IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.11484 of 2018 and
Crl.M.P.No.5970 of 2018

1.Latha
2.Lalitha
3.Lavanya
4.Abirami ... Petitioners

Vs.

1. The Inspector of Police,
District Crime Branch,
Coimbatore

2. Pradeep Kumar ... Respondents

PRAYER: Criminal Original Petition filed under Section 438 Cr.P.C. praying to call for the records in Crime No.2 of 2018 on the file of the Inspector of Police, District Crime Branch, Coimbatore and quash the same in respect of the petitioner concerned.

For Petitioners : Mr.B.Kumarasamy

For Respondents
For R1 : Mr.M.Mohamed Riyaz,
Additional Public Prosecutor

For R2 : Mr.S.Saravanan Satheesh Kumar

ORDER

This petition has been filed to quash the F.I.R. in Crime No.2 of 2018 on the file of the first respondent registered for the offence under Section 420 I.P.C.

2. The learned counsel for the petitioner submitted that the second respondent lodged a complaint alleging that he paid a huge sum of Rs.1.35 crores by cash on 21.02.2013 to the first accused in the presence of the petitioners 1 to 3 herein. Again, the second respondent paid a sum of Rs.40 lakhs on various occasions through bank transactions. After receipt of

the same, the accused persons failed to repay and when the second respondent questioned the same, the fourth petitioner has threatened him with dire consequences.

2.1.He further submitted that the first accused is none other than the husband of the fourth petitioner and is running a business under the name and style of Winwin Agro Exports India Private Limited at Erode. The first accused borrowed money from the second respondent to develop his business. Thereafter the first accused used to repay the loan amount to the second respondent from time to time and there is an amount due. Under these circumstances the second respondent demanded exorbitant interest from the first accused. There is a dispute in respect of quantum and as such the first accused refused to pay the amount as demanded by the second respondent.

2.2.He further submitted that while being so, the first accused was kidnapped by the second respondent and huge money was demanded with exorbitant interest. Therefore, the fourth petitioner lodged a complaint before the Inspector of Police, District Crime Branch, Coimbatore and the same was registered in Crime No.95 of 2017. Thereafter, fortunately the first petitioner escaped with injuries all over the body, and had taken treatment in the Coimbatore Medical College Hospital. Thereafter the case was altered into offence under Sections 341, 342, 324, 365, 506(i) I.P.C. r/w Section 4 of TNPPDL Act against the second respondent and his father and his mother. In this regard, the first accused also filed a suit in O.S.No.1006 of 2017 before the learned District Munsif Court, Coimbatore for permanent injunction against the second respondent and it is pending. After receipt of summons from the civil court, the second respondent lodged the impugned complaint with false and frivolous allegations.

2.3.He further submitted that the petitioners are no way connected with the complaint as alleged by the second respondent. The petitioners are living separately and even according to the complaint, the petitioners have nothing to do with the transaction between the first accused and the defacto complainant. Therefore, he sought for quashment of the FIR.

3. Per contra, the learned counsel for the second respondent filed counter and submitted that during the course of business the first accused was introduced by one, Mahendran. They also developed business relationship and he borrowed a sum of Rs.1.35 crores to develop his coconut export business. Thereafter he also borrowed a further sum of Rs.40 lakhs on various dates. When the defacto complainant requested to return back the money, the petitioners and the other accused threatened him with dire consequences. Therefore they colluded each other and cheated

the second respondent. Hence, he prayed for dismissal of this quash petition.

4. The learned Additional Public Prosecutor would submit that the case has been registered in Crime No.2 of 2018 for the offence under Section 420 I.P.C. Though it is a business transaction, the accused persons introduced the defacto complainant and borrowed a sum of Rs.1.35 crores and thereafter did not repay the same. Further he submitted that the complaint is only at the stage of FIR and it has to be investigated further to unearth the truth. Therefore, he prayed for dismissal of this quash petition.

5. Heard, the learned counsel for the petitioners, learned counsel for the second respondent and the learned Additional Public Prosecutor appearing for the first respondent.

6. On the complaint lodged by the second respondent, the first respondent registered the case in Crime No.2 of 2018 as against five accused persons in which the petitioners are arrayed as A2 to A5. The crux of the complaint is that the first accused borrowed a sum of Rs.1.35 crores on 21.02.2013 to develop his business and thereafter a sum of Rs.40 lakhs on various dates, but he refused to repay the said amount and thereby cheated the second respondent.

7. Admittedly, there is a business transaction between the first accused and the second respondent in respect of developing the coconut export business. It is also seen that the first accused repaid certain amount and there is a due amount payable by him. In this regard there is a dispute in respect of quantum of the balance amount. In fact, the first accused was kidnapped by the second respondent and his family members and exorbitant interest was demanded. Therefore, a case was registered on the complaint lodged by the fourth petitioner, and the first respondent registered a case in Crime No.95 of 2017 and subsequently offences have been altered into under Sections 341, 342, 324, 365, 506(i) I.P.C. r/w Section 4 of TNPPDL Act against the second respondent and his family members. Thereafter the first accused also filed a suit in O.S.No.1006 of 2017 before the learned District Munsif Court, Coimbatore for permanent injunction as against the second respondent. On receipt of summons from the said suit, the second respondent lodged the impugned complaint before the first respondent.

8. On perusal of the entire complaint, it shows that it is completely a business transaction between the first accused and the second respondent. Admittedly, some of the amount was repaid by the first accused and in respect of balance amount

there is a dispute in the quantum. In this regard, a suit has also been filed by the first accused. Even before that, there was another crime registered as against the second respondent and as such the present complaint is nothing but a counter blast to the first complaint lodged by the fourth petitioner, who is none other the wife of the first accused.

9. That apart, even according to the second respondent / defacto complainant there is absolutely no allegations as against the petitioners herein. The entire transaction is between the first accused and the second respondent. Therefore the present complaint cannot be sustained as against the petitioners and it is a clear abuse of process of law. Therefore, the impugned complaint cannot be sustained as against the petitioners. It is relevant to extract Section 420 of the Penal Code, which reads as thus:

> "Section 420. Cheating and dishonestly inducing deliver of property:- Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable to being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

The ingredients to constitute an offence under Section 420 are as follows:
i) A person must commit the offence of cheating under Section 415; and
ii) The person cheated must be dishonestly induced to

(a) deliver property to any person; or
(b) make, alter or destroy valuable security or anything signed or sealed and capable of being converted into valuable security.

Cheating is an essential ingredient for an act to constitute an offence under Section 420.

10. It is also relevant to extract the judgment in the case of Vinod Natesan Vs. State of Kerala and Others reported in (2019) 2 SCC 401, wherein it is held as follows:

> "10. Having heard the appellant as party in person and the learned advocates appearing on behalf of the original accused as well as the State of Kerala and considering the judgment [Tomy

Mathew v. State of Kerala, 2016 SCC OnLine Ker 33330] and order passed by the High Court, we are of the opinion that the learned High Court has not committed any error in quashing the criminal proceedings initiated by the complainant. Even considering the allegations and averments made in the FIR and the case on behalf of the appellant, it cannot be said that the ingredients of Sections 406 and 420 are at all satisfied. The dispute between the parties at the most can be said to be the civil dispute and it is tried to be converted into a criminal dispute. Therefore, we are also of the opinion that continuing the criminal proceedings against the accused will be an abuse of process of law and, therefore, the High Court has rightly quashed the criminal proceedings. Merely because the original accused might not have paid the amount due and payable under the agreement or might not have paid the amount in lieu of one month's notice before terminating the agreement by itself cannot be said to be a cheating and/or having committed offence under Sections 406 and 420 IPC as alleged. We are in complete agreement with the view taken by the High Court.

11. Insofar as the submissions made on behalf of the appellant-party in person that initially the learned Judge dismissed the application and, thereafter when the judgment was dictated and pronounced, the learned Judge has allowed the application and, therefore, the impugned judgment [Tomy Mathew v. State of Kerala, 2016 SCC OnLine Ker 33330] and order passed by High Court is required to be quashed and set aside is concerned, the aforesaid has no substance. What is produced as P-45 is the docket of the file, which does not bear the signature of the learned Judge. Therefore, it cannot be said that initially the learned Judge dismissed the petition and, thereafter, when the judgment was pronounced the order was changed and the application was allowed. Even otherwise, as observed hereinabove, we are more than satisfied that there was no criminality on part of the accused and a civil dispute is tried to be converted into a criminal dispute. Thus to continue the criminal proceedings against the accused would be an abuse of the process of law. Therefore, the High Court has rightly exercised the powers under Section 482 CrPC and has rightly quashed the criminal proceedings. In view of the aforesaid and for the reasons stated above, the present appeal fails and deserves to be dismissed and is accordingly dismissed.”

11. In the above judgment, the Hon'ble Supreme Court of India has held that the ingredients for the offence under Sections 406, 420 are not satisfied and the dispute between the parties are civil in nature and it is not right to convert into criminal dispute. In the case on hand, admittedly on receipt of summons from the suit filed by the first accused, the second respondent lodged the impugned complaint, and the first respondent mechanically registered the case for the offences under Section 420 I.P.C. without even looking into the allegations whether it constitutes any offence.

12. Therefore, the above judgment is squarely applicable to the present case on hand. Further there is no ingredients to make out the offence under Section 420 I.P.C.

13. In view of the above discussions, this Criminal Original Petition is allowed, and the proceedings in Crime No.2 of 2018 on the file of the Inspector of Police, District Crime Branch, Coimbatore is quashed as against the petitioners. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

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To

1. The Inspector of Police,
   District Crime Branch,
   Coimbatore

2. The Additional Public Prosecutor,
   High Court of Madras

+1 cc to Mr.S.Gunalan, Advocate, S.R.No.39239

Crl.O.P.No.11484 of 2018

SSM(18/06/2019)