IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.04.2022

PRONOUNCED ON : 27.05.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.29012 of 2018 and
Crl.M.P.No.16946 of 2018

1.J.Ravi
2.R.Savitha
3.R.Narayanan ... Petitioners

Versus

1.The State by the Inspector of Police,
Kannankurichi Police Station,
Crime No.650 of 2018,
Salem District.

2.N.Muthukumar ... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the FIR in Crime No.650 of 2018 on the file of the 1st respondent Police, Quash the same by allowing this Criminal Original Petition.

For Petitioners : Mr.M.Ganesh for
Mr.N.Manokaran

For R1 : Mr.A.Damodaran,
Additional Public Prosecutor

For R2 : Mr.R.Marudhachalamurthy

ORDER

This Criminal Original Petition has been filed to quash the FIR in Crime No.650 of 2018, dated 29.11.2018, on the file of the 1st respondent Police.

2.The 2nd respondent lodged a complaint to the Commissioner of Police, Police on 30.10.2018, which was forwarded to the 1st respondent Police on 01.11.2018. On the complaint, an FIR in Crime No.650 of 2018, for offence under Section 420 IPC, was registered against the petitioners on 29.11.2018.

3.The complaint is that the petitioners and the 2nd respondent are known to each other and they are devotees of Thirumoorthy Malai Swamigal. The petitioners 1 and 2 were running a business in the name and style of M/s.Xedon Media Private Limited at Gorimedu, Salem. The petitioners 1 and 2 were unable to repay the business loan obtained in City Union Bank, Erode Branch and they became defaulters. The petitioners 1 and 2 intended to get loan from Canara Bank, Gorimedu Branch, Salem by mortgaging the 1st petitioner's father property, for which they had to show some bank transaction in the bank account maintaining in the name of M/s.Xedon Media Private Limited. Hence, the petitioners 1 and 2 approached the 2nd respondent on 01.03.2018 and asked them to deposit Rs.21,00,000/- in M/s.Xedon Media Private Limited bank account and thereafter, the same would be re-transferred to the 2nd respondent's bank account. It is only an adjustment. Further, the petitioners 1 and 2 also promised to convey the property in favour of the 2nd respondent. For the above bank transaction, the 3rd petitioner was engaged by the petitioners 1 and 2 and the entire transaction was handled by him. Believing the same, the 2nd respondent gave Rs.21,00,000/- to his Manager Angamuthu and also gave his two Axis Bank account Nos.917030032895768 and 915030006267074 for the transaction, the said Angamuthu proceeded to Canara Bank, Gorimedu Branch, Salem. At about 10.30 a.m., Angamuthu handed over Rs.21,00,000/- to the 3rd petitioner, who received the cash, deposited the same in M/s.Xedon Media Private Limited bank account and gave NEFT slip showing that the amount of Rs.10,00,000/- transferred to the Axis bank account in No.91503006267074 and the balance amount of Rs.11,00,000/- transferred to the Axis bank account No.917030032895768. The amount of Rs.10,00,000/- was credited to the 2nd respondent's bank account. As regards, the amount of Rs.11,00,000/- is concerned, the 3rd petitioner wrongly mentioned the last two digits of the 2nd respondent bank account number and thereby, the amount of Rs.11,00,000/- got re-credited to M/s.Xedon Media Private Limited bank account.

4.The CCTV camera in Canara Bank, Gorimedu Branch, Salem confirms the presence of the 2nd respondent's Manager Angamuthu as well as the 3rd petitioner. Hence, the 2nd respondent lodged a complaint to the 1st respondent against the petitioners herein.

5.The learned counsel for the petitioners submitted that the petitioners 1 and 2 are husband and wife, the 3rd petitioner is their Manager. The petitioners are doing printing business in the name and style of M/s.Xedon Media Private Limited, Salem. The 2nd respondent is a Doctor-cum-Money Lender, he used to visit the office of the petitioners. In the course of said business conduct, the 2nd respondent offered loan to the petitioners 1 and 2 at a very low interest rate. Hence, the petitioners 1 and 2 borrowed a sum of Rs.1,02,00,000/- from the 2nd respondent. The said amount was transferred to through NEFT on 27.10.2017 from the bank accounts (Rs.51,00,000/- each from the Axis Bank accounts in Nos.917030032895768 & 915030006267074) of the 2nd respondent to M/s.Xedon Media Private Limited bank account maintained in City Union Bank, Erode and agreed for monthly interest at the rate of 3% per month. At the time of availing loan, the 2nd respondent obtained signature in blank promissory notes, cheques and conquer sheets. Thereafter, the petitioners 1 and 2 were regularly paying the interest by cash. Suddenly, the 2nd respondent started insisting the petitioners 1 and 2 to pay exorbitant rate of interest of 10% per month and started threatening them with dire consequences, if they did not agree to pay. Therefore, the petitioners decided to settle the loan to avoid further harassment at the hands of the 2nd respondent. Accordingly, the petitioners 1 and 2 have repaid Rs.44,00,000/- as follows:-

- Rs.40,00,000/- on 09.11.2017 to Account No.CIUBH 17313023569.

- Rs.4,00,000/- on 24.11.2017 to Account No.CIUBH 17328306312.

6.The learned counsel further submitted that even after the payment of Rs.44,00,000/-, the 2nd respondent engaged goons and started giving frequent trouble to the petitioners 1 and 2. On 26.02.2018, the 2nd respondent came to the business premises of the petitioners 1 and 2 and forcibly took away the original documents, tax receipts, Aadhaar card, E.B card, PAN card etc., with the assistance of his goons. The petitioners 1 and 2 were unable to resist the 2nd respondent and his goons and hence, they apprehended danger for their life. The 2nd respondent threatened the petitioners 1 and 2 to arrange the balance payment on or before 01.03.2018. Unable to bear any further, the petitioners

1 and 2 pledged their jewels and mobilized the amount through money lender to the tune of Rs.21,00,000/-. The 2nd respondent has sent his Manager Angamuthu to collect the amount of Rs.21,00,000/- at Gorimedu, Salem near the residence of the petitioners 1 and 2. The petitioners 1 and 2 instructed their Manager/3rd petitioner to accompany Angamuthu for depositing the amount in M/s.Xedon Media Private Limited bank account and requested him to further transfer the same to the account of the 2nd respondent. The 3rd petitioner accompanied Angamuthu and went to Canara Bank, Gorimedu Branch, Salem to deposit the above said amount of Rs.21,00,000/-. As per Angamuthu's instruction, the amount of Rs.10,00,000/- deposited in the Axis Bank account No.915030006267074 of the 2nd respondent and the amount of Rs.11,00,000/- deposited in another Axis Bank account No.917030032895768 of the 2nd respondent. Thereafter, the 2nd respondent with a group of persons came to the house of the petitioners 1 and 2, forcibly abducted them in his Skoda car to the Sub Registrar Office, Suramangalam, parked the car in an isolated place and kept them under his control. Due to which, the 2nd petitioner became unconscious. In the meanwhile, the 2nd respondent was making arrangement with the Sub Registrar, Suramangalam to register the property which was given as security. The sale deed was attempted to be registered under threat and coercion by keeping the petitioners 1 and 2 under captive.

7.The learned counsel further submitted that the 1st petitioner's father Janarthanan on coming to know about the abduction of the petitioners 1 and 2 through his grandchildren, went to the All Women Police Station, Suramangalam and proceeded to the crime spot and rescued the petitioners 1 and 2. On seeing the Police, the 2nd respondent and his goons escaped from the scene. Thereafter, the petitioners 1 and 2 along with the patrol party had gone to the All Women Police Station, Suramangalam and lodged the complaint, but they were directed to give a complaint to the Inspector of Police, Kannankurichi Police Station, the jurisdiction Police. Finally, the complaint was received by the Inspector of Police, Suramangalam Police Station at about 08.30 p.m., and assigned C.S.R.No.143 of 2018. The 2nd respondent on coming to know about the lodging of Police complaint, adopted a dubious method and lodged the above compliant before the 1st respondent Police with nine months delay and a case in Crime No.650 of 2018 registered, for offence under Section 420 IPC against the petitioners. The 2nd respondent conveniently and fraudulently to suit his convenience lodged a false complaint against the petitioners. The complaint of the 2nd respondent is with suppression of facts withholding the earlier transaction, which took place in the year 2017, particulars of repayments of interest and receiving of documents (promissory notes, cheques and conquer sheets), which were produced at the time of availing loan. The 2nd respondent as a counter blast to the complaint lodged by the petitioners 1 and 2, had devised a novel method and projected a false complaint against the petitioners. The drafting of complaint would show that the 2nd respondent is backed with legal support and advice. In the complaint, no reason given for delay of nine months in lodging the complaint.

8.The learned counsel further submitted that the 2nd respondent, a highly influential person, an unregistered money lender, is fleecing innocent people by charging exorbitant interest. The admitted case of the petitioners 1 and 2 is that they only borrowed a sum of Rs.1,02,00,000/- from the 2nd respondent by giving blank promissory notes, cheques and conquer sheets and thereafter, they were repaying the interest. Sofar, the petitioners 1 and 2 paid around Rs.44,00,000/- to the 2nd respondent. When the petitioners 1 and 2 were harassed at the hands of the 2nd respondent, they have arranged further sum of Rs.21,00,000/- and deposited in the bank account of M/s.Xedon Media Private Limited. Due to inadvertence of the 3rd respondent, the 2nd respondent bank account number of last two digits have been wrongly mentioned, due to which, the amount of Rs.11,00,000/- was re-credited to M/s.Xedon Media Private Limited bank account. Admittedly, in this case, the petitioners 1 and 2 were at home, it was the 3rd petitioner, who had gone to the Canara Bank, Gorimedu Branch, Salem to deposit the amount of Rs.21,00,000/- to the account of the 2nd respondent. The account details of the 2nd respondent were furnished by the 2nd respondent's Manager Angamuthu. The 2nd respondent forced the petitioners 1 and 2 to settle the total amount of Rs.1,02,00,000/-, on the other hand, he forced the petitioners 1 and 2 to execute a sale deed in his favour. Since the petitioners 1 and 2 resisted the same, the 2nd respondent lodged several Police complaints to get away from all of his misdeeds. On going through the entire complaint of the 2nd respondent, it is seen that the petitioners 1 and 2 repaid substantial amount to the 2nd respondent for the loan obtained.

9.The learned counsel for the petitioners filed typed set of paper containing several complaints, notices, statement of account and other documents, which are as follows:-

(i)The statement of account No.512020010018346 of M/s.Xedon Media Private Limited, Salem pertaining to account No.18436 is produced. From the statement of account, it is seen that on 27.10.2017, the 2nd respondent transferred Rs.51,00,000/- in two instalments (totally Rs.1,02,00,000/-). Immediately, on the same day, amount of Rs.1,00,00,000/- has been debited from the loan account of M/s.Xedon Media Private Limited and thereby, the loan was closed on the same day. It is also seen that on 03.11.2017, the loan of Rs.1,00,00,000/- has been credited by the City Union Bank, Erode Branch. On 09.11.2017, the petitioners 1 and 2 transferred Rs.40,00,000/- to the 2nd respondent's bank account and on 24.11.2017, Rs.4,00,000/-. According to the petitioners 1 and 2, on 01.03.2018, a sum of Rs.10,00,000/- was credited to the 2nd respondent's Axis Bank account No.915030006267074.

(ii)The learned counsel for the petitioners produced the complaint, dated 05.03.2018 given by the 2nd petitioner to the Assistant Commissioner of Police, Asthampatti, in which the abduction by the 2nd respondent and forcibly getting signature from the petitioners 1 and 2 to execute sale deed are all recorded.

(iii)The learned counsel for the petitioners produced the copy of the complaint, dated 02.03.2018 lodged by the 2nd petitioner to the Commissioner of Police by registered post. The acknowledgment for both the Police complaints are produced.

(iv)The learned counsel for the petitioners produced the representation sent to the Sub Registrar Office, Suramangalam on 02.03.2018 requesting the Sub Registrar not to create any encumbrance or execute any document pertaining to document No.5299 of 1972. She also sent a representation on 03.03.2018 to the Inspector General of Registration, Chennai, District Registrar, Salem complaining about the document No.7047 of 2010, dated 23.09.2010 forcibly obtained by the 2nd respondent and no encumbrance to be created using the said document.

(v)The learned counsel for the petitioners produced the representation, dated 06.03.2018 sent to the Branch Manager, Canara Bank, Gorimedu Branch, Salem requesting not to honour the cheque bearing No.312097 pertaining to account No.5639101006722 of her husband and cheque No.312088 pertaining to account No.5639101006723 of herself.

(vi)The learned counsel for the petitioners produced the representation, dated 06.03.2018 sent to the Chief Minister's Special Cell with regard to the incident taken place on 01.03.2018.

(vii)Both the petitioners 1 and 2 had sent a letter, dated 10.03.2018 to the 2nd respondent, in which, availing of loan of Rs.1,02,00,000/- on 27.10.2017 is admitted and they sought return of Rs.100/- non judicial stamp papers, five promissory notes, conquer sheets and cheque leafs No.112976 & 112977 drawn on Tamil Nadu Mercantile Bank, Kannankurichi and other two cheque leafs in Nos.312088 & 312097. All these blank documents with signature were obtained by the 2nd respondent while availing loan from him, but the petitioners 1 and 2 gave no authority to the 2nd respondent to fill up and use the same. Further, in the letter, dated 10.03.2018, the petitioners 1 and 2 mentioned the repayment of the loan amount in part of Rs.40,00,000/- on 09.11.2017 and Rs.4,00,000/- on 24.11.2017 and Rs.10,00,000/- on 01.03.2018. The petitioners 1 and 2 admitted that the amount of Rs.11,00,000/- deposited through NEFT was returned due to some mistake in NEFT form. They have also mentioned about muscle men, forcible abduction, getting signature in sale deed and lodging a Police complaint.

(viii)The 2nd respondent sent Advocate notice, dated 11.03.2018 to the 2nd petitioner, in which, the 2nd petitioner is said to have availed loan of Rs.1,40,00,000/- on 26.03.2017 and receipt of Rs.44,00,000/- by the 2nd respondent are accepted. Though the petitioners 1 and 2 availed loan of Rs.1,02,00,000/- on 27.01.2017, they did not pay back the same. In the notice, for the incident happened on 01.03.2018, the 2nd respondent has given different version contrary to the true facts.

(ix)The petitioners produced the letter sent by the 2nd petitioner to the National Commission for Women, New Delhi about the incident happened on 01.03.2018. The National Commission for Women, New Delhi sent a communication to the 2nd petitioner that her complaint was forwarded to the Commissioner of Police, Salem.

(x)On 05.04.2018, the 1st petitioner received a notice under Section 138 of the Negotiable Instruments Act, 1881 from the 2nd respondent's Advocate, for which, suitable reply was given by the petitioners 1 and 2 on 08.05.2018 denying the allegations.

10.The learned counsel for the petitioners further submitted that the 2nd respondent's present stand is that two loans were obtained by the petitioners 1 and 2. One by the 1st petitioner and another one by the 2nd petitioner. Repayment in part was made only with regard to the loan of the 2nd petitioner.

It is contended by the 2nd respondent that the petitioners 1 and 2 are attempting to project only one loan was availed from the 2nd respondent and the 2nd respondent forcibly obtained the cheques, promissory notes, stamp papers etc., from the petitioners 1 and 2. He further submitted that in the statutory notice, dated 05.04.2018 and in the the complaint, dated 21.05.2018 and in the proof affidavit filed before the learned Judicial Magistrate No.II, Salem, the 2nd respondent not whispered anything about the alleged incident took place on 01.03.2018, in the Canara Bank, Gorimedu, Branch. As an after thought, with a delay of nine months, the above complaint has been filed against the petitioners. A civil dispute is given a criminal colour. The 2nd respondent in hand in glove with the 1st respondent Police is attempting to have a forcible settlement.

11.In support of his submissions, the learned counsel for the petitioners relied on the decision of the Hon'ble Apex Court in the cases of “Thermax Limited and others Versus K.M.Johny and others reported in (2011) 13 SCC 412”, “R.Kalyani Versus Janak C.Mehta and Others reported in (2009) 1 SCC 516”, and “State of Haryana Versus Bhajan Lal reported in 1992 SCC (Crl.) 426”.

12.The learned Additional Public Prosecutor appearing for the 1st respondent Police submitted that a complaint was lodged by the 2nd respondent against the petitioners to the Commissioner of Police, Salem in C.No.37/PGP/D.C/Cr&Tr/SLM(C)/2018, Salem, dated 30.10.2018. The said complaint was forwarded to the 1st respondent Police Station in Ref.No.340/C3-P.S/SLM(C)/2018, dated 01.11.2018. After preliminary enquiry, FIR registered in Crime No.650 of 2018, for offence under Section 420 IPC on 29.11.2018 against the petitioners herein. Immediately, after filing of FIR, the petitioners approached this Court and obtained interim stay on 12.12.2018. Due to which, the veracity and truthfulness of the complaint could not be verified and hence, the investigation not progressed. He further submitted that the contention of the petitioners to be considered during investigation. In the event of petitioners' explanation found to be true, appropriate steps would be taken to close the case. Likewise, if it is otherwise, appropriate action would be taken against them, in accordance with law. Hence, he prayed for dismissal of this Criminal Original Petition.

13.The learned counsel for the 2nd respondent submitted that the 2nd respondent and the petitioners are known to each other and they are devotees of Thirumoorthy Malai Swamigal. The 2nd respondent, who is a Doctor-cum-Money Lender, was approached by the petitioners 1 and 2 seeking loan to improve the business.

Believing the representation, the 2nd respondent gave loan for interest to the 2nd petitioner to the tune of Rs.1,40,00,000/- on 26.03.2017. Thereafter, the 2nd petitioner made repayment of Rs.40,00,000/- on 09.11.2017 and Rs.4,00,000/- on 24.11.2017, she is yet to pay the balance amount of Rs.97,44,000/-, for which she issued a cheque drawn on Canara Bank, Gorimedu Branch, Salem bearing No.312088 on 01.03.2018. Likewise, the 1st petitioner availed loan of Rs.1,02,00,000/- from the 2nd respondent for development of his business in the field of virtual reality and artificial intelligence. On 27.10.2017, the 2nd respondent made two payments each Rs.51,00,000/-, totalling Rs.1,02,00,000/- through bank, which is not disputed. After receiving the amount of Rs.1,02,00,000/-, the 1st petitioner neither paid the interest nor returned the principal sofar. In discharge of liability, the 1st petitioner issued a cheque bearing No.312097 drawn on Canara Bank, Gorimedu Branch, Salem for Rs.1,08,00,000/- on 01.03.2018. While availing the loan, the petitioners 1 and 2 gave undertaking letter, handed over signed cheques, promissory notes and non judicial stamp papers, conquer sheets and also handed over the title deed in document No.7047 of 2010, PAN Card, Voter ID, Aadhaar card, photographs etc. They have also given an undertaking to execute the sale deed in discharge of their liability towards the loan.

14.He further submitted that to regularize the loan and to raise creditworthiness, the petitioners 1 and 2 needed Rs.21,00,000/- from the 2nd respondent, which was deposited in the bank account of M/s.Xedon Media Private Limited maintained in Canara Bank, Gorimedu Branch, Salem. On their request, the 2nd respondent through his Manager Angamuthu gave Rs.21,00,000/- and provided two Axis bank account Nos.917030032895768 and 915030006267074 and the said Angamuthu proceeded to Canara Bank, Gorimedu Branch, Salem. At about 10.30 a.m., Angamuthu handed over Rs.21,00,000/- to the 3rd petitioner, who received the cash, deposited the same in M/s.Xedon Media Private Limited bank account and gave NEFT slip showing that the amount of Rs.10,00,000/- transferred to the bank account in No.91503006267074 and the balance amount of Rs.11,00,000/- transferred to the bank account No.917030032895768. The amount of Rs.10,00,000/- was credited to the 2nd respondent's bank account. As regards, the amount of Rs.11,00,000/- is concerned, the 3rd petitioner wrongly mentioned the last two digits of the 2nd respondent bank account number and thereby, the balance amount of Rs.11,00,000/- got re-credited to the 1st petitioner's bank account. Further, a drama was enacted in the Sub Registrar Office, Suramangalam before registration to be done. The 1st petitioner's father came to the Sub Registrar Office, Suramangalam, created a big scene and left with the petitioners 1 and 2 and hence, registration could not be carried out. In offensive to their cheating, they lodged a false complaint to Suramangalam Police Station and Kannankurichi Police Station against the 2nd respondent. Though the Police initially assigned CSR, finding the falsity in the 1st and 2nd petitioners' complaint, not taken any action. The petitioners 1 and 2 sofar not taken any steps to justify their complaint and get it registered. On the other hand, picking holes in the 2nd respondent's complaint and attempting to wriggle out from the situation by projecting the loans independently availed by both the petitioners 1 and 2 as single loan and the part payment made by the 2nd petitioner is now being attempted and projected as a regular loan transaction.

15.He further submitted that as regards for the default in cheque payment, a case under Section 138 of the Negotiable Instruments Act, 1881 has been filed against the petitioners 1 and 2, which are pending. This complaint has been filed for a specific incident, which had taken place on 01.03.2018, wherein believing false promise, the 2nd respondent handed over Rs.21,00,000/- to the petitioners 1 and 2, who in connivance with the 3rd petitioner re-credited only Rs.10,00,000/- and cheated Rs.11,00,000/- from the 2nd respondent. With regard to the incident happened on 01.03.2018, proper reply was given by the 2nd respondent to the petitioners 1 and 2. As on date, there is no complaint against the 2nd respondent. He further submitted that FIR is not an encyclopaedia, only after detailed investigation, the contention of the petitioners can be decided and not at this stage. Hence, he prayed for dismissal of this Quash Petition.

16.This Court considered the rival submissions and perused the materials available on record.

17.The petitioners 1 and 2 are running a business in the name of M/s.Xedon Media Private Limited, Gorimedu, Salem. The petitioners and the 2nd respondent are known to each other for quite sometime and they are devotees of Thirumoorthy Malai Swamigal. The 2nd respondent being a Doctor-cum-Money Lender, lent loan for interest to the of Rs.1,02,00,000/-. The amount of Rs.51,00,000/- each have been transferred from Axis bank accounts of the 2nd respondent to the account of M/s.Xedon Media Private Limited on 27.10.2017. On the same day, this amount of Rs.1,02,00,000/- debited to the loan account of M/s.Xedon Media Private Limited and hence, the loan was closed. These particulars are found in the statement of bank account of

M/s.Xedon Media Private Limited from 01.10.2017 to 31.10.2017. On 03.11.2017, M/s.Xedon Media Private Limited credited with Rs.1,00,00,000/- as loan from the City Union Bank, Erode Branch. On 09.11.2017, the amount of Rs.40,00,000/- was credited to the account of the 2nd respondent and on 24.11.2017, the amount of Rs.4,00,000/- was credited to the 2nd respondent's account. These are all not disputed. From the bank account of M/s.Xedon Media Private Limited maintained in Canara Bank, Gorimedu Branch, Salem it is seen that on 01.03.2018, there is deposit of Rs.21,00,000/- by cash. Correspondingly, the amount of Rs.21,00,000/- was transferred by way of NEFT.

18.The issue, in this case, is that this amount of Rs.21,00,000/- not reached the beneficiary/2nd respondent, on the other hand, only Rs.10,00,000/- transferred to the 2nd respondent's account and Rs.11,00,000/- was re-transferred to the account of M/s.Xedon Media Private Limited for wrong mentioning of 2nd respondent's bank account number. This wrong credit has been made deliberately by the 3rd petitioner. The complaint further discloses that on 01.03.2018, the 2nd respondent's Manager Angamuthu received Rs.21,00,000/- by cash from the 2nd respondent and was waiting in Canara Bank, Gorimedu Branch, Salem, where the 3rd petitioner received the cash, deposited the same in the account of M/s.Xedon Media Private Limited. Subsequently, the amount of Rs.21,00,000/- transferred to the account of the 2nd respondent. Due to the negligence of the 3rd respondent, the amount of Rs.11,00,000/- re-credited to the account of M/s.Xedon Media Private Limited. The amount of Rs.21,00,000/- was borrowed by the petitioners 1 and 2 only for the purpose of facilitating and to project creditworthiness of the M/s.Xedon Media Private Limited bank account. On the same day, at about 04.00 p.m., the petitioners 1 and 2 had gone to the Sub Registrar Office, Suramangalam, where the sale deed pertaining to document No.7047 of 2010 was made ready for registration in favour of 2nd respondent. When it was about to be presented before the Sub Registrar, Suramangalam, the 2nd petitioner fainted. Thereafter, the 2nd petitioner's father-in-law Janarthanan came there, objected for the sale and took away the petitioners 1 and 2.

19.The contention of the learned counsel for the petitioners is that the properties are valued around Rs.5 Crores and they were forced to execute the sale deed using unsigned document collected earlier by the 2nd respondent. The contention of the petitioners gains credence as could be seen from the notice of the 2nd respondent, which was sent to the 2nd petitioner on 11.03.2018. In the notice, he admitted that on 26.03.2017, Rs.1,40,00,000/- was advanced as loan to the 2nd petitioner. At that time, the title deeds as security were received and the loan was agreed with the interest at the rate of 1.50 per hundred per month and a memorandum of title deed was also executed by creating an equitable mortgage at Salem Town on 29.03.2017. It is further admitted that the amount of Rs.40,00,000/- was received towards repayment of principal and interest on 09.11.2017 and the amount of Rs.4,00,000/- was received on 24.11.2017 and for the balance amount, a cheque bearing No.312088 of Canara Bank, Gorimedu Branch, Salem for amount of Rs.97,44,000/- was handed over by the 2nd petitioner. In the said notice, it is averred that the 1st petitioner wanted a further loan of Rs.1,02,00,000/- by way of two debits and on 27.01.2017, from the Axis Bank account of the 2nd respondent, the amount of Rs.51,00,000/- each transferred to the account of City Union Bank, Erode of M/s.Xedon Media Private Limited. From the notice, dated 11.03.2018, it is seen that the 1st petitioner neither paid the principal nor paid interest and he was inclined to convey the property of 4,753 sq.ft at Alagapuram Puthur Village, Salem Town. It is strange to see that the 2nd respondent advanced loan of Rs.1,02,00,000/- on 27.01.2017,which was transferred through bank in two installments as stated above. But there is no reference how and what mode the loan of Rs.1,40,00,000/- paid to the 2nd petitioner on 26.03.2017, on the contrary, the 2nd respondent admitted he received a part amount of Rs.44,00,000/- on 09.11.2017 and 31.10.2017, which does not meet eyes, merit consideration.

20.A person, who took loan from the 2nd respondent on 27.01.2017 neither repaid the principal nor interest. While that being so, again the 2nd respondent gave loan of Rs.1,40,00,000/- on 26.03.2017 to the wife of a defaulter is not possible and whether it was through bank or cash, there is no answer. The incident happened on 01.03.2018 seems to be clouded with mystery. The learned counsel for the petitioners fairly admitted that due to the negligence of the the 3rd petitioner, the amount of Rs.11,00,000/- re-transferred to the account of M/s.Xedon Media Private Limited bank account. In the notice of the 2nd respondent, dated 11.03.2018, it is mentioned that to help the petitioners to avail further loan, the amount of Rs.21,00,000/- was credited, so as to project M/s.Xedon Media Private Limited bank account as viable account for loan. Already M/s.Xedon Media Private Limited is having account in Canara Bank, Gorimedu Branch, Salem. After KYC norms is made mandatory, the suppression and false projection of bank accounts one bank to another is not possible. Only after getting creditworthiness certificate and confirmation from the other bank, the loans are disbursed. Hence, the reason given by the 2nd respondent helping the petitioners 1 and 2 to tide over creditworthiness appears to be far-fetched.

21.As regards the incident happened at Sub Registrar Office, Suramangalam is concerned, the 2nd respondent did not deny the same and gave a different version as that of the petitioners. The petitioners 1 and 2 have produced contemporary documents confirming the happenings on 01.03.2018 by producing the complaint made to the Assistant Commissioner of Police, Suramangalam in C.S.R.No.143 of 2018, followed it with representation to the Commissioner of Police by post and online, complaint to the Sub Registrar, Suramangalam and other registration authorities and also to the Assistant Commissioner of Police, Suramangalam and to the Canara Bank, Gorimedu Branch, Salem and to the Chief Minister Cell, followed it, by a detailed notice to the 2nd respondent.

22.From the notice and the reply notice sent by the 2nd respondent, it is seen that there is a long relationship between the petitioners and the 2nd respondent and there was exchange of amount due to business development and now cases filed against the petitioners 1 and 2 under Section 138 of the Negotiable Instruments Act, before the learned Judicial Magistrate No.II, Salem. As regards, the incident happened on 01.03.2018, it is nothing but part of the earlier incident and loan transaction.

23.The Hon'ble Apex Court in the case of “Alpic Finacne Limited Versus P.Sadasivan reported in (2001) 3 SCC 513” held as follows:-

> “10. .... The injury alleged may form the 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 a 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 the respondents committed the offence under Section 420 IPC and the case of the appellant is that the 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, the parties entered into a valid lease agreement and the grievance of 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."

24.It is highly unbelievable on the admitted case of the 2nd respondent that he extended loan to the 1st petitioner on 27.01.2017 for a sum of Rs.1,02,00,000/- and the 1st petitioner neither paid principal nor interest. While this being so, it is not to be said that on 26.03.2017, the 2nd respondent gave Rs.1,40,00,000/- to the 2nd petitioner as loan. No prudent person shall give second loan, when no repayment made towards the principal or interest in the first loan. The deposit of Rs.21,00,000/- on 01.03.2018 is a transaction for earlier loan. In this case, the role of the 3rd petitioner is on limited extent, he acted as per the instructions of the petitioners 1 and 2, under whom, he is employed.

25.It is seen that there is inordinate delay of nine months in lodging the complaint by the 2nd respondent and no reason given for the same. In the meanwhile, there have been exchange of several notices making claim and counter claim against each other.

26.It is settled principle that the essential ingredients to attract offence under Section 420 IPC is that the dishonest intention to deceive another person is to be at the inception. Merely a breach of contract cannot give rise to criminal prosecution.

27.On perusal of the complaint, FIR and exchange of notices making claim and counter claim, the complaint is with inherent latches and improbability and it contains flavour of civil nature.

28.In view of the above, this Court finds that the continuation of the investigation would amount to abuse of process of the law. Hence, the FIR in Crime No.650 of 2018, on the file of the 1st respondent Police is hereby quashed against the petitioners. Accordingly, this Criminal Original Petition is allowed. Consequently, the connected Miscellaneous Petition is closed.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

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To

1.The Judicial Magistrate II,
Salem.

2.The Chief Judicial Magistrate,
Salem.

3.The Inspector of Police,
Kannankurichi Police Station,
Salem District.

4.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.R.Marudhachalamurthy, Advocate Sr.31908
+1cc to Mr.N.Manokaran, Advocate Sr.31944

Crl.O.P.No.29012 of 2018

skm[co]
srg 08/06/2022