

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.02.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL.O.P.No.5346 of 2015 and  
Crl.M.P.No.1 of 2015

1. S.Thangamuthu,  
S/o.Seerappa Gounder,  
Divisional Manager,  
The India Assurance Co., Ltd.,  
Kumaran Shopping Complex,  
Kumaran Road,  
Tiruppur-642 601,  
Residing at:  
10, Telephone Colony,  
Moolapalayam,  
Erode-2.
2. M.Gopalakrishnan,  
S/o.Murugesan,  
Senior Branch Manager,  
The India Assurance Co., Ltd.,  
Kumaran Shopping Complex,  
Kumaran Road,  
Tiruppur-642 601,  
Residing at:  
D-86, Thayumanavar Street,  
'D' Colony, Jothi Nagar,  
Pollachi-642 001.
3. S.Vijeyeswara Prasath,  
S/o.Saminathan,  
Development Officer,  
The India Assurance Co., Ltd.,  
Kumaran Shopping Complex,  
Kumaran Road,  
Tiruppur-642 601,  
Residing at:  
21, Kambar Street,  
Mahalingapuram Post,  
Pollachi-642 002.
4. K.Manoharan,  
S/o.Kumarasamy,  
Development Officer,  
The India Assurance Co., Ltd.,

Kumaran Shopping Complex,  
Kumaran Road,  
Tiruppur-642 601,  
Residing at:  
5, G.I.C. Nagar,  
Coimbatore Road,  
Pollachi-642 002.

5. P.R.Selvaraj,  
S/o.Rangasamy,  
Development Officer,  
The India Assurance Co., Ltd.,  
Kumaran Shopping Complex,  
Kumaran Road,  
Tiruppur-642 601,  
Residing at:  
13, Mahalakshmi Nagar,  
D.Kottampatti,  
Pollachi-642 002.

....Petitioner

Vs.

M.Sathishkumar

....Respondent

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records pertaining to the complaint in C.C.No.88 of 2015 on the file of the Judicial Magistrate No.II, Pollachi quash the same by allowing this criminal original petition.

For Petitioners: Mr.N.Manokaran

For Respondent : Mr.S.Priyanga for  
Mr.K.M.Balaji

ORDER

This Criminal Original Petition is filed to quash the proceedings in C.C.No.88 of 2015 pending on the file of the Judicial Magistrate Court No.II, Pollachi.

2.The petitioners are accused Nos.1 to 5 in C.C.No.88 of 2015, filed by the respondent for the offence under Sections 406, 420, 466, 217, 294(b), 107 and 109 of IPC. The 1<sup>st</sup> petitioner is the Divisional Manager, the 2<sup>nd</sup> petitioner is the Senior Branch Manager and the 3<sup>rd</sup> to 5<sup>th</sup> petitioners are the Development Officers of the New India Assurance Company, Tirupur. The petitioners have convened a meeting on 12.06.2012 to motivate the agents to develop their business, while so, it is alleged that in the course of the said meeting dated 12.06.2012, the petitioners announced incentive under Special Motivation Scheme for agents, who are working in New India

Assurance Company. The respondent was granted license by the Insurance Regulatory and Development Authority (IRDA) to act as an agent for the New India Assurance Company Limited. As per the allegations made in the complaint, the petitioners have promised to give one gram gold coin to the agents, who would collect the premium of Rs.5,00,000/- over and above for the financial year 2012-2013. The respondent has achieved the said target by collecting the premium of Rs.12,78,520/- for the said financial year. Thereafter, the petitioners have not announced any such prize or incentives in the subsequent meeting held on 03.01.2013. On enquiry, the respondent was informed that the scheme was dropped. Hence the respondent filed a private complaint before the learned Judicial Magistrate No.II, Pollachi.

3.The learned counsel for the petitioners would submit that the complaint of the respondent does not make any averment as to infer any fraudulent or dishonest inducement having been made by the petitioners. The learned counsel would further submit that merely because the development officers have motivated their agents by their attractive speech to promote business, it cannot be said that the petitioners have cheated the respondent. Further, there is no material in the complaint to show that the petitioners have had an intention to deceive at the time when the meeting was conducted on 12.06.2013 to constitute the offence of cheating.

4.The learned counsel for the petitioners would further submit that unless the intention to deceive has been in existence at a time when the alleged inducement was made, no complaint for cheating is maintainable and further, a mere failure to keep up promise subsequently, cannot be presumed as an act of leading to cheating. The learned counsel would further submit that as per Section 415 of IPC, a person must dishonestly or fraudulently induce the complainant to deliver any property and should be intentionally induced the complainant to do or omit to do a thing. But in the complaint of the respondent, there is no allegations are made attracting the ingredients of Section 415 of IPC. Hence, he prayed for quashing of the complaint filed by the respondent.

5.The learned counsel for the respondent would submit that the respondent is an agent of New India Assurance Company Limited, Tirupur. The petitioners, who are the Divisional Manager, Senior Branch Manager and the Development Officers of the New India Assurance Company, convened a meeting on 12.06.2012 and announced incentive under Special Motivation Scheme for agents. During the meeting, the petitioners promised to give one gram of gold coin to the agents who would collect Rs.5,00,000/- over and above for the financial year 2012.2013. The respondent fulfilled the target as announced by the

petitioners by collection premium of Rs.12,78,520/- and sought for incentives. On enquiry the respondent was informed the scheme was dropped and all the accused persons have allegedly laughed at him.

6.The learned counsel for the respondent further submitted that the issues that has been raised by the petitioners cannot get into the factual aspect in exercise of its jurisdiction under Section 482 of the Code of Criminal Procedure.

7.On perusal of the available records, it is seen that the allegations as against the petitioners is that they have promised to give one gram gold coin to the agents, who would collect the premium of Rs.5,00,000/- over and above for the financial year 2012-2013. But, they failed to do as promised by them. Further, the issues that have been raised by the learned counsel for the petitioners are factual in nature and this Court is not in a position to appreciate these facts and it is only the Court below which has to consider the same in the course of proceedings on its own merits and in accordance with law. This Court does not want to interfere with the proceedings at this stage and it is left open to the petitioner to raise all the contentions before the Court below in the course of trial.

8.In view of the above, this Criminal Original Petition is dismissed by giving liberty to the petitioners to raise all the issues before the Court below. This Court directs the trial Court, to expedite the trial in C.C.No.88 of 2015 and complete the same within a period six months from the date of receipt of a copy of this order. The appearance of the petitioners before the Trial Court is dispensed with. However, this order will not stand on the way of the Trial Court to insist for the appearance of the petitioners for receiving copies under Section 207 of Cr.P.C., framing of charges, questioning under Section 313 of Cr.P.C. and judgment and as and when the Trial Court feels it necessary. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Judicial Magistrate No.II,  
Pollachi.

+1cc to Mr.N.Manokaran, Advocate in SR.NO..14950

+1cc to M/s.K.Balaji, Advocate in SR.NO..15916

CRL.O.P.No.5346 of 2015

BR(CO)  
RV(23/10/2020)



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