IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.10.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.9246 of 2020
and Crl.M.P.Nos.4228 & 4229 of 2020

G.V.Ramanigopal
S/o. Late G.Venkatraman ...Petitioner

Vs.

1. The State Rep by
   The Inspector of Police,
   Thuraipakkam Police Station,
   (Crime No.101 of 2020)

2. R.Umanathan ...Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records and quash all further proceedings in Crime No.101 of 2020 on the file of the Inspector of Police, Thuraipakkam Police Station, Chennai.

For Petitioner : Mr.R.Shanmuga Sundaram
Senior Counsel.
For Mr.Manuraj

For Respondents
For R1 : Mr.S.Karthikeyan
Additional Public Prosecutor.
For R2 : Mr.V.Manohar

ORDER

This petition has been filed to quash the FIR in Crime No. 101 of 2020 on the file of the first respondent registered for the offence under Section 420 of IPC as against the petitioner.

2. Mr.R.Shanmuga Sundaram, learned Senior Counsel appearing for the petitioner would submit that the second respondent lodged complaint alleging that his son had joined the Chennai School of Ship Management to pursue the Alternative Training Scheme from the academic year 2014-2015. He paid a sum of Rs.50,000/- on 17.02.2014 and a sum of Rs.5,80,000/- was also paid between 18.03.2014 and 10.12.2015. He also paid a sum of Rs.2,00,000/- for the next academic year 2015-16. The second

year course involves an on-board training component for nine months. The petitioner had promised to avail a training opportunity with a Mumbai based shipping company for all second year students, including the son of the second respondent herein. But the petitioner failed to avail any training opportunity to his son. Further alleged that his son on his own efforts, secured on-board training with Mumbai based company for six months from 15.03.2017 to 23.03.2017 as such they had to pay Rs.60,000 towards the fees. He also had to pay another sum of Rs.60,000/- more for on-board training with MI Off shore and Marine Services LPP for a period of three months. Thereafter, the son of the second respondent met with the petitioner along with the necessary certificates of on-board training and informed him that he was ready to resume his studies.

2.1. The second respondent further alleged that the petitioner informed his son that management had relocated and the remaining classes would be taken place at the residence of the petitioner in Perungudi, Chennai. Therefore, the petitioner further informed to the second respondent's son that he need not attend the third year classes and after making payment of Rs.1,90,000/- he may receive the certificates for the Alternative Training Scheme course. On enquiry, the second respondent came to understand that the Director General of Shipping, Ministry of Shipping, Government of India, who is the competent authority to issue approval/permission to the petitioner and his institution had withdrawn its approval. When the son of the second respondent requested the petitioner to return his school certificates, the petitioner refused to return the same, thereby cheated the second respondent's son and also other students viz., Sarathkumar and Venkatesan.

2.2. The learned Senior Counsel further submitted that the second respondent's son along with three of his classmates were placed with Great Offshore Limited, an offshore company based in Mumbai on 24.03.2017. Subsequently, they were place with Hoger Offshore and Marine Pvt. Ltd., on 26.10.2017. They also provided on-board training on Malviya Thirty-Three vessel, which was duly informed to the second respondent and his son. Insofar as the other classmates are concerned, after completion of their on-board training, they returned to the petitioner's institution. But the second respondent's son failed to report for the on-board training with the above said companies.

2.3. He further submitted that in respect of withdrawal of approval, the petitioner's management was communicated vide letter dated 21.07.2017, for which the petitioner replied by the letter dated 24.08.2017. In fact, the petitioner also filed a writ petition before this Court in W.P.No.24916 of 2017 challenging the said order dated 21.07.2017 and the same is pending before this Court. By an email dated 16.12.2017, the Official of the Director General of Shipping has explained that the students who are admitted are permitted to continue and conclude their programs, as such there is no bar for the second respondent's son to continue and complete his Alternative Training Scheme program. In fact, other cadets who had started their course along with the second respondent's son have successfully completed their program.

2.4. In respect of non return of certificate is concerned, it is also baseless since by a letter dated 04.03.2020, the petitioner duly informed to the first respondent that there is absolutely no issues to return the certificates and mark sheets. Therefore, there is absolutely no intent to cheat or defraud the second respondent at any point of time. In support of his contention, he relied upon the following judgments :-

i) (2003) 6 SCC 697 - Islamic Academy Vs. State of Karnataka

ii) Order dt. 13.06.2011 in Crl.O.P.NO.20223 of 2009 - Malini and ors Vs. Gunavathi and ors

iii) 2019 SCC Crl.L.J.3479 - Saifuddin Bharmal Vs. Inspector of Police

iv) (2020) 3 SCC 240 - Sushil Sethi & anr Vs. State of Arunachal Pradesh & ors

Therefore, he sought for quashment of the entire proceedings.

3. Per contra, the learned counsel appearing for the second respondent/defacto complainant filed counter and submitted that the petitioner is conducting unrecognized, unapproved course in Alternative Training Scheme claiming it as the recognized one. In the academic year 2015-2016, the petitioner induced with false propagation and profiles, the son of the second respondent and other students had approached the petitioner and they were thrown to the infrastructure and facilities made available therein to belief that of the son of the second respondent joined the said course. Within a period of six months, they came to know that the college and infrastructure are nothing to do with the petitioner and the petitioner had hired or made some understanding with the said college to impart the course in an arrangement on some terms. Thereafter they chased out of campus and they asked to report to classes at No.36, East Coast Road, Opposite to MGM Disney World, Muttukadu, Chennai, without explaining any reasons for shifting of alleged institution. In the said place no educational materials or infrastructure or class room are made available and in a temporary provisions made to stay and study despite collecting heavy fee towards hostel and food. In fact the students have to contribute and cook for their daily needs was situation created by the petitioner despite making huge amount. Since the said place belongs to Church and due to inconvenience, the said stay was shifted to another place of resort nearby

temporarily and in the course of said periods no classes were conducted. Thereafter, the students were left in lurch to go over to their home. Thereafter the students were called to report to other place, which seems to be an apartment. Even there the students were prevented by the watchman from entering into the campus.

3.1. He further submitted that under the guise of providing on-board training, the students were made to go over Mumbai without any prior arrangement and left them to wander in the Mumbai without any assistance. There is no company as referred by the petitioner herein and no company was in existence. Thereafter at the efforts of the students as well as the well-wishers, they approached a shipping company at Mumbai and thereafter they had taken on-board training as it is essential to sit for the examination, thereby each of the student has spent Rs.60,000/- for such training. Therefore the petitioner played fraud on the innocent student aspirants of Marine Engineering.

3.2. He further submitted that the petitioner also withholding all original document of personal details and past school certificate and also blackmailing to extort further sum of Rs. 1,90,000/- for returning the same along with the certificate of Alternative Training Scheme. Therefore, the offence punishable under Section 420 of IPC is made out as against the petitioner and the first respondent has to investigate further to find out the crime committed by the petitioner. The other students are also lodged complaint as against the petitioner and those complaints are pending for investigation. This petition is premature and it is liable to be dismissed and hence he prayed for dismissal of this petition.

4. The learned Additional Public Prosecutor appearing for the first respondent police submitted that on the complaint lodged by the second respondent, the first respondent registered the FIR in Crime No.101 of 2020 for the offence under Section 420 of IPC. The allegations are that the son of the second respondent after having paid huge amount, as offered by the petitioner, admitted in Alternative Training Scheme for the academic year 2014-15. Thereafter, the petitioner also promised to avail on-board training opportunity at Mumbai based shipping company to all the students of the second year. Thereafter the petitioner did not arrange any training opportunity and all the students had gone to Mumbai at their own expenses and availed training in the Mumbai based company on payment of separate fees. Thereafter the recognization for the petitioner's institution was also cancelled. The petitioner also refused to return the past school certification of the second respondent's son and demanded further amount, thereby cheated the second

respondent. Therefore the petitioner induced the students by joining in their institution without any infrastructure and recognization from the Ministry of shipping and thereby cheated the students. Therefore, the offence under Section 420 of IPC is clearly made out and it is only FIR and it has to be investigated further to find out the truth. Therefore, he prayed for dismissal of this petition.

5. Heard Mr.R.Shanmuga Sundaram, learned Senior Counsel appearing for the petitioner, Mr.V.Manohar, learned counsel appearing for the second respondent and Mr.S.Karthikeyan, learned Additional Public Prosecutor appearing for the first respondent.

6. The second respondent lodged complaint with the allegations that the petitioner did not arrange on-board training for the son of the second respondent herein during the second year viz., 2015-2016. Further alleged that the petitioner continued to offer the programme to the son of the second respondent, even after cancellation of their approval with the Ministry of Shipping, Government of India. The petitioner is also refused to return the past school certificate of the second respondent's son and demanded a sum of Rs.1,90,000/- for returning the school certificate. The petitioner also received huge fee without any infrastructure, class rooms, other hostel facilities and food, thereby cheated the students.

7. It is seen that the petitioner is the Managing director of the Chennai School of Ship Management certified as the Marine Engineering College approved by the Director General of Shipping, Government of India. The son of the second respondent joined with the petitioner college to pursue his Alternative Training Scheme from the academic year 2014-2015. He also paid requisite fee and completed the first year. In the second year, there would be on-board training component for nine months. Accordingly the petitioner sent the second respondent's son along with two other students placed with Great Offshore limited in Mumbai from 24.03.2017 and subsequently with Hoger Offshore and Marine Pvt. Ltd., from 26.10.2017. The son of the second respondent failed to report for the on-board training with those companies.

8. On perusal of records, it is seen from the letter dated 21.07.2017, the petitioner's approval had been withdrawn and it is under challenge in a writ petition in W.P.No.24916 of 2017 before this Court and it is pending. It is also seen from the Email dated 16.12.2017 from the Director General of Shipping that the students who were already admitted are permitted to continue and conclude their programs. In fact other students have completed their course successfully and completed the

diploma. Therefore at the time of offering the course by the petitioner, there was no intention to cheat the second respondent. After completion of the first year course and during the second year course, even according to the second respondent, the petitioner failed to provide on-board training at Mumbai. It is relevant to extract the provisions under Sections 415 & 420 of IPC as follows :-

> "415. Cheating — Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived 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, is said to "cheat".
>
> ....
>
> 420. Cheating and dishonestly inducing delivery 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 of 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.

9. A dishonest concealment of facts is a deception within the meaning of Section 415 of IPC is required -

(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) Intentional inducing 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. Therefore the deception must be at the inception and there must be a fraudulent or dishonest inducement to deliver a property. Such inducement must be intentional. To hold a person guilt of cheating, it is necessary to show that he had fraudulent or dishonest intention at the time of making promise. Therefore, mere failure to keep a promise one cannot presume that he had a culpable intention.

10. In the case on hand, in the academic year 2014-15, the son of the petitioner had joined with the college of the petitioner to pursue the course of Alternative Training Scheme. He successfully completed the first year and in the second year, the petitioner failed to sent the students for on-board training. Thereafter the recognition of the petitioner's institution was withdrawn. Therefore, at the time of admitting the students i.e., at the very initiation of the course there was no intention to cheat them. The disputes between the petitioner and the son of the second respondent are civil in nature.

11. The learned Senior Counsel appearing for the petitioner relied upon the judgment reported in 2019 Crl.L.J.3479 in the case of Saifuddin Bharmal Vs. Inspector of Police, which reads as follows :-

> "24. Admittedly, the petitioner entered into a work contract to install CCTVs in 40 junctions in and around Chennai City and also received a sum of Rs.2,69,80,740/- equivalent to 90% of the total contract value. The condition necessary for an act to constitute an offence under Section 405 of the Penal Code is that the accused was entrusted with some property or has dominion over property. There is on the face of the complaint, no entrustment of the petitioner with any property. The condition necessary for an act to constitute an offence under Section 415 of the Penal Code is that there was dishonest inducement by the accused. No act on part of the petitioner has been alleged that discloses an intention to induce the delivery of any property to the petitioner by the second respondent. There is thus nothing on the face of the complaint to indicate that the petitioner dishonestly induced the second respondent to deliver any property to them. Cheating is an essential ingredient to an offence under Section 420 of the Penal Code. The ingredient necessary to constitute the offence of cheating is not made out from the fact of the complaint and consequently, no offence under Section 420 of IPC is made

out.

25. It has to see that, whether a matter which is essentially of a civil nature has been given a cloak of a criminal offence. Where the ingredients required to constitute a criminal offence are not made out from a bare reading of the complaint, the continuation of the criminal proceeding will constitute an abuse of the process of the Court. In the present case, the averments in the complaint, read on its face, do not disclose the ingredients necessary to constitute offences under the Penal Code. An attempt has been made by the second respondent to cloak a civil dispute with a criminal nature http://www.judis.nic.in despite the absence of the ingredients necessary to constitute a criminal offence. The complaint filed by the second respondent against the petitioner constitutes an abuse of process of Court and is liable to be quashed.

12. He also relied upon the judgment reported (2020) 3 SCC 240 in the case of Sushil Sethi & anr Vs. State of Arunachal Pradesh & ors, the Hon'ble Supreme Court of India held as follows :-

"7. While considering the prayer of the appellants to quash the impugned criminal proceedings against the appellants for the offence under Section 420 IPC, few decisions of this Court on exercise of powers under Section 482 Cr.P.C. are required to be referred to.

7.1 In the case of Bhajan Lal (supra), in paragraph 102, this Court has categorised the cases by way of illustration wherein the powers under Article 226 or the inherent powers under Section 482 Cr.P.C. could be exercised either to prevent the abuse of the process of any court or otherwise to secure the ends of justice. In paragraph 102, it is observed and held as under: "102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases 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 guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) 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.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR 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.

(3) Where the uncontroverted 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.

(4) 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. (5) 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.

(6) 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.

(7) 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.” The aforesaid decision of this Court has been followed subsequently by this Court in catena of decisions.

7.2 In the case of Vesa Holdings Private Limited (supra), it is observed and held by this Court that every breach of contract would not give rise to an offence of cheating and only in those cases breach of contract would amount to cheating where there was any deception played at the very inception. It is further observed and held that for the purpose of constituting an offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. It is further observed and held that even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in the absence of a culpable intention at the time of making initial promise being absent, no offence under Section 420 IPC can be said to have been made out. It is further observed and held that the real test is whether the allegations in the complaint disclose the criminal offence of cheating or not.

7.3 In the case of Hira Lal Hari Lal

Bhagwati (supra), in paragraph 40, this Court has observed and held as under:

"40. It is settled law, by a catena of decisions, that for establishing the offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. From his making failure to keep promise subsequently, such a culpable intention right at the beginning that is at the time when the promise was made cannot be presumed. It is seen from the records that the exemption certificate contained necessary conditions which were required to be complied with after importation of the machine. Since the GCS could not comply with it , therefore, it rightly paid the necessary duties without taking advantage of the exemption certificate. The conduct of the GCS clearly indicates that there was no fraudulent or dishonest intention of either the GCS or the appellants in their capacities as office-bearers right at the time of making application for exemption. As there was absence of dishonest and fraudulent intention, the question of committing offence under Section 420 of the Penal Code, 1860 does not arise. We have read the chargesheet as a whole. There is no allegation in the first information report or the chargesheet indicating expressly or impliedly any intentional deception or fraudulent/dishonest intention on the part of the appellants right from the time of making the promise or misrepresentation. Nothing has been said on what those misrepresentations were and how the Ministry of Health was duped and what were the roles played by the appellants in the alleged offence. The appellants, in our view, could not be attributed any mens rea of evasion of customs duty or cheating the Government of India as the Cancer Society is a nonprofit organisation and, therefore, the allegations against the appellants levelled by the prosecution are unsustainable. The Kar Vivad Samadhan

Scheme certificate along with Duncan [(1996) 5 SCC 591 : 1996 SCC (Cri) 1045] and Sushila Rani [(2002) 2 SCC 697 : (2002) 2 Apex Decisions] judgments clearly absolve the appellants herein from all charges and allegations under any other law once the duty so demanded has been paid and the alleged offence has been compounded. It is also settled law that once a civil case has been compromised and the alleged offence has been compounded, to continue the criminal proceedings thereafter would be an abuse of the judicial process." It is further observed and held by this Court in the aforesaid decision that to bring home the charge of conspiracy within the ambit of Section 120B of the IPC, it is necessary to establish that there was an agreement between the parties for doing an unlawful act. It is further observed and held that it is difficult to establish conspiracy by direct evidence.

7.4 In the case of V.Y Jose (supra), it is observed and held by this Court that one of the ingredients of cheating is the existence of fraudulent or dishonest intention of making initial promise or existence thereof, from the very beginning of formation of contract. It is further observed and held that it is one thing to say that a case has been made out for trial and as such criminal proceedings should not be quashed, but it is another thing to say that a person should undergo a criminal trial despite the fact that no case has been made out at all.

7.5 In the case of Sharad Kumar Sanghi (supra), this Court had an occasion to consider the initiation of criminal proceedings against the Managing Director or any officer of a company where company had not been arrayed as a party to the complaint. In the aforesaid decision, it is observed and held by this Court that in the absence of specific allegation against the Managing Director of vicarious liability, in the absence of company being arrayed as a party, no proceedings can be initiated against such Managing Director or any officer of a company. It is further observed and held that when a complainant intends to rope in a Managing Director or any officer of a company, it is essential to make requisite allegation to constitute the vicarious liability.

7.6 In the case of Joseph Salvaraja A v. State of Gujarat (2011) 7 SCC 59, it is observed and held by this Court that when dispute between the parties constitute only a civil wrong and not a criminal wrong, the courts would not permit a person to be harassed although no case for taking cognizance of the offence has been made out.

7.7 In the case of Inder Mohan Goswami v. State of Uttaranchal, (2007) 12 SCC 1, it is observed and held by this Court that the Court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurise the accused. It is further observed and held by this Court that it is neither possible nor desirable to law down an inflexible rule that would govern the exercise of inherent jurisdiction. It is further observed and held that inherent jurisdiction of the High Courts under Section 482 Cr.P.C. though wide has to be exercised sparingly, carefully and with caution and only when it is justified by the tests specifically laid down in the statute itself.

8. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand, we are of the opinion that this is a fit case to exercise powers under Section 482 Cr.P.C. and to quash the impugned criminal proceedings."

It is settled law by a catena of decision that for establishing the offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. From his making failure to keep promise subsequently, such a culpable intention right at the beginning that is at the time when the promise was made cannot be presumed.

13. On perusal of entire allegations in the case on hand, the petitioner admitted the son of the second respondent during the year 2014-15 to pursue the course of Alternative Training Scheme. He successfully completed his first year and during the second year, the petitioner failed to provide training opportunity with Mumbai based company and thereafter on spending his own huge money, he had training. Therefore, this Court is of the considered opinion that the petitioner would not be attributed any mens-rea of cheating the second respondent's or any other student. Further during the year 2017, the recognition of the petitioner's institution had been withdrawn and the same was also challenged in W.P.No24916 of 2017 before this Court and it is pending.

14. Insofar as the receipt of fees is concerned, the son of the second respondent herein accepted the terms and conditions that the fees paid by him is not refundable under any circumstances and the petitioner will not be held responsible for withdrawal of training from the institution on own and person reasons. The petitioner never induced the second respondent to deliver any property to him. Cheating is an essential ingredient to attract the offence punishable under Section 420 of IPC. The ingredient is not made out from the allegations of the complaint and as such no offence under Section 420 of IPC is made out. It is an attempt made by the second respondent to convert the civil dispute in to criminal nature despite the absence of ingredients necessary to constitute the offence. Therefore, the FIR registered as against the petitioner is nothing but clear abuse of process of law and it is liable to be quashed.

15. Accordingly, this criminal original petition is allowed and the FIR in Crime No. 101 of 2020 on the file of the first respondent registered, is hereby quashed. However the second respondent is at liberty to give undertake to complete the programme and on such undertaking, the petitioner is directed to return the past certificate of the second respondent's son without demanding any fees. Consequently, connected miscellaneous petitions are also closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Inspector of Police,
   Thuraipakkam Police Station,

2. The Public Prosecutor
   High Court,
   Madras.

+1cc to Mr.C.Manohar, Advocate, S.R.No.33494

CRL.O.P.No.9246 of 2020 and
Crl.M.P.Nos.4228 & 4229 of 2020

RSV(CO)
RV(10/11/2020)