

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.02.2021

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.O.P No.1681 of 2017

and Crl.M.P Nos.1211 & 1212 of 2017

1. Karthikeyan

2. Sridhar

...Petitioners

vs.

K.H.Chandru

...Respondent

COMMON PRAYER: Criminal Original Petitions filed under Section 482 of the Code of Criminal Procedure, to call the records with respect of the complaint filed by the respondent herein in C.C.No.75 of 2015 on the file of Judicial Magistrate III, Salem and quash the same as far as the petitioner's concerned.

For Petitioners : Ms.Revathy for
Mr.I.C.Vasudevan

For Respondent : No Appearance

ORDER

This petition has been filed challenging the proceedings in C.C.No.75 of 2015 on the file of the learned Judicial Magistrate III, Salem.

2.The respondent has filed the complaint against the petitioners on the ground that the petitioners had purchased silver anklets on credit basis and subsequently they failed to pay the cost of the silver anklets. Thereafter, when the respondent was insisting for payment of the amount, evasive reply was given and the police complaint given against the petitioners also did not evoke any response and ultimately a private complaint was given before the Court below which was taken cognizance for the offences under Sections 403, 406, 409 and 420 of IPC.

3.The learned counsel for the petitioners submitted that the transaction between the parties was a pure and simple commercial transaction and it does not involve any commission of offence and the Court below has taken cognizance of the complaint without any application of mind. The learned counsel further submitted that the respondent has attempted to give the civil case a criminal color.

4.The respondent has been served with notice and proof of service has also been filed and there is no representation for the respondent either in-person or through counsel.

5.A reading of the complaint shows that silver anklets were purchased by the petitioners from the year 2008 both for cash and credit. According to the respondent, till August 2013, the petitioners are due and payable to the sum of Rs.6,00,000/- This amount was not repaid and hence, the criminal complaint has been given before the Court below.

6.In the considered view of this Court, even if the allegations made in the complaint is taken as it is, neither the offence of criminal breach of trust nor the offence of cheating has been made out. Even according to the complaint, the transaction is going on from the year 2008 and in the year 2013, the amount is said to have been not paid by the petitioners. This averment at the best can only amount to a breach of the terms of contract and it will not constitute any offence. It is now a settled law that to constitute an offence of cheating, the intention must be present even at the inception.

7.In view of the above discussion, the continuation of the criminal proceedings against the petitioner is an abuse of process of Court which requires the interference of this Court and accordingly the proceedings in C.C.No.75 of 2015, on the file of the learned Judicial Magistrate III, Salem is hereby quashed.

8.In the result, this criminal original petition stands allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

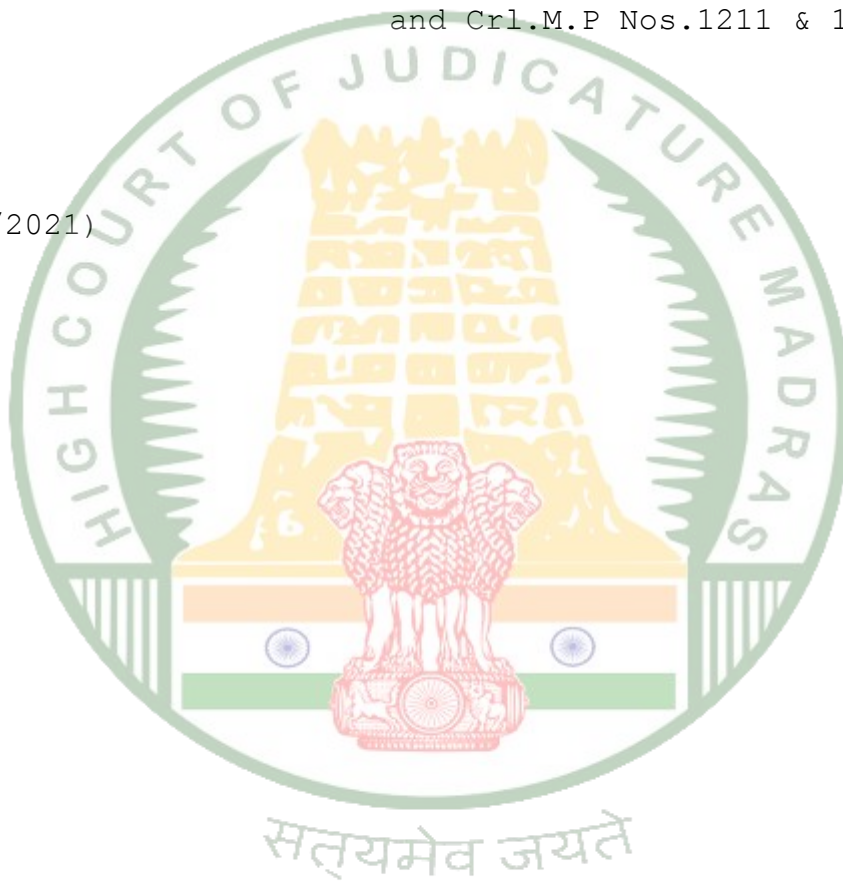
ssr

To

1. The Judicial Magistrate III,
Salem.
2. The Public Prosecutor,
High Court of Madras,
Madras.

Crl.OP No.1681 of 2017
and Crl.M.P Nos.1211 & 1212 of 2017

NRL (CO)
NRA (10/03/2021)



WEB COPY