BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 30.06.2022

PRONOUNCED ON: 21.07.2022

CORAM

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

Crl.O.P.(MD)No.11092 of 2019
and
Crl.M.P.(MD)No.6988 of 2019

Sudhakaran : Petitioner/Sole Accused

Vs.

1.State represented by
The Deputy Superintendent of Police,
District Crime Branch,
Theni.

2.The Inspector of Police,
Chinnamanur Police Station,
Theni District.
In Crime No.430/2014 : Respondents 1 and 2/Complainants

3.Umarani : 3rd Respondent/defacto complainant

PRAYER : Criminal Original Petition has been filed under Section 482 Cr.P.C, to call for the records pertaining to the proceedings pending in C.C.No.365 of 2015, on the file of the learned Judicial Magistrate, Uthamapalayam, Theni District and quash the same.

For Petitioner : Mr.R.Aravindan

For Respondents : Mr.K.Sanjai Gandhi
Government Advocate(Crl.Side)
for R.1 and R.2

: Mr.A.S.Abdul Kalam Azad Sulthan
for R.3

ORDER

This Criminal Original Petition has been filed, invoking Section 482 Cr.P.C., seeking orders to call for the records pertaining to the case in C.C.No. 365 of 2015, pending on the file of the Court of Judicial Magistrate, Uthamapalayam, Theni District and quash the same.

2. The petitioner is the sole accused in C.C.No.365 of 2015, on the file of the Judicial Magistrate Court, Uthamapalayam, Theni District. On the basis of the complaint lodged by the third respondent, F.I.R. came to be registered in Cr.No.430 of 2014, dated 12.08.2014 against five persons including the petitioner for the alleged offence under Section 420 I.P.C. The first respondent, after completing the investigation, has laid the final report under Section 173 Cr.P.C., dated 05.10.2015. against the petitioner for the alleged offence under Section 420 I.P.C., and the case was taken on file in C.C.No.365 of 2015 and the same is pending on the file of the Judicial Magistrate Court, Uthamapalayam.

3. The case of the prosecution is that the third respondent, after divorcing her husband, was living with her parents and was doing textile business, that one Jeyapriya, Inspector of Police, was a close friend of the third respondent, that the parents of the said Jeyapriya and her brother were the family friends of the third respondent, that the said Jeyapriya had informed the third respondent that her brother Sudhakaran and his wife Karthigairani were in need of money to develop their business and if the amount is paid through the third respondent, she will be in a position to get back that amount, that the third respondent had then enquired about the money needs of Jeyapriya's brother Sudhakaran with his wife Karthigairani, that since they had requested for a loan of Rs.10,00,000/- on 06.11.2011, she had paid the said amount to Jeyapriya, who in turn handed over to her brother and his wife, that the said Jeyapriya had handed over the signed promissory notes and cheques of her brother to the third respondent, that though the said Sudhakaran got amount of Rs.54,00,000/-, he informed that he wanted to utilise the said amount for his business purposes and requested six months' time for repayment, that the said Sudhakaran had also agreed to pay interest at Rs.2/- for Rs.100/- per month and Sudhakaran and others had paid interest for ten months, that subsequently, the petitioner treated a sum of Rs.4,85,000/- payable to the defacto complainant towards chit amount as loan and agreed to pay the same with interest, that the mother of Jeyapriya had also taken a loan of Rs.4,00,000/- for completing their constructions on 15.04.2013, that the said

Sudhakaran's wife Karthigairani had also taken a loan of Rs.2,00,000/- to meet her urgent expenses, that thereafter the said Sudhakaran, for purchasing grinder, had taken a loan of Rs.2,00,000/- and the same was paid through ICICI bank account, that when the third respondent had demanded Jeyapriya and others to return her amount, they had informed that they would sell their land situated at Chinnamanur Kannamma Garden and settle her amount, that though they had sold the land, they have not paid any amount, that Jeyapriya and others had approached the third respondent and requested further time for repayment, that since the third respondent had not settled the jewel loan, her 65 sovereigns of gold jewels were sold in auction and that the said Jeyapriya, her brother and other family members had cheated the third respondent and refused to pay the amount. Hence, the complaint.

4. As rightly pointed out, in the charge sheet it has been stated that the petitioner/accused had taken total loan amount of Rs.16,85,000/- from the third respondent by issuing unfilled, but signed cheques, promissory notes and stamp papers and that the petitioner, without paying the said amount, had cheated the third respondent. It is evident from the records that the Investigating Officer has examined 13 independent witnesses apart from the third respondent/defacto complainant and recorded their statements under Section 161(3) Cr.P.C.. As rightly contended by the learned Counsel for the petitioner, most of the witnesses

in their statements have specifically stated that the petitioner and the third respondent were close friends and there existed money transactions between them.

5. As rightly contended by the learned Counsel for the petitioner, it is pertinent to note that even according to the defacto complainant, she herself had enquired about financial needs of the petitioner from his wife and as per the request made by them, she advanced the first loan amount of Rs.10,00,000/- to them. As already pointed out, the defacto complainant in her compliant as well as in her statement, has specifically stated that since the petitioner had agreed to repay the loan amount with interest and more particularly at Rs.2/- per Rs.100/- per month as interest, she had advanced the subsequent loans totally Rs.16,85,000/-.

6. At this stage, it is necessary to refer Sections 415 and 420 I.P.C., which read thus:

> ***"Section 415 of the Penal Code reads thus:***
>
> ***"Section 415. Cheating.****- Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes*

or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat"."

The ingredients to constitute an offence of cheating are as follows:

i) there should be fraudulent or dishonest inducement of a person by deceiving him;

ii) (a) the person so induced should be intentionally induced to deliver any property to any person or to consent that any person shall retain any property, or

(b) the person so induced should be intentionally induced to do or to omit to do anything which he would not do or omit if he were not so deceived; and

iii) in cases covered by (ii) (b) above, the act or omission should be one which caused or is likely to cause damage or harm to the person induced in body, mind, reputation or property.

A fraudulent or dishonest inducement is an essential ingredient of the offence. A person who dishonestly induces another person to deliver any property is liable for the offence of cheating.

Section 420 of the Penal Code reads thus:

***"Section 420. Cheating and dishonestly inducing deliver of property.**- Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable to being converted into a valuable security, shall be punished with* *imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."*

The ingredients to constitute an offence under Section 420 are as follows:

i) A person must commit the offence of cheating under Section 415; and

ii) The person cheated must be dishonestly induced to

(a) deliver property to any person; or

(b) make, alter or destroy valuable security or anything signed or sealed and capable of being converted into valuable security.

Cheating is an essential ingredient for an act to constitute an offence under Section 420."

7. The condition necessary for an act to constitute an offence under Section 415 I.P.C., is that there was dishonest inducement by the accused. Cheating is an essential ingredient for an offence under Section 420 I.P.C. At this juncture, it is necessary to refer the decision of the Hon'ble Supreme Court in ***Rekha Jain Vs. State of Karnataka and another*** reported in ***2022 Livelaw (SC)468 (Crl.A.No.749 of 2022, dated 10.05.2022)*** wherein the Hon'ble Supreme Court held as follows:

"8. At the outset, it is required to be noted that the offence alleged against the appellant-accused – Rekha Jain is for the offence under Section 420 of IPC. She has been now charge-sheeted for the said offence. However, considering the allegations in FIR/complaint, it

can be seen that the entire and all the allegations are against the accused Kamalesh Mulchand Jain. In the complaint/FIR, there are no allegations whatsoever to the effect that the accused Rekha Jain induced the complainant to part with the gold jewellery."

Considering the above, it is very much clear that there must be a dishonest inducement to deceive a person to deliver any property to any other person in order to make out a case against a person for the offence under Section 420 I.P.C.

8. The learned Counsel for the petitioner would submit that the petitioner has not borrowed any amount from the third respondent at any point of time, that the documents kept in the office of the petitioner were illegally taken by one Udhayakumar, the then partner of the petitioner and that the said Udhayakumar has fabricated the documents by using the unfilled documents and initiated proceedings in the name of several persons without any justifiable cause and that the complainant is one among the name lender and lodged the above complaint at the instance of the said Udhayakumar.

9. The learned Counsel for the petitioner would submit that the specific complaint of the third respondent that the petitioner has borrowed the amounts referred in the complaint only by giving necessary documents as security for the loan amount will not constitute any offence punishable under Section 420 I.P.C.,,

especially in the absence of any fraudulent intention on the part of the petitioner to cheat the complainant, that there is no specific overt act against the petitioner to show any *malafide* intention of the petitioner to cheat the defacto complainant, that there is nothing in the complaint or in the charge sheet to indicate that the petitioner induced the third respondent with dishonest intention, that the materials produced does not disclose any offence as against the petitioner, that the entire allegations made, even it is accepted as true, in its entirety does not disclose the ingredients of the offence under Section 420 I.P.C. and that the continuance of the proceedings initiated against the petitioner is nothing but abuse of legal process.

10. As already pointed out, cheating is an essential ingredient for an act to constitute an offence under Section 420 I.P.C., But at the same time, a fraudulent or dishonest inducement is an essential ingredient of the offence under Section 415 I.P.C. To put it in other way, a person who dishonestly induced the person to deliver any property is liable for the offence of cheating. But in the case on hand, there are absolutely no averments that there was dishonest inducement to deceive the third respondent to delivery money or any other property to any other person.

11. As rightly contended by the learned Counsel for the petitioner, when there are no allegations of inducement by the petitioner, it cannot be said that he has committed any offence as alleged under Section 420 I.P.C., On perusing the complaint, charge sheet and the statements recorded under Section 161(3) Cr.P.C., the averments or the allegations against the petitioner do not constitute an offence under Section 420 I.P.C., and even if the Court accepts the allegations in the complaint and the charge sheet taken at the face value to be true, the essential ingredient of cheating is found missing. Considering the above, as rightly contended by the learned Counsel for the petitioner, this Court has no hesitation to hold that the third respondent has made an attempt to convert a civil dispute into a criminal dispute, despite the absence of ingredients necessary to constitute a criminal offence.

12. Considering the above, this Court is of the clear view that permitting the prosecution to proceed against the petitioner would only amount to abuse of process of law. Hence, this Court concludes that the proceeding in C.C.No.365 of 2015 is liable to be quashed as against the petitioner.

13. In the result, this Criminal Original Petition is allowed and the proceedings in C.C.No.365 of 2015, on the file of the Judicial Magistrate,

Uthamapalayam, Theni District, is hereby quashed as against the petitioner. Consequently, the connected miscellaneous petition is closed.

21.07.2022

Index : Yes/No
Internet : Yes/No

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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, Uthamapalayam,
   Theni District.

2. The Deputy Superintendent of Police,
   District Crime Branch,
   Theni.

3. The Inspector of Police,
   Chinnamanur Police Station,
   Theni District.

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

K.MURALI SHANKAR, J.

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PRE-DELIVERY ORDER MADE IN

Crl.O.P.(MD)No.11092 of 2019

21.07.2022