



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.01.2020

CORAM:

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P. (MD)No.4685 of 2016

and

Crl.M.P. (MD)No.2345 of 2016

Raman & Raman Motors,
No.48, Thiruvidadaimaruthu Road,
Kumbakonam,
Thanjavur District
represented by its Sales Manager,
Manikandan

... Petitioner/Accused

-vs-

Murugesan

... Respondent/Defacto
Complainant

PRAYER: Petition filed under Section 482 of the Criminal Procedure Code to call for the records in C.C.No.243 of 2015 on the file of the Learned II Additional District Munsif cum Judicial Magistrate, Kumbakonam, Thanjavur District and quash the proceedings as against the petitioner.

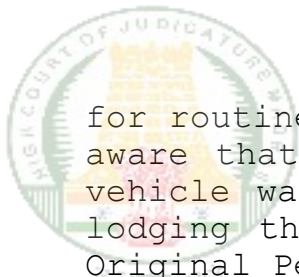
For Petitioner : Mr.A.Thiruvadikumar

For Respondent : Mr.K.S.Duraipandi

O R D E R

Heard the learned counsel on either side.

2.The respondent herein approached the petitioner for purchasing a two-wheeler. The respondent wanted to gift the said two-wheeler to his brother-in-law as a marriage gift. It is not in dispute that the respondent paid the entire consideration in cash for taking delivery of the vehicle. The respondent had also handed over the same to his brother-in-law. When the respondent's brother-in-law was riding the vehicle, it was stopped by the traffic police



for routine inspection. The respondent's brother-in-law then became aware that in the RC Book, an endorsement has been made as if the vehicle was subject to hypothecation. This was the foundation for lodging the impugned complaint. To quash the same, this Criminal Original Petition has been filed.

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3.The learned counsel for the petitioner pointed out that they do not dispute the fact that the entire consideration has been paid and that there is no claim on the vehicle as such at the time of effecting the sale. It appears that due to a typing error, an erroneous endorsement was made in the RC Book. The petitioner had assured the complainant that they would set right the same. Not satisfied with the said explanation, the respondent went ahead and filed the complaint in question.

4.It appears that the vehicle got involved in an accident and the respondent approached the petitioner once again and offered to withdraw the complaint.

5.The learned counsel for the petitioner states that the offence under Section 420 of IPC will be attracted only if the respondent can show that the petitioner had dishonest intention at the inception and that as a result of the act of cheating committed by the petitioner, the respondent was put to any wrongful loss. In this case, if the respondent can show that the vehicle was actually subject to encumbrance, then prima facie would stand made out. A wrong endorsement made in the RC Book might have put the respondent to serious embarrassment within the family. But then, it will not amount to wrongful loss within the meaning of Section 420 of I.P.C.

6.The learned counsel for the petitioner states that the petitioner have conveyed their sincere apology to the respondent over the mistake committed by some office staff due to inadvertence. He points out that apart from Section 420 of IPC, the offences relating to forgery have also been incorporated. Again, the element of wrongful loss will have to be shown. The respondent has only indicated that he suffered loss of face before his sister and brother-in-law but that would not constitute wrongful loss within the legal meaning of the term.

7.In as much as the respondent has not established causing of wrongful loss to him or wrongful gain to the petitioner herein, taking cognizance of the offence is not warranted. The elementary ingredients of Section 420 of IPC are wholly absent in this case. The very institution of the prosecution is an abuse of legal process.

8.Therefore, the proceedings in C.C.No.243 of 2015 on the file of the learned II Additional District Munsif cum Judicial Magistrate at Tiruvakur, Thanjavur District stand quashed and this



Crl.O.P.(MD)No.4685 of 2016

Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar(CS)

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To

The II Additional District Munsif cum Judicial Magistrate,
Kumbakonam, Thanjavur District.

+1 CC to M/s.A.THIRUVADIKUMAR, Advocate (SR-3960[F] dated
30/01/2020)

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