

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.08.2019

CORAM:

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

CRL.O.P.No.4557 of 2017
and
Crl.M.P.No.3420 & 3421 of 2017

Banumathi

... Petitioner

-vs-

1.The State Tamil Nadu rep. by
The Sub-Inspector of Police,
Central Crime Branch,
EDF-1, Team IV,
Vepery, Chennai - 600 007.
(Crime No.601/2013)

2.Soundarapandian

... Respondent

Prayer: Criminal Original petition is filed under Section 482 of Criminal Procedure Code, to call for the records in C.C.No.1125 of 2015 on the file of the learned XI Metropolitan Magistrate, Saidapet, Chennai, and quash the same.

For Petitioner : Mr.A.Ilaya Perumal

For Respondent : Mr.M.Mohamed Riyaz (for R1)
Additional Public Prosecutor

ORDER

This petition has been filed seeking to quash the proceedings in C.C.No.1125 of 2015 pending on the file of the XI Metropolitan Magistrate, Saidapet, Chennai.

2.Based on the complaint given by the 2nd respondent, the respondent police registered an FIR in Crime No.601 of 2013 for an offence under Sections 406 and 420 of IPC. On the completion of the investigation, a final report was filed before the Court below and the same has been taken on file in C.C.No.1125 of 2015 as against three accused persons for an offence under Sections 406, 420 r/w 34 and 120(b) of IPC. The petitioner has been added as A3.

3.The case of the prosecution is that the son of the petitioner namely, A1 had received a sum of Rs.28,00,000/- from the defacto complainant and this amount was paid on the assurance given by the petitioner and her husband, that it will be returned back. This amount was paid for the purpose of producing a movie by A1. Subsequently another sum of Rs.2,00,000/- has been paid to A1. The cheque that was issued by A1 was also dishonored with an endorsement "stop payment". Therefore, according to the defacto complainant, he has been cheated and all the accused persons conspired together and misappropriated the amount.

4.The learned counsel for the petitioner submitted that even if the final report is taken as it is, along with the materials relied upon by the prosecution, no offence of breach of trust or cheating has been made out against the petitioner. The learned counsel submitted that the simple case of the prosecution is that money was paid by the defacto complainant to A1 on the assurance given by his parents and the amount has not been repaid. These allegations, according to the learned counsel for the petitioner, does not make out an offence of criminal breach of trust and cheating.

5.The learned Additional Public Prosecutor submitted that the respondent police have investigated the case and filed a final report and the statement recorded from the defacto complainant and LW2 to LW5, clearly makes out a prima facie case of breach of trust and cheating. The learned counsel submitted that this Court should not interfere with the proceedings at this stage and the accused persons must be made to face the trial before the Court below.

6.This Court carefully considered the submissions made on either side and the materials available on record.

7.The private notice that was sent to the 2nd respondent has been returned as "information delivered". The Hon'ble Supreme Court in J.K.International vs. State (Govt. of NCT of Delhi) And others reported in (2001) 3 SCC 462 has categorically held that it is not necessary in all cases to hear the defacto complainant, while dealing with quash proceedings at the stage of final report and he can be effectively represented by the Public Prosecutor appearing on behalf of the State. The 2nd respondent has not entered appearance in this case and therefore this Court proceeds to decide the case on merits.

8.The case of the prosecution has been extracted supra. It is a clear case of money being lent by the defacto complainant to A1 and the same not being repaid back to him. According to

the complainant, the money was given to A1 only on the assurance given by his parents. The petitioner before this Court is the mother of A1.

9.It is now a well settled proposition of law that in order to constitute an offence of cheating, there must be an intention to cheat even at the inception. A culpable intention at the very inception, cannot be presumed on the failure to keep up a promise subsequently. Useful reference can be made to the judgment in T.Chandrasekhar vs. State, rep by Inspector of Police, Central Crime Branch, Land Grabbing, Thousand Light P.S., Chennai-600006 and Another reported in (2011) 3 MLJ (Cr1) 644.

10.This is a clear case which is squarely covered by the above said judgment. A1 had failed to keep up his promise to repay back the amount subsequently. That by itself will not give raise to a presumption that there was a culpable intention at the very inception.

11.In the considered view of this Court, the defacto complainant has given a criminal colour to a pure and simple civil dispute and therefore the proceedings itself is an abuse of process of Court.

12.In the result, the proceedings in C.C.No.1125 of 2015, on the file of the learned XI Metropolitan Magistrate, Saidapet, Chennai, is hereby quashed in so far as the petitioner is concerned. Accordingly, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

vs
To

1.The Sub-Inspector of Police,
Central Crime Branch,
EDF-1, Team IV,
Vepery, Chennai - 600 007.

2.The Public Prosecutor,
High Court, Madras.

+1 CC to Mr.A.Ilaya Perumal, Advocate sr 67638.

CRL.O.P.No.4557 of 2017
and
Crl.M.P.No.3420 & 3421 of 2017

SS (CO)
SP (12/09/2019)