



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.12.2021

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P.(MD)No.20049 of 2021 and

CRL.M.P.(MD)No.11304 & 11305 of 2021

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Muthuvel

... Petitioner/Accused No.1
Vs.

1. State rep. By,
The Inspector of Police,
Cheranmahadevi police station,
Tirunelveli District.
(Crime No.241 of 2016)

... 1st Respondent / Complainant

2. Munish

... 2nd Respondent / Defacto
Complainant

Prayer: Criminal Original petition is filed under Section 482 of Cr.P.C, to call for the records in C.C.No.392 of 2018 on the file of the learned Judicial Magistrate, Cheranmahadevi, Tirunelveli District and quash the same in so far as the petitioner is concerned.

For Petitioner : Mr.P.Balamurugan

For R-1 : Mr.E.Antony Sahaya Prabahar,
Additional Public Prosecutor.

O R D E R

Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the first respondent.

2. The petitioner is figuring as first accused in C.C. No.392 of 2018 on the file of the Judicial Magistrate, Cheranmahadevi, for the offences under Sections 147, 420 and 511 of I.P.C. The case of the prosecution is that the accused numbering seven persons were found together on 07.12.2016 at about 11.30 p.m., near Ramasamy temple in Cheranmahadevi. The Central Government had just and then announced demonetisation. According to the prosecution, the accused wanted to make use of the situation and cheat the members of the general public by promising to exchange the old notes on payment of commission. From the accused, a cash counting machine was seized. Based on this information, the second respondent registered First Information Report in Crime No.241 of 2016 for the offences under Sections 147, 420 and 511 of I.P.C. Investigation was undertaken and final report was filed before the jurisdictional Magistrate. Cognizance of the offences was taken. Summons were issued. The petitioner is figuring as first accused. He has come to this Court for quashing the impugned proceedings.



3. The learned counsel appearing for the petitioner reiterated all the contentions set out in the memorandum of grounds and submitted that no case is made out and that the impugned prosecution deserves to be quashed to secure the ends of justice.

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4. Per contra, the learned Additional Public Prosecutor submitted that from the accused, a cash counting machine was seized and that there are materials to sustain the charges and that no case for quashing has been made out.

5. I carefully considered the rival contentions and went through the materials on record.

6. The case of the prosecution is that the petitioner attempted to cheat the people in the wake of demonetisation measure brought in by the Central Government. To constitute the offence of cheating, certain basic ingredients must be present. There must be a dishonest intention from the very inception. The accused must have held out some promise or assurance or representation with a dishonest intention and believing the same, the victim must have altered his position. Only then, the offence of cheating will be made out. Of course, to complete the crime, four stages are involved; intention, preparation, actual attempt and completion of the act. Even if the crime could not be committed and it is aborted at the third stage, still the offence will be attracted. But then, the elementary ingredients must be present. In this case, no person had complained to the police that the accused attempted to cheat them. In the absence of such complaint from any member of the public, I fail to understand as to how the First Information Report could have been registered. Only a cash counting machine had been seized from the accused. That by itself is not sufficient to prosecute against the petitioner. The petitioner was found near the local temple along with the other accused. That by itself cannot constitute an unlawful assembly. By no stretch of imagination, the prosecution can be said to be maintainable. The impugned proceedings are quashed.

7. This criminal original petition is allowed. The benefit of this order will enure in favour of the non-petitioning accused also. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AE)

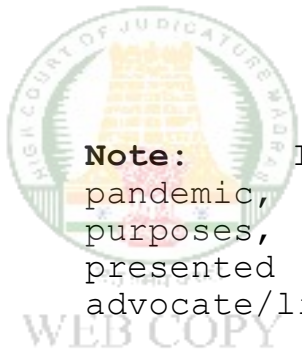
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/ /2022

Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

1. The Judicial Magistrate,
Cheranmahadevi, Tirunelveli District.
 2. The Inspector of Police,
Cheranmahadevi police station,
Tirunelveli District.
 3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
- +1 CC to M/s.P.BALAMURUGAN, Advocate (SR-39645[F] dated 20/12/2021)

Crl.O.P. (MD) No.20049 of 2021
16.12.2021

AP (12.01.2022) 3P 5C