Crl.OP.No.10079 of 2013

and

M.P.No.1 of 2013

VD (CO)
RMP (24/09/2018)



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