IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 04.04.2018

Orders Reserved on	Orders Pronounced on
21.09.2017	04.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.No.5464 of 2011
andCrl.M.P.No.1 of 20111.

1. Rev.Samuel D.Stephens
   President National Association of
   Interdependent Churches
   No.48, Chairman Chinnaiah Road
   N.M.Extension, Salem-7.

2. R.S.Vasantha Raj Albert
   Council Member
   National Association of
   Interdependent Churches
   No.1, 3rd Street, Krishna Nagar
   Thiru.Vi.Ka. Nagar, Chennai

3. Joshua Vijayakumar
   Trustee, National Association of
   Interdependent Churches
   Ist Floor, Jonespuram 3rd Street,
   Pasumalai, Madurai.

4. Pastor Paul Raj
   General Co-Ordinator
   National Association of
   Interdependent Churches
   No.48, Chairman Chinnaiah Road
   N.M.Extension, Salem-7. ... Petitioners / Accused 1 to 4

-vs-

A.Samuel Ramasamy ... Respondent / Complainant

PRAYER :

Criminal original petition, filed under Section 482 of Criminal Procedure Code, seeking to call for the records relating to proceedings in C.C.No.695 of 2006, on the file of the Judicial Magistrate No.II, Poonamallee and quash the same.

For Petitioner : Mr.K.S.Dinakaran, Senior Counsel for Mr.M.Arokiaraj

For Respondent : No appearance

O R D E R

The criminal original petition has been filed, under Section 482 Cr.P.C., by the petitioners / accused seeking to quash the proceedings initiated against them by the respondent / complainant in C.C.No.695 of 2006, pending on the file of the learned Judicial Magistrate No.II, Poonamallee.

2. The case of the respondent / complainant in brief is that the petitioners / Accused in the private complaint are the President, Council Member, Trustee and General Co-Ordinator of the National Association of Interdependent Churches (in short, NAIC). He is doing Gospel work from 1983 onwards having himself got faith in Jesus Christ and during 1980, he got Baptised and thereafter, he became an independent Pastor. Furthermore, during 1994, the World Wide Mission had also ordained the respondent / complainant as a Pastor and thereafter, he had established Churches at Veerapuram, Thiruvallur Park Nagar, Madhuravoyil, Ambattur, Korattur, Kottur, Gnayiru, Karanodai, Srirangam (Trichy) and Ranchi (Bihar) and in several other places totalling more than 250 in number.

3. According to the respondent / complainant, as an independent organiser, between 1983 and 1996, he brought many Churches situated in the Circle of Chennai and Thiruvallur and its surrounding area under his wing by his missionary efforts. Resultantly, about 250 Churches were under his control as he is the sole organizer within the Biblical Jurisdiction of preaching gospel and members run to 1,50,000 including non-christian and christian faith. That apart, about 1000 women leaders and youths and about 20,000 children were also under his wing.

4. During February 1996, the first petitioner / first accused with an object of acquiring wrongful gain to his organisation (NAIC), induced and abetted the second petitioner / second accused and the second petitioner / second accused, as an agent of the first petitioner/ first accused, met the respondent / complainant in a Pastors' Meeting conducted by the respondent / complainant and made a false representation stating that their Organisation, namely, NAIC is a Society, registered under the Co-operatives Act and forced him to join in their Organisation along with the Churches under, which are under his wing and issued a folder to him promising that they would provide financial support for the construction of Churches, purchasing

Bibles and would make arrangements for issuing licence to the Pastors of the Churches under the respondent / complainant's wing to conduct Christian marriages.

5. Further, according to the respondent / complainant, he and the Churches under his wing joined NAIC Organisation of the petitioners 1 and 2 / respondents 1 and 2, but for the fact that it is a registered Society, he and the Churches under his wing would not have joined the Organisation during 1996. The respondent / complainant was given a post of Co-ordinator in the said Organisation and for which a flag and shield were also issued to him by the first petitioner / first accused. Thereafter, the first petitioner/ first accused, with an intention criminally, issued letters, dated 11.08.2000 and 21.03.2001, signed by the fourth petitioner / fourth Accused to the respondent / complainant and the Churches under his wing in order to collect Rs.1,50,000/- and Rs.75,000/- from the unemployed youths for providing jobs in Singapore, but, inasmuch as it was beyond the scheme of the gospel work, the respondent / complainant had refused it. Further, the fourth petitioner / fourth Accused declared the above said Organisation as a registered one and the petitioners / respondents received subscription runs to several lakhs from the respondent / complainant and the Churches under his wing and for which the petitioners / respondents issued bogus membership certificates to the respondent / complainant and his Churches.

6. Further, according to the respondent / complainant, NAIC Organisation is not a registered Society as declared by the first petitioner / first accused, as the District Registrar, Salem West, sent a reply dated 29.04.2006, for the respondent / complainant's letter, dated 28.02.2005, stating that no such Society has been registered in the name and style of National Association of Interdependent Churches (NAIC). Aggrieved by the act of the petitioners / respondents, the respondent / complainant lodged a private complaint in C.C.No.695 of 2006, before the learned Judicial Magistrate No.II, Poonamallee, under Section 200 Cr.P.C., seeking to examine the witnesses, take cognizance of the offence, committed by the petitioners/ respondents, punishable under Sections 120(B), 420 and 465 I.P.C., and issue summons to them to appear for the trial. Challenging the same, the petitioners / respondents have invoked the inherent jurisdiction of this Court under Section 482 Cr.P.C.

7. Heard Mr.K.S.Dinakaran, learned Senior Counsel, appearing for Mr.M.Arokiaraj, learned counsel on record for the petitioners and carefully perused the materials placed on records. Though several opportunities were given, neither the respondent nor his counsel entered appearance.

8. The learned senior counsel for the petitioners contended that the complaint is bereft of material particulars and though the case has been filed for the offence under Sections 120B, 420 and 465 of IPC, absolutely no averment has been made in respect of the ingredients of the offences alleged. The learned senior counsel submitted that it is a well settled principle of law that for making out an offence of cheating there should be mis-representation and intention to cheat at the inception which is an essential ingredients of cheating and that in the present case the aspect of mis-representation in the initial stage was not there and that on going through the entire complaint and the materials filed along with the complaint there is absolutely no averment that the accused had fraudulent or dishonest intention at the time of making the representation or promise and that such a culpable intention right from the time of entering into the agreement cannot be presumed merely from the failure of the accused keeping the promise at a subsequent date and that in the present complaint there is no whisper that the accused made dishonest representation at the initial stage when asking the complainant and his Churches to join the organization. No material has been brought in record to satisfy the ingredients of cheating. Further, other than a bare averment no material has also been placed to prove the conspiracy between the petitioners.

9. The learned senior counsel further contended that the charge against the petitioner for the offence under Section 465 of IPC is also not maintainable since in order to make out the case for forgery, it has to be established that the person accused of offence made the complainant to believe that the said document is signed by a person or his authority knowing fully well that the said person has not signed or none had signed on the authority of the said person and further it is not the case of the complainant that the petitioners forged some other persons' record. Even as per the averment it is the case of the complainant that the petitioners had falsely stated that the organization NAIC is registered under the Co-operative Societies Act, whereas it is not so. The learned senior counsel also further contended that no material had been produced to show that the petitioners are guilty of offences alleged.

10. The learned senior counsel further contended that the entire proceedings against the petitioners is an abuse of process of law since it had been filed only with an oblique motive and wrecking vengeance against them. He would further contend that prior to this complaint an earlier complaint had been initiated by the respondent for prosecution against the first and fourth petitioners for the offence of defamation on 17.02.2003 in C.C.No.655 of 2003 before the same trial court and on the petitioners filing Criminal Original Petition 37509 of

2004 this Court by order dated 29.12.2004 has quashed the proceedings. Even as per Document No.10 dated 02.01.2002 enclosed along with the complaint, the fourth petitioner had issued a circular to the complainant which contains the details relating to the registration of the association. The fourth petitioner had also stated that though the organization was started in the year 1988 there were several hurdles and obstacles faced by the petitioner for registering the name as a National Association and thereby the nomenclature of the association was changed as Non-Denominational Association of Interdependent Churches instead of National Association of Interdependent Churches and that the organization got registered only during 2001 and the Registration Number is 71 of 2001, dated 13.8.2001 and thereby the averments that the organization was not a registered one runs contrary to the document filed along with the complaint and that the respondent/ complainant was also very well aware of the change of the name. While this is so, on 16.01.2003, the fourth petitioner issued a circular expelling the respondent/complainant from the association. Thereafter,on 17.02.2003 the respondent / complainant had filed a complaint against the first and fourth petitioners for the offence under Section 500 IPC before the learned Chief Judicial Magistrate and in that complaint the respondent/complainant had not mentioned about the nomenclature of the association or that the accused in that case were representing any association. Further, in the above complaint for defamation nothing had been stated about the petitioners having cheated the respondent/complainant or that they have committed forgery during the year 1996.

11. The learned counsel would further contend that since the respondent/complainant continued to misuse the name of the Association representing to be its Coordinator the petitioners had filed a suit against him in O.S.No.118 of 2003 against the respondent/complainant not to conduct Evangelical meetings in the name of the association known as Non-Denominational Association of Interdependent Churches and hereby the respondent/ complainant was well aware that the petitioners were running the registered organization only in the name of Non-Denominational Association of Interdependent Churches. The respondent / complainant had also filed a written statement and in that written statement nothing had been stated that the petitioners/ accused had committed the offences of cheating or forgery.

12. As stated above the first and fourth petitioners had filed a petition in Crl.O.P.No.37509 of 2004 for quashing the proceedings in C.C.No.655 of 2003 and this Court had quashed the proceedings in C.C.No.655 of 2003 by order dated 29.12.2004.

After the complaint was quashed in order to wreck vengeance and in order to explain the delay the respondent/complainant feigning to be not aware of anything had sent a letter to the Registrar seeking information as to whether an association was registered in the name of National Association of Interdependent Churches. Even in the sworn statement the respondent/complainant had stated that he received a reply stating that there was no association registered in the name of National Association of Interdependent Churches, whereas an association had been registered in the name of Non-Denominational Association of Interdependent Churches during the year 2001. Thereafter, only on 10.05.2006, the present complaint was filed for the offence under Sections 120B, 465 and 420 IPC and thereby though he was aware of the change of nomenclature of the association the complaint had been filed to wreck vengeance as if the respondent/complainant was induced in the year 1996. On 27.02.2009, the petitioners had filed copy application seeking certified copy of the documents filed along with the complaint to prove that the complaint was filed only in order to wreck vengeance and also to prove that even in the documents filed along with the complaint, the complainant was aware and that he had knowledge with regard to the nomenclature of the association was Non-Denominational Association of Interdependent Churches. Since the copy application was returned the petitioners had filed Crl.O.P.No.12743 of 2007 against the return of copy application and this Court by order dated 27.02.2009 directed the trial court to furnish certified copies of the required documents to the petitioners. Thereafter, the petitioners have filed the present quash petition. He would further submit that the perusal of the documents would go to show that the complainant was well aware that the name of the association as Non-Denominational Association of Interdependent Churches and due to certain glitches there was delay in registering it.

13. He would further submit that the complaint had been filed with mala fide and in maliciously instituted with an ulterior motive for wreaking vengeance on the petitioner with a view to spite them due to private and personal grudge.

14. The learned senior counsel submitted that moreover the petitioners were all outside the territorial jurisdiction of the trial court and that the trial court did not follow the procedure under Section 200 Cr.P.C., and prayed for quashing of the proceedings.

15. To fortify his arguments the learned Senior Counsel relied on the decisions of the Hon'ble Apex Court reported in:

1. Fixity Packaging Industries Private Limited vs. Udyen Jain (HUF) reported in (2009) 8 SCC 761; and
2. State of Haryana v. Bhajan Lal, reported in 1992 (Suppl)

(1) SCC 335.

16. Though notice was served on the respondent through Court and by private notice, the respondent neither appeared nor engaged a counsel.

17. Heard the learned counsel for the petitioners and also gone through the, petition copy of the complaint and the documents filed along with the quash petition.

18. It is to be seen that for constituting offence of cheating the essential ingredients of Section requires that there should be:

(1) deception of any person;

(2) (a) Fraudulently or dishonestly inducing that person

(i) to deliver any property to any person; or

(ii) to consent that any person shall retain any property; or

(b) intentionally inducing that the person to do or omit to do anything which he would not do or omit, if he were not so deceived and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property.

19. In this case there is absolutely no averment that the petitioners had the intention to cheat the defacto complainant from the inception. Further it is seen that admittedly, there are disputes pending between the petitioners and the respondent and that earlier the respondent had filed a private complaint in C.C.No.655 of 2003 for the offence under Section 500 IPC and in that complaint no averment of cheating or forgery had been made against the petitioners and only after the complaint was quashed the present complaint has been filed.

20. The Hon'ble Supreme Court in a case of Fixity Packagig Industries Peivate Limited vs. Udyen Jain (HUF) repoted in (2009) 8 SCC 761 has held that:

> "7.The question that therefore arises for consideration is whether the material on record prima facie constitutes any offences against the accused. The contention of the appellant is that if the allegations made in the complaint and FIR, even if accepted to be true in entirety did not disclose the ingredients of any offence of forgery (sections 467 and 471) or cheating (section 420) or insult (section 504) or wrongful restraint (section 341) or causing hurt (section 323) and there was no other material to show any offence and therefore, their application ought to have been accepted.

8. This Court has time and again drawn attention to the growing tendency of complainants attempting to give the cloak of a criminal offence to matters which are essentially and purely civil in nature, obviously either to apply pressure on the accused, or out of enmity towards the accused, or to subject the accused to harassment. Criminal courts should ensure that proceedings before it are not used for settling scores or to pressurise parties to settle civil disputes. But at the same, it should be noted that several disputes of a civil nature may also contain the ingredients of criminal offences and if so, will have to be tried as criminal offences, even if they also amount to civil disputes. [See: G. Sagar Suri v. State of U.P. [2000 (2) SCC 636] and Indian Oil Corporation vs. NEPC India Ltd. [2006 (6) SCC 736]. Let us examine the matter keeping the said principles in mind.

Sections 467 and 471 of the Penal Code

9. Let us first consider whether the complaint averments even assuming to be true make out the ingredients of the offences punishable either under section 467 or section 471 of Penal Code.

10. Section 467 (in so far as it is relevant to this case) provides that whoever forges a document which purports to be a valuable security, shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine. Section 471, relevant to our purpose, provides that whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document, shall be punished in the same manner as if he had forged such document.

11. Section 470 defines a forged document as a false document made by forgery. The term "forgery" used in these two sections is defined in section 463. Whoever makes any false documents with intent to cause damage or injury to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into express or implied contract, or with intent to commit fraud or that

the fraud may be committed, commits forgery. Section 464 defining "making a false document" is extracted below :

12. Section 464 defining “making a false document” is extracted below:

"464. Making a false document.--A person is said to make a false document or false electronic record---

First.--Who dishonestly or fraudulently -

(a) makes, signs, seals or executes a document or part of a document;

(b) makes or transmits any electronic record or part of any electronic record;

(c) affixes any digital signature on any electronic record;

(d) makes any mark denoting the execution of a document or the authenticity of the digital signature, with the intention of causing it to be believed that such document or a part of document, electronic record or digital signature was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or Secondly.--Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with digital signature either by himself or by any other person, whether such person be living or dead at the time of such alternation; or Thirdly.--Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his digital signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration.

Explanation 1 - A man's signature of his own name may amount to forgery.

Explanation 2 - The making of a false document in the name of a fictitious person, intending it to be believed that the document was made by a real person, or in the name of a deceased person, intending it to be believed that the document was made by the person in his lifetime, may amount to forgery.

[Note: The words `digital signature' wherever it occurs were substituted by the words `electronic signature' by Amendment Act 10 of 2009]."

13. The condition precedent for an offence under sections 467 and 471 is forgery. The condition precedent for forgery is making a false document (or false electronic record or part thereof). This case does not relate to any false electronic record. Therefore, the question is whether the first accused, in executing and registering the two sale deeds purporting to sell a property (even if it is assumed that it did not belong to him), can be said to have made and executed false documents, in collusion with the other accused.

14. An analysis of section 464 of Penal Code shows that it divides false documents into three categories:

1) The first is where a person dishonestly or fraudulently makes or executes a document with the intention of causing it to be believed that such document was made or executed by some other person, or by the authority of some other person, by whom or by whose authority he knows it was not made or executed.

2) The second is where a person dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part, without lawful authority, after it has been made or executed by either himself or any other person.

3) The third is where a person dishonestly or fraudulently causes any person to sign, execute or alter a document knowing that such person could

not by reason of (a) unsoundness of mind; or (b) intoxication; or (c) deception practised upon him, know the contents of the document or the nature of the alteration.

In short, a person is said to have made a `false document', if (i) he made or executed a document claiming to be someone else or authorised by someone else; or (ii) he altered or tampered a document; or (iii) he obtained a document by practicing deception, or from a person not in control of his senses."

21. Likewise to bring home the averments for offence of forgery the Hon'ble Supreme Court in the above cited Judgment held as follows:-

"26. The Penal Code however defines `fraudulently', an adjective form of the word `fraud', in section 25, as follows : "A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise".

27. The term "fraudulently" is mostly used with the term "dishonestly" which is defined in section 24 as follows : "Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person is said to do that thing "dishonestly".

28. To `defraud' or do something fraudulently is not by itself made an offence under the Penal Code, but various acts when done fraudulently (or fraudulently and dishonestly) are made offences. These include:

(i) Fraudulent removal or concealment of property (sec.206, 421, 424) (ii) Fraudulent claim to property to prevent seizure (sec. 207).

(iii) Fraudulent suffering or obtaining a decree (sec. 208 and 210)

(iv) Fraudulent possession/delivery of counterfeit coin (sec.239, 240, 242 and 243).

(v) Fraudulent alteration/diminishing weight of coin (sec. 246 to 253) (vi) Fraudulent acts relating to stamps (sec. 261-261)

(vii) Fraudulent use of false instruments/weight /measure (sec.264 to 266)

(viii) Cheating (sec. 415 to 420)

(ix) Fraudulent prevention of debt being available to creditors (sec. 422).

(x) Fraudulent execution of deed of transfer containing false statement of consideration (sec. 423).

(xi) Forgery making or executing a false document (sec. 463 to 471 and 474)

(xii) Fraudulent cancellation/destruction of valuable security etc.(sec. 477)

(xiii) Fraudulently going through marriage ceremony (sec.496). It follows therefore that by merely alleging or showing that a person acted fraudulently, it cannot be assumed that he committed an offence punishable under the Code or any other law, unless that fraudulent act is specified to be an offence under the Code or other law."

22. In State of Haryana v. Bhajan Lal, 1992 (Suppl) (1) SCC 335, the Hon'ble Apex Court held as follows:

"In the exercise of the extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Code of Criminal Procedure, the following categories of cases are given by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guide- i7 myriad kinds of cases wherein such power should be exercised:

(a) where the allegations made in the First Information Report or 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 a case against the accused;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(c) where the un-controverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(f) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(g) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."

23. Applying the ratio laid down by the Apex Court in the judgments cited above, and on going through the averments in this case and also taking into consideration the documents and the circumstances attended to this case and the submissions made by the learned Senior Counsel, this Court is of the opinion that no case for the offence of cheating, forgery and criminal conspiracy to commit the offence of forgery and cheating are made out against the petitioners.

24. Hence, this court finds that the further proceedings against the petitioners is nothing but an abuse of process of law and thereby the proceedings in C.C.No.695 of 2006, on the file of the Judicial Magistrate No.II, Poonamallee are quashed. This Criminal Original Petition stands allowed. Consequently, Crl. M.P.No.1 of 2011 is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

Krk/gr.

To:

The Judicial Magistrate No.II,
Poonamallee.

+2ccS to Mr.M.Arokiaraj, Advocate, S.R.No.24897

Crl.O.P.No.5464 of 2011
and
M.P.No.1 of 2011

RJI(CO)
CS/26/04/18