



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 02.03.2021

Pronounced on : 01.04.2021

CORAM

THE HONOURABLE MR.JUSTICE **K.MURALI SHANKAR**

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CRL.R.C.(MD).464 of 2017

Thangaraj

: Petitioner

Vs.

1.State represented by
The Sub Inspector of Police,
Puthanatham Police Station,
Trichy District.
(Crime No.176 of 2015)

2.Venkateswari

3.Lavanya

4.Naveen

5.Rengasamy

6.Ganaptahy

: Respondents

PRAYER : Criminal Revision has been filed under Section 397 r/w 401 of Cr.P.C, to call for the records and set aside the order of the learned Judicial Magistrate, Manapparai, dated 22.03.2017 in C.C.No.8 of 2017.

For Petitioner : Mr.T.Senthil Kumar

For Respondents : Mrs.S.E.Veronica Vincent,
Government Advocate (Criminal Side)

: Mr.Karthigai Priya,
for Mr.A.Balakrishnan, for R2 to R6.

ORDER

This Criminal Revision Case is directed against the order passed in C.C.No.8 of 2017, dated 22.03.2017, on the file of the learned Judicial Magistrate, Manapparai, discharging the accused under section 239 Cr.P.C.

2.The revision petitioner is the defacto complainant and the respondents 2 to 6 are the accused in C.C.No. 8 of 2017 on the file of the Judicial Magistrate, Manapparai.



3.It is not in dispute that as per the order passed by this Court in CrI.O.P.(MD) No.12066 of 2015, dated 01.07.2015, FIR came to be registered on the basis of the complaint lodged by the revision petitioner in Crime No.176 of 2015, on the file of the first respondent police for the offences punishable under Sections 294 (b) 506(ii) and 420 IPC against the respondents 2 to 6 and after investigation, the 1st respondent police has laid the final report under Sections 147, 294(b), 420, 506 (ii) IPC r/w 34 IPC before the Court of the jurisdictional Magistrate and that the learned Magistrate has taken the case on file in C.C.No.8 of 2017 and ordered issuance of the summons. After appearance of the respondents 2 to 6, copies of the records were furnished to them under Section 207 Cr.P.C on free of cost. Thereafter, the respondents 2 to 6/accused have filed an application under Section 239 Cr.P.C, and the same was taken on file in Cr.M.P.No.1515 of 2017. The learned Magistrate has passed an order, in the main case itself, by holding that the allegations levelled against the accused are baseless and groundless, discharging the accused under Section 239 Cr.P.C and consequently, closed the discharge petition in Cr.M.P.No.1515 of 2017. Aggrieved by the said order, the defacto complainant has come forward with the present revision.

4.Whether the impugned order, dated 22.03.2017, passed in C.C.No.8 of 2017 by the learned Judicial Magistrate, Manapparai, discharging the accused is liable to be set aside? is the point for consideration.

5.The learned counsel for the revision petitioner would contend that the learned Magistrate has observed that the receipt dated 03.06.2015, has not been annexed with the FIR; that the said receipt has not been shown to be collected during the investigation, but the Investigation Officer has recovered the said receipt and filed the same along with the charge sheet; that the learned Magistrate without verifying the records has passed the impugned order erroneously; that though specific allegations for the offences under Sections 294(b) and 506(ii) IPC are made out, the learned Magistrate has simply overlooked the same as groundless and that the order of the learned Magistrate is illegal and unsustainable and the same is liable to be set aside.

6.The case of the prosecution is that the first accused has offered to sell her six cents of house plot situated in Survey No.174 /3 of Elamanam Village to the defacto complainant; that they have fixed the sale price at Rs.47,50,000/-on 19.05.2015; that the first accused has received a sum of Rs.14,00,000/- from the defacto complainant in the presence of the accused A2 to A4 and issued a stamped receipt therefor; that on 04.06.2015, the defacto complainant along with the witness Ramasamy had visited the house of the first accused and requested them to execute the sale deed; that the accused



had refused to execute the sale deed and abused the defacto complainant and also threatened that they would kill them with the help of mercenary, and that therefore, the defacto complainant was forced to file the above complaint for the offences under Sections 294(b), 506(ii) and 420 IPC.

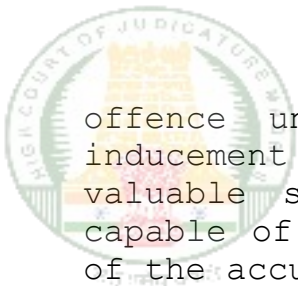
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7.As already pointed out, the learned Magistrate, in the impugned order, has observed that though in the complaint, it was stated that the receipt dated 03.06.2015 was annexed with, no receipt has been annexed along with the FIR; that no such receipt was said to be collected, nor the investigation officer attempted to gather documents when the FIR and the final report revolves around the passing of some amount to A1 under receipt; that the investigation did not reveal that any such document was alleged to have been executed by the first accused or any other accused in favour of the complainant; that in the absence of the alleged documents, which formed the basis of the case to allege any offence under Section 406 or 420 IPC could not be pressed into service and that if the defacto complainant is having such payment receipt, he is at liberty to move the appropriate Civil Court, if he is so advised.

8.Considering the above, the learned Magistrate has given much importance to the non-production of the alleged receipt, dated 03.06.2015 and came to the conclusion that the charges alleged under Section 420 IPC are to be considered as groundless and baseless. Whatever it is, it is the specific case of the defacto complainant that he had agreed to purchase the property of the first accused, that they had negotiated and settled the sale price at Rs.47,50,000/-; that the defacto complainant had paid Rs.14,00,000/- to the first accused and received a stamped receipt therefor from the first accused and that subsequently, the first accused had refused to execute the sale deed. But according to the accused, the defacto complainant borrowed the loan from the husband of the first accused and that in order to discharge the said loan, he had paid Rs.14,00,000/- to the first accused, for which, she had issued the receipt and lodged the above false complaint.

9.No doubt, the revision petitioner has produced the copy of the receipt. It is not the specific case of the defacto complainant that he had entered into any written sale agreement with the first accused. He has also not produced any documents to show the total sale price arrived at, the period of performance and other terms of the sale.

10.Even assuming for arguments sake that the case put forth by the defacto complainant is true, as rightly observed by the learned Magistrate, the defacto complainant has to approach the competent Civil Court, either for specific performance of the agreement or for refund of the amount paid. The essential elements to attract the



offence under 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 value security; and iii) *mens rea* of the accused at the time of making the inducement.

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11.It is pertinent to mention that mere breach of a contract between the parties 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. It is the intention, which is the substance of the offence of Section 420 IPC and therefore, it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise to hold a person guilty for the offence of cheating.

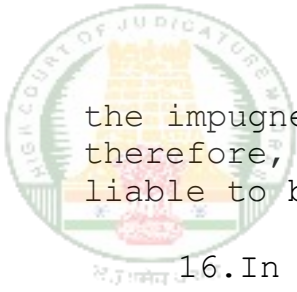
12.In the case on hand, there are no averments or allegations so as to attract the ingredients of Section 420 IPC. In the FIR, the defacto complainant has alleged that the accused had abused him with defamatory or derogatory words. But he has not chosen to mention the words that were uttered by the accused. But in the statement recorded under Section 161 Cr.P.C, the defacto complainant has stated that he was abused with filthy words.

13.In the discharge petition filed by the accused, it has been stated that the first accused is a Tamil Teacher working in a Government Higher Secondary School; the second accused is a medical practitioner at Trichy; that the third accused has been studying in a College at Chennai; that the fourth accused is 65 years old senior citizen with kidney problem and that the fifth accused is doing business at Trichy.

14.The learned Magistrate, under Section 239 Cr.P.C, is required to confine his consideration with the police report and the documents produced by the police to decide, whether the allegations against the accused are groundless or whether there is ground for presuming that the accused has committed the offence and that when there is *prima facie* material to frame charge against the accused, charge cannot be said to be groundless. The word groundless employed in Section 239 Cr.P.C would only mean without basis or foundation.

15.Considering the above facts and circumstances and the materials produced by the police, it is very much clear that the defacto complainant with an intention to get the instant relief, has attempted to give her civil case a criminal colour or flavour. Hence, the finding of the learned Magistrate that the charges alleged against the accused are groundless and baseless and consequently, discharging the accused under Section 239 Cr.P.C, cannot be found

<https://hdservicesteam.gov.in/hdservicesteam>, this Court concludes that there is no infirmity in



the impugned order passed by the learned Judicial Magistrate and that therefore, the criminal revision case, which is devoid of merits, is liable to be dismissed.

16.In the result, the Criminal Revision Case is dismissed.

Sd/-

Assistant Registrar (CS-1)

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/ /2021

Sub Assistant Registrar(CS)

To

1.The Judicial Magistrate,
Manapparai.

2 The Sub Inspector of Police,
Puthanatham Police Station,
Trichy District.

3.THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI

COPY TO:

The Section Officer,
Criminal Section, (Records)
Madurai Bench of Madras High Court,
Madurai. (Soft copy) (2 copies)

+1 CC to M/s.A.BALA KRISHNAN, Advocate (SR-15416[F] dated 07/04/2021)

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01.04.2021

das

AM/29/04/2021/5P/7C