

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2021

CORAM

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Cr1.O.P.No.26882 of 2014 and
M.P.No.1 OF 2014

B.T.ARASAKUMAR @ B.T.KUMAR,
S/o. Late Thiyagaraja

... Petitioner/Accused

Vs.

P.Subburaj,
S/o.S.Palanisamy

...Respondent/Complainant

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records relating to the case in C.C.No.4322 of 2014, pending trial, on the file of the learned XXIII Metropolitan Magistrate, Saidapet, Chennai and quash the same with regard to this petitioner.

For Petitioner : Mr.P.R.Malarvannan
for Mr.E.Vijay Anand

For Respondent : Ms.M.Rakhi,
for Mr.K.Vanangamudi

ORDER

(The case has been heard through video conference)

This Criminal Original Petition has been filed by the Petitioner/Accused, seeking to call for the records relating to the private complaint in C.C.No.4322 of 2014, pending on the file of the learned XXIII Metropolitan Magistrate, Egmore, Chennai and quash the same.

2. The facts relevant to the present dispute are thus:-

The Respondent/Complainant is the Founder/Chairman and Managing Trustee of Palanisamy Pasupathy Ammal Educational Trust and having office at 65, Palani Road, Dindigul, Dindigul District and the Trust is providing Teachers Training Course (TTI) and B.Ed., Course. During the year 2008, the Petitioner/Accused had approached the Respondent/Complainant and offered him to absolutely transfer the management and the administration of his two Educational Institutions viz., 1. Teacher Training Institute (TTI) and 2. K.V.K. B.Ed., College at Dindigul to and in favour of the Respondent/Complainant for a total sale consideration of Rs.75 Lakhs, for which, the Respondent/Complainant agreed. This is evidenced by an agreement

dated 19.06.2009 and in pursuance of the above said agreement, dated 19.06.2009, the Respondent/Complainant had paid a sum of Rs.55 Lakhs to the Petitioner/Accused by way of cash during the period between 07.12.2008 and 29.04.2009.

The balance sale consideration of Rs.20 Lakhs was paid to the Petitioner/Accused by way of cash on 19.06.2009. Thus the Respondent/ Complainant had paid the entire sale consideration of Rs.75 Lakhs to the Petitioner/Accused by way of cash at Chennai. The Petitioner/Accused had played a deception on the Respondent/ Complainant fraudulently and dishonestly induced the Respondent/ Complainant to part with the above said amount of Rs.75 Lakhs to the Petitioner/Accused and one Suresh and Instien, who are the relatives of the Petitioner/Accused have actively co-operated with the Petitioner/ Accused to commit the act of cheating.

After the above said transaction of absolute transfer of the management and administration of the said two Educational Institutions viz., 1) Teacher Training Institute (TTI) and 2) KVK B.Ed., College at Dindigul, the Respondent/Complainant started making all the arrangements like appointing teaching and non teaching staff, purchasing text books, uniforms for teachers and students, other equipments and apparatus. He also purchased 200 cots, 200 mattresses, 200 pillows with covers, bed sheets, cooking vessels and other kitchen items, chairs and tables and published advertisements through newspapers and by other means and methods and also made bus arrangements. The Respondent/Complainant had invested huge amounts to the tune of Rs.1.5 Crores. During the academic year 2008-2009, the Petitioner/Accused dishonestly and deliberately started admitting 100 students into Teacher Training Course by collecting a sum of Rs.2 Lakhs from each student totalling to the tune of Rs.2 Crores and further the Petitioner/ Accused had admitted 100 students in B.Ed., Course by collecting a sum of Rs.1 Lakh from each student totalling, to the tune of Rs.1 Crore. Thus the Petitioner/Accused defying the agreement dated 19.06.2009, in order to cause wrongful loss to the Respondent/Complainant and make wrongful gain to himself illegally, collected a sum of Rs.3 Crores from the students.

Further, during the year 2009-2010, the Petitioner/Accused in a similar manner admitted the students in both Teacher Training Course and B.Ed., Course and dishonestly collected another sum of Rs.3 Crores enriching himself illegally and causing wrongful loss to the Respondent / Complainant. Further, the Petitioner/Accused did not have any right to collect any amount from the students by way of admission and as a matter of fact, the Respondent/Complainant alone has got the right of admission of students. The Petitioner/Accused played a deception

on the Respondent/Complainant and not only collected a sum of Rs.75 Lakhs from the Respondent/Complainant but also collected the aforesaid sum of Rs.6 Crores from the students by way of admission. Not withstanding the same, the Petitioner/Accused also caused a loss to the Respondent / Complainant to the tune of Rs.1.50 Crores in making arrangements for running the management and administration of Two Educational Institutions. Thus the Petitioner/Accused has cheated the Respondent / Complainant to the tune of Rs.8.25 Crores and committed offence punishable under Section 420 IPC.

The Respondent/Complainant had earlier lodged a complaint against the Petitioner/Accused before the Commissioner of Police and the Additional Commissioner of Police, Chennai City Police, Egmore, Chennai on 22.04.2013. Since, the police had not taken any action upon the complaint of the Respondent/Complainant, he filed a petition seeking for a direction, before the High Court in Crl.O.P.No.16041 of 2013, to register the complaint of the Respondent/Complainant dated 22.05.2013 and investigate the same thereby, this Court vide order dated 02.08.2013 had granted liberty to the petitioners as follows:

"Since the complaint has been closed. This Court is not inclined to give any further direction. Hence, the present Criminal Original Petition is dismissed. However, the petitioner is at liberty to work out his remedy in a manner known to law, if he is so advised."

In view of the above order passed in Crl.O.P.No.16041 of 2013, the Respondent/Complainant had filed a private complaint before the learned XXIII Metropolitan Magistrate Court, Egmore, Chennai. The learned Trial Judge, after recording the sworn affidavit of the Respondent / Complainant took the complaint in C.C.No.4322 of 2014 and issued summons to the Petitioner/Accused.

3.The Petitioner/Accused has filed the present petition, challenging the private complaint.

4.Mr.P.R.Malarvannan, learned counsel appearing for the Petitioner/Accused would submit that taking into consideration, the entire averments made in the complaint, no ingredients have been made out against the accused for offence under Section 420 IPC. The subject matter of the present dispute is civil in nature and that the criminal complaint has been filed by the Respondent/Complainant with an intention to abuse the process of law and is liable to be quashed. The Respondent/Complainant had earlier given a complaint before the Commissioner of Police and the Petitioner/Accused was called upon for enquiry and he had

appeared before the police and offered his explanation. The police finding the entire averments made in the complaint is civil in nature and that the same has been given a criminal colour had closed the case after enquiry. Whereas, the Respondent / Complainant instead of filing a civil suit, had filed a criminal complaint, suppressing various facts.

5.The learned counsel would further submit that it is an admitted fact that the agreement was entered only on the basis that the name of the Teacher Training Institute and the B.Ed., College Administration name should not be changed. Whereas, the Respondent / Complainant had failed to abide by the specific clause in the agreement and had committed breach of the agreement. As per the agreement, the Institutions were handed over to the Respondent/Complainant for management, whereas in total violation of the agreement, the Respondent/Complainant had issued advertisement in the newspaper on 21.06.2009, for changing the names of Institutions and thereby, the Petitioner/Accused was constrained to issue a legal notice on 20.08.2009 to the Respondent/Complainant and due to the breach committed by the complainant, the Petitioner/Accused had cancelled the agreement and also had given a paper publication on 04.09.2009. Thereafter, the Petitioner / Accused after proper notice had filed a suit in O.S.No.491 of 2009, before the Principal District Munsif Court, Dindigul, seeking for a Declaration to declare that the cancellation of agreement dated 20.08.2009 is legal and also for an Injunction restraining the Respondent/Complainant and his men from interfering with the possession and administration of the institution. Despite notice served on the Respondent/Complainant, he did not appear before the Court and he was set Ex-parte and thereby the suit filed by the Petitioner/Accused was decreed in favour of the petitioner on 24.09.2010. Thereafter, after four years, the Respondent/Complainant had preferred a complaint before the Commissioner of Police on 22.04.2013 and based on the complaint, the petitioner was called for enquiry and during the enquiry, the petitioner had produced all the documents to show that the Petitioner/Accused was running the Institute and he had not committed any act of cheating and thereafter, the complaint was closed as mistake of fact.

6.The Respondent/Complainant also filed a Direction petition before this Court and since, the complaint was closed much earlier, the direction petition filed by the respondent/complainant before this Court was also dismissed. The Respondent/Complainant suppressing all the facts and the Civil Court decree had filed the present complaint. He would further submit that no evidence had been produced by the Respondent/Complainant to show that the sale consideration was paid to the petitioner.

7.The learned counsel for the petitioner would submit that the allegations made in the complaint and even they are taken at their face value and accepted in the entirety did not prima facie constitute offence or make out a case against the accused and the uncontroverted allegation made in the complaint, evidence filed in support of the complaint do not disclose the commission of any offence and did not make out a case against the accused. Further, the criminal proceedings is manifestly attended with malafides and is maliciously instituted with an ulterior motive for wrecking vengeance with a view to spite the petitioner due to private and personal grudge, thereby bringing the case within the principles 1, 3, & 5 enumerated in The State of Haryana and others vs. Bhajan Lal and Others reported in MANU/SC/0115/1992: 1992 Supp. (1) SCC 335, and he would pray for quashing of the proceedings.

8.Per Contra, Ms.Rakhi, learned counsel appearing for the Respondent/Complainant would vehemently oppose stating that the allegations in the complaint disclosed necessary ingredients for offence under Section 420 IPC. The accused had induced the complainant and he had agreed to transfer the management of institutions in favour of the Respondent/Complainant and on various dates he had also received the entire sale consideration of Rs.75 Lakhs, thereafter, the Petitioner/Accused, had also managed to get an ex-parte decree from the Court. In breach of the agreement, he had admitted students for two academic years and thereby, collected a huge sum of Rs.6 Crores from the students. Believing the false representation made by the Petitioner/Accused, the Respondent/Complainant had also invested huge amounts to the tune of Rs.1.5 Crores in the institution and thus the Petitioner/Accused had cheated the Respondent/Complainant to the tune of Rs.8 Crores and hence, he prayed for dismissal of the petition.

9.Heard the counsels, perused the materials placed on record.

10.Now what is to be seen is whether the petitioner has made out a case for quashing by invoking the inherent power before this Court under Section 482 Cr.P.C.

11.The crux of the complaint is that the Petitioner / Accused entered into an agreement dated 19.06.2009 for absolute transfer of his two educational institutions in favour of the Respondent / Complainant and received a sum of Rs.75,00,000/- as consideration. Based on the agreement, the Respondent / Complainant had further invested Rs.1.5 Crores, whereas the accused admitted students in both the institution for the academic year 2008-2009 and 2009-2010 and collected fees and

cheated the complainant.

12. In S.K. Education Private Limited and Others vs. The State of Bihar and Others reported in 2019(4) PLJR 603;

"28. So far as Section 420 of IPC is concerned, the same prescribes punishment for the offence of 'cheating', which is defined under Section 415 of the IPC. It reads as under:-

"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".

29. The Section consists of two distinct parts, each part dealing with one way of cheating, (i) the first part contemplates where by deception practised upon a person the accused dishonestly or fraudulently induces that person to deliver a property to any person or to consent that any person shall retain any property; (ii) the second part envisages where by deception practised upon a person the accused intentionally induces that person to do or omit to do so, 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.

30. The offence punishable under Section 420 IPC reads as under:-

"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."

31.It would be evident from combined reading of Sections 415 and 420 of the IPC that the essential ingredients of Section 420 IPC are:

(i)Cheating;

(ii)dishonest inducement to deliver property or to make, alter or destroy any valuable security or anything, which is sealed or signed or is capable of being converted into a valuable security; and

(iii)mens rea of the accused at the time of making inducement.

32.In Dalip Kaur & Ors. vs. Jagnar Singh & Anr., since reported in MANU/SC/1139/2009 : (2009) 14 SCC 696, the question for determination before the Supreme Court was whether breach of contract of an agreement for sake would constitute an offence under Section 406 or Section 420 of the IPC. After examining the fact of the case and relevant Sections of the IPC, the Supreme Court held that an offence of 'cheating' would be constituted when the accused has fraudulent or dishonest intention at the time of making of promise or representation. A pure and simple breach of contract does not constitute the offence of 'cheating'. It further held that if the dispute between the parties was essentially a civil dispute resulting from a breach of contract on the part of the appellants for non-refunding the amount of advance, the same would not constitute an offence of 'cheating' or 'criminal breach of trust'.

33.In Alplic Finance Ltd. vs. P.Sadasivan and Anr., since reported in MANU/SC/0106/2001 : (2001) 3 SCC 513, the Supreme Court highlighted the grounds on which criminal proceedings are to be quashed under Section 482 of the Cr.P.C., and noted the ingredients of Section 420 of the IPC. In that case, the appellant was a registered company having its head office at Mumbai. It was carrying business, inter alia, of leasing and hire purchase. The first respondent therein was the Chairman and founder-trustee of a trust. The second respondent was also a trustee. The Trust was running a dental college in the name and

style of Rajiv Gandhi Dental College. The respondents therein entered into agreement with the appellant-Company therein whereby the appellant had agreed to finance the purchase of 100 hydraulically-operated dental chairs of which cost was around Rs.92,50,000/-. The appellant-Company agreed to finance the respondents for the purchase of chairs through a lease agreement and as per the agreement, the respondents were liable to pay rentals. The respondents agreed to pay quarterly the sum of Rs.7,50,000/- for the first year, Rs.12,50,000/- for the second year, Rs.8,00,000/- for the third year and Rs.6,25,000/- for the fourth year. In accordance with the agreement, the appellant made payments to M/s.United Medico Dental Equipments and they delivered the dental chairs to the respondents. The appellant-Company alleged that the respondents were not regular in making payments and committed default in payment of the instalments and that the bank had dishonoured certain cheques issued by the respondents. The appellant-Company also alleged that on physical verification, certain chairs were found missing from the premises of the respondents and thus they committed cheating and caused misappropriation of the property belonging to the appellant. The appellant-Company filed a complaint under Section 200 of the Cr.P.C., before the Chief Metropolitan Magistrate, Bangalore alleging that the respondents had committed offences under Sections 420, 406 and 423 read with Section 120-B of the IPC. The Magistrate took cognizance of the alleged offence under Section 190 of the Cr.P.C., and issued summons to the respondents. The order taking cognizance was challenged by the respondents by filing an application under Section 482 of the Cr.P.C., before the Karnataka High Court. The High Court quashed the entire proceedings. Being aggrieved, the appellant-Company preferred appeal before the Supreme Court. It was contended on behalf of the appellant in that case that the High Court had seriously erred in quashing of the proceedings under Section 482 of the Cr.P.C. It also contended that allegation in the complaint clearly made out offences punishable under Sections 420, 406, 423, 424 read with Section 120-B of the IPC. It was contended on behalf of

the respondents that the complaint was filed only to harass the respondents and it was motivated by mala fide intention. It was argued that the entire transaction was of civil nature and that the respondents have made a substantial payment as per the hire-purchase agreement and the default, if any, was not wilful and there was no element of misappropriation or cheating.

34. After considering the power under Section 482 of the Cr.P.C., and the facts and law involved in the case, the Supreme Court dismissed the appeal and concluded that the learned Judge of the High Court was perfectly justified in quashing the proceedings. It held in para 10 as under:-

"10....The injury alleged may form basis of civil claim and may also constitute the ingredients of some crime punishable under criminal law. When there is dispute between the parties arising out of a transaction involving passing of valuable properties between them, the aggrieved person may have right to sue for damages or compensation and at the same time, law permits the victim to proceed against the wrongdoer for having committed an offence of criminal breach of trust or cheating. Here the main offence alleged by the appellant is that respondents committed the offence under section 420, I.P.C, and the case of the appellant is that respondents have cheated him and thereby, dishonestly induced him to deliver property. To deceive is to induce a man to believe that a thing is true which is false and which the person practising the deceit knows or believes to be false. It must also be shown that there existed a fraudulent and dishonest intention at the time of commission of the offence. There is no allegation that the respondents made any wilful misrepresentation. Even according to the appellant is that the respondents failed to discharge their contractual obligations. In the complaint, there is no allegation that there was fraud or dishonest inducement on the part of the respondents and thereby the respondents parted with the property. It is trite law and common sense that an honest man entering into a contract is deemed to represent that he has the present intention of carrying it out but if,

having accepted the pecuniary advantage involved in the transaction, he fails to pay his debt, he does not necessarily evade the debt by deception.”

35. In *Anil Mahajan vs. Bhor Industries Ltd., and Anr.*, since reported in MANU/SC/1297/2004 : (2005) 10 SCC 228, a three-Judge Bench of the Supreme Court considered a case relating to the issuance of process for the offence punishable under Section 415, 418 and 420 of the IPC. In that case also, the Bench analysed the difference between 'breach of contract' and 'cheating'. The appellant therein was the accused in complaint filed against him by the respondent company for the offence punishable under Sections 418 and 420 of the IPC. On the basis of the allegations made in the complaint, the magistrate issued the process against the accused. The order of Magistrate would demonstrate that the complainant had filed documents on record to show that the accused promised to pay the amount, but he did not pay the same with the intent to deceive the complainant. Therefore, the Magistrate held that the complainant had been able to make out a case to issue process against the accused under Sections 415, 418 and 420 of the IPC.

36. The said order of the Magistrate was challenged before the court of sessions. The learned Additional Sessions Judge, who heard the matter, set aside the order of Magistrate issuing process. The order of the learned Additional Sessions Judge was set aside by the High Court.

37. The order of the High Court was challenged by the appellant before the Supreme Court. After analysing the provisions of the IPC under which the complaint was filed and the allegation made in the complaint, the Court observed that it was a simple case of civil dispute between the parties. It held that requisite averments so as to make out a case of 'cheating' are absolutely absent. It further held that the principles laid down in *Alpic Finance Ltd., vs. P. Sadasivan and Anr.* (Supra) were rightly applied by learned Additional Sessions Judge while setting aside the order of the Magistrate issuing process to

the appellant.

38. In Hridaya Ranjan Prasad Verma and Ors. vs. State of Bihar and Anr., since reported in MANU/SC/0223/2000 : (2000) 4 SCC 168, the Supreme Court while dealing with a case in which FIR was instituted under Sections 418, 420, 423, 504 and 120-B of the IPC held in paras 14 and 15 as under :--

"14. On a reading of the Section it is manifest that in the definition there are set forth two separate classes of acts which the persons deceived may be induced to do. In the first place he may be induced fraudulently or dishonestly to deliver any property to any person. The second class of acts set forth in the section is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases the inducing must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but not fraudulent or dishonest.

15. In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore, it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right as the beginning, that is, when he made the promise cannot be presumed."

39. In S.W. Palanikar and Ors. vs. State of Bihar and Anr. (Supra), it has been held by the Supreme Court in para 21 as under:--

"21. ... In order to constitute an offence of cheating, the intention to deceive should be in existence at the time when the inducement was made. It is necessary to show that a person had fraudulently or dishonest intention at the time of making the promise, to say that he committed an act of cheating. A mere failure to keep up promise subsequently cannot be presumed as an act leading to cheating."

40. In State of Kerala vs. A. Pareed Pillai and Anr., since reported in MANU/SC/0263/1972 : (1972) 3 SCC 661, the Supreme Court held in para 16 as under:--

"16. ... To hold a person guilty of the offence of cheating, it has to be shown that his intention was dishonest at the time of making the promise. Such a dishonest intention cannot be inferred from the mere fact that he could not subsequently fulfil the promise."

41. In Indian Oil Corporation vs. NEPC India Ltd., and Ors., since reported in MANU/SC/3152/2006 ; (2006) 6 SCC 736, it has been held by the Supreme Court in para 13 as under:--

"13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable break down of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged. In G. Sagar Suri vs. State of UP [MANU/SC/0045/2000 : (2002) 2 SCC 636], this Court observed:

"It is to be seen if a matter, which is essentially of a civil nature, has been given a

cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this Section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice."

42.The Court further held in para 14 as under:-

"14.While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law. One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power under Section 250 Cr.P.C., more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant. Be that as it may."

43.In *Rajesh Bajaj vs. State, NCT of Delhi and Ors.*, since reported in MANU/SC/0155/1999 : (1999) 3 SCC 259, the Supreme Court held in para 11 as under:--

"11.The crux of the postulate is the intention of the person who induces the victim of his representation and not the nature of the transaction which would become decisive in discerning whether there was commission of offence or not. The complainant has stated in the body of the complaint that he was induced to believe that respondent would honour payment on receipt of invoices, and that the complainant realised later that the intentions of the respondent were not clear. He also mentioned that respondent after receiving the goods have sold them to others and still he did not pay the money. Such averments would prima facie make out

a case for investigation by the authorities.”

13. In a case in similar set of facts, the Patna High Court in *S.K. Education Private Limited and Others vs. The State of Bihar and Others* referred above had quashed the proceedings.

14. Further in *State of Haryana & Ors. vs. Bhajan Lal and Ors.*, since reported in MANU/SC/0115/1992 : 1992 Supp. (1) SCC 335, the Supreme Court laid down the principles on which the Court can quash the criminal proceedings under Article 226 of the Constitution of India or under Section 482 of the Cr.P.C. These are 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 F.I.R. 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 F.I.R 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."

15. Now analyzing the present case in consonance with the Judgments referred to above, it is the case of the respondent/Complainant that he had entered into an agreement with the petitioner for transfer of management of the Institutions run by the Petitioner/Accused and received a sum of Rs.75,00,000/-. However, a perusal of the agreement, discloses nothing about the sale consideration of Rs.75 Lakhs alleged to be paid by the Respondent/Complainant to the Petitioner/Accused.

16. The complainant has suppressed vital information regarding the earlier actions taken by the Petitioner / Accused against him before the Civil Court and the decree obtained by the Petitioner/Accused before the Civil Court and suppressing the same he had preferred the complaint. Further this Court is of the opinion that taking into entirety the allegations made in the complaint, they do not prima facie constitute any offence or make out a case against the accused and the same does not

disclose the commission of any offence and make out a case against the accused for the offence of cheating punishable under Section 420 IPC. The case of the Petitioner / Accused falls within the principles enumerated in Clause 1, 3 & 5 of paragraph 102 of The State of Haryana and Others vs. Bhajan Lal and Others stated supra.

17. In view of the above, the Criminal Original Petition stands allowed and the proceedings in C.C.No.4322 of 2014, on the file of the learned XXIII Metropolitan Magistrate, Saidapet, Chennai is quashed. Consequently, the connected miscellaneous petition also stands closed.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

ssi

To

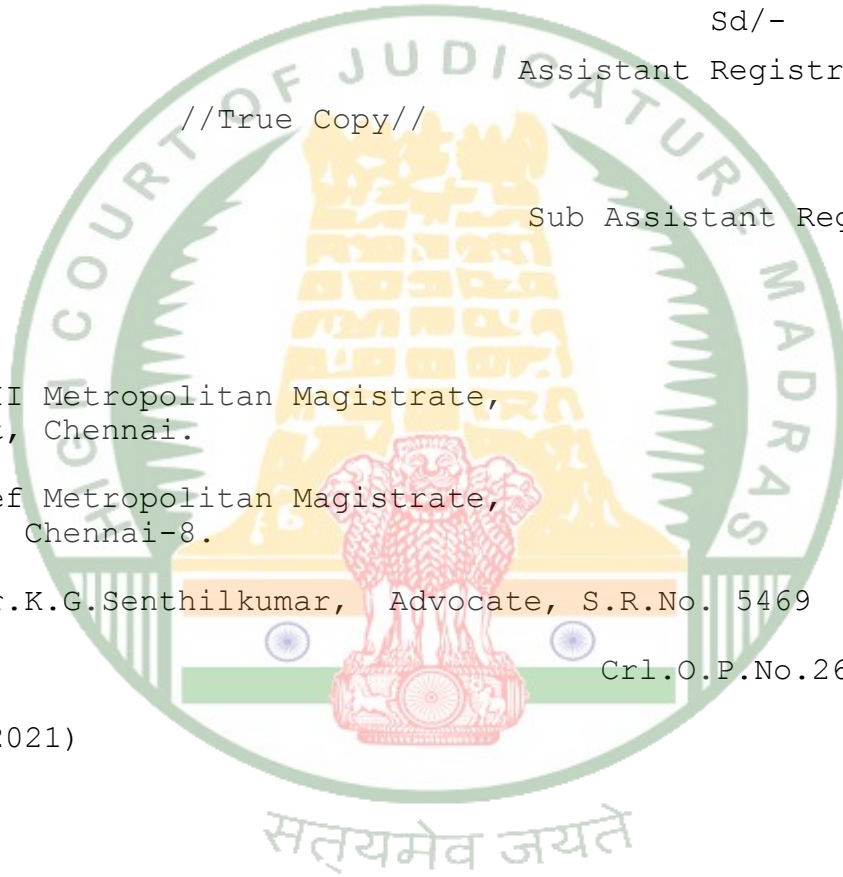
1. The XXIII Metropolitan Magistrate,
Saidapet, Chennai.

2. The Chief Metropolitan Magistrate,
Egmore, Chennai-8.

+1cc to Mr.K.G.Senthilkumar, Advocate, S.R.No. 5469

Crl.O.P.No.26882 of 2014

AK II(CO)
GN(15/04/2021)



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