



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 21/04/2022

CORAM:

THE HON'BLE MR.JUSTICE G.ILANGOVAN

Crl.OP(MD)No.6435 of 2019

and

Crl.MP(MD)Nos.4282 and 4283 of 2019

A.Abhu Amzhad

... Petitioner/Sole Accused

Vs.

1.The Inspector of Police,
Batlagundu Police Station,
Batlagundu.
(Crime No.157 of 2017)

...Respondent/Complainant

2.A.Murali Kannan

... Respondent/Defacto Complainant

Prayer: Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records pertaining to the charge sheet for offences under sections 420,294 (b) and 506(i) of the Indian Penal Code in CC No.322 of 2018 on the file of the Judicial Magistrate, Nilakottai, Dindigul District and quash the charge sheet and consequential all further proceeding. .

For Petitioner : Mr.D.Shanmugaraja Sethupathi

For 1st Respondent : Mr.SS.Madhavan
Government Advocate
(Criminal side)

For 2nd Respondent : Mr.R.Velmurugan

O R D E R

This petition has been filed seeking quashment of the case in CC No.322 of 2018 on the file of the Judicial Magistrate, Nilakottai.

2.The case of the prosecution in brief:-

On 22/08/2012, the accused borrowed a sum of Rs.6,00,000/-and another sum of Rs.4,55,000/-, on 24/05/2015 from the de-facto
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complainant. With an intention to cheat the money, the accused failed to repay the same and drag on the matter. When it was demanded, on 28/05/2016 at about 7.00 pm, the accused abused him in filthy language and also criminally intimidated. Based upon the complaint given by the de-facto complainant, a case in Crime No.157 of 2017 has been registered for the offences under sections 420, 294 (b) and 506(i) IPC and after completing the formalities of investigation, final report was filed in CC No.322 of 2018 and it was taken cognizance by the trial court.

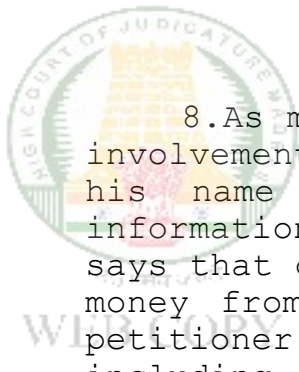
3. Seeking quashment of the same, this petition came to be filed on the ground that it is absolutely out and out money transaction between the second respondent herein, who is the de-facto complainant and one Sundaramoorthy, who was originally arrayed as the 2nd accused and subsequently his name was deleted from the final report and later included. Apart from the factual aspects, other legal grounds have also been raised by the petitioner stating that since it is a money transaction, the offence under section 420 IPC is not attracted and other offences are also not attracted in the facts and circumstances of this case.

4. Heard both sides. The entire CD file has been called and perused.

5. At the outset, certain factual aspects are required for considering this petition. Perusal of the CD file shows that there was no documentary evidence with regard to the money transaction. In 2012, the first accused demanded and received Rs.6,00,000/- and in 2015, also for performing his daughter's marriage, he received Rs.4,55,000/-. So totally, Rs.10,55,000/- was borrowed by him.

6. As mentioned earlier, there is no documentary evidence. During the course of investigation, the de-facto complainant has produced the CD which contains the telephonic conversation between the parties and one Sundaramoorthy introduced A1 to the de-facto complainant and thereafter, there were direct money transactions between the de-facto complainant and this petitioner.

7. As mentioned earlier, the name of the above said Sundaramoorthy has been subsequently deleted from the final report. The above said Sundaramoorthy appears to have given a complaint against the second respondent herein stating that the de-facto complainant for the purpose of meeting the medical expenses of his wife, he requested the loan and he pledged 8.50 sovereigns of gold jewels for the purposing of raising the money. Thereafter, he did not redeem the jewels and according to him, the above said occurrence took place on 05/02/2016 and 22/01/2016. When that was not returned, he made a complaint, on 21/10/2019, much after the registration of the FIR.



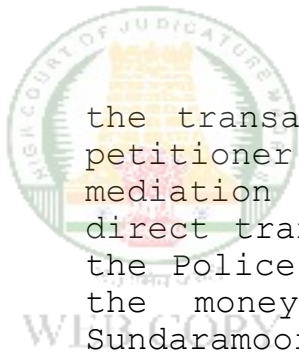
8.As mentioned earlier, during the course of investigation, the involvement of Sundaramoorthy in the occurrence was doubted and so, his name was deleted from the final report. But later, on information his name was also included. Now the Inspector of Police says that only the second accused namely Sundaramoorthy received the money from the de-facto complainant, who in turn gave it to the petitioner herein. Now the final report has been altered by including the above said Sundaramoorthy also. So these are the factual grounds.

9.In the light of the above said factual grounds, the learned counsel appearing for the petitioner would rely upon number of judgments for the purpose of argument that the allegation against the petitioner does not attract the offence of 420 IPC. For that purpose, he has relied upon the decision of the Hon'ble Supreme Court in the case of **Mitesh Kumar J.Sha Vs. The State of Karnataka and others (Criminal Appeal No.1285 of 2021, dated 26/10/2021)**. In that case, the distinction between the mere breach of contract and the offence of cheating has been elaborately discussed in para 39, wherein the Hon'ble Supreme Court was of the considered view that the criminal intention to cheat might writ large on the face of the record, even at the initial stage of the transaction. But the subsequent conduct may also be taken into account. So according to the Hon'ble Supreme Court, the intention is the main ingredient for the offence under section 420 IPC.

10.Here, as mentioned earlier, at one point of time, it was the case of the prosecution that there was a direct money transaction between this petitioner and the de-facto complainant and at another point of time, Sundaramoorthy only received the money from the de-facto complainant, who in turn gave the same to the petitioner herein. So these are the factual issues, which cannot be gone into by this court.

11.Perusal of the entire CD file shows that the prosecution rests upon one circumstance that after several demands were made by the de-facto complainant, the petitioner was not willing to repay the amount and even refused to execute any document. This was the argument of the second respondent/de-facto complainant also.

12.According to the prosecution and the second respondent, the intention of cheating can be inferred from the conduct of the petitioner in refusing to repay the amount and execute any document. But however, the learned counsel appearing for the petitioner would submit that in view of the intervention of the above said Sundaramoorthy, no intention of cheating can be attributed to the petitioner. Even though, there is a total denial on the part of the petitioner with the above transaction, as mentioned earlier, this is a factual aspect. Purely a factual issue, which cannot be taken into account. Noting that there was a documentary evidence, evidencing



the transaction between the parties, this court also insisted the petitioner to settle the issue, even by referring the matter to the mediation centre. But he has refused stating there there was no direct transaction between them. Since the petitioner is working in the Police Department, the said complaint has been given to recover the money, which was payable by the second accused namely Sundaramoorthy. So the main ingredient for the offence under sections 420 IPC is not attracted.

13.Regarding the offences under sections 294(b) and 506(i) IPC also, it is seen that there was oral conversation between the the de-facto complainant and the petitioner through the mobile phone. So in such circumstances, the offences under sections 294(b) and 506(i) IPC may not also be attracted, in view of the decision of this court in the case of ***R.Lochanan Vs. The Inspector of Police, South Thamaraiikulam Police Station, Kanyakumari District and another made in Crl.OP(MD)No.23128 of 2013, dated 28/06/2018.*** Because the main ingredient of section 294(b) IPC is that it must be uttered in the public place or in the public view or in the annoyance of others. Absolutely, there is no such ground.

14.In respect of section 506(i)IPC also, the ingredients of section 506(1) IPC are not attracted. There is no allegation to the effect that the de-facto complainant entertained or suffered life threat. So in the light of the above said discussion, the final report filed against the petitioner is liable to be quashed.

15.In the result, this criminal original petition is **allowed**. The impugned CC No.322 of 2018 on the file of the Judicial Magistrate, Nilakottai, is hereby quashed as against the petitioner. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (Admn-I)

// True Copy //

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Sub Assistant Registrar(CS)

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Note :

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To
1.The Judicial Magistrate,
Nilakottai,
Dindigul District.

2.The Inspector of Police,
Batlagundu Police Station,
Batlagundu.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.R.VELMURUGAN, Advocate (SR-20348[F]dated 22/04/2022)

+1 CC to M/s.D.SHANMUGARAJA SETHUPATHI, Advocate (SR-20389[F] dated 22/04/2022)

ORDER MADE IN
CrI.OP (MD) No.6435 of 2019
21.04.2022

PKP/06.06.2022/5P/6C