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CrI.O.P.(MD) No.15558 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 27.10.2022

PRONOUNCED ON : 25.11.2022

CORAM

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CrI.O.P (MD) No.15558 of 2022

and

CrI.M.P.(MD) No.10223 of 2022

Seshadri

...Petitioner

vs

1.The Inspector of Police,
District Crime Branch,
Thanjavur,
Thanjavur District.

2.A.Balathandayutham

...Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records relating to the charge sheet in C.C.No.147 of 2022 on the file of the learned Judicial Magistrate No.II, Thanjavur and quash the same.

For Petitioner	: Mr.B.Prahalad Ravi
For R1	: Mr.R.Meenakshi Sundaram
	Additional Public Prosecutor
For R2	: Mr.C.D.Johnson



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ORDER

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This Criminal Original Petition has been filed to quash the Charge Sheet in C.C.No.147 of 2022 on the file of the learned Judicial Magistrate No.II, Thanjavur.

2. It is the contention of the learned Counsel for the Petitioner that the Petitioner and the second Respondent are friends. The second Respondent had given a complaint to the police that the Petitioner under the guise of getting a Government job for the second Respondent had obtained a sum of Rs.6,00,000/-. But he had not secured the job for the second Respondent. Therefore, the second Respondent sought return of the amount, for which the Petitioner is alleged to have issued him a cheque for a sum of Rs.6,00,000/-. When the second Respondent had presented the cheque for withdrawal of money, the same was bounced. Therefore, the second Respondent had issued statutory notice, for which the Petitioner had replied that only a sum of Rs.30,000/- was received and the second Respondent had exaggerated the amount. Therefore, the second Respondent had filed a complaint before the first Respondent, as though the Petitioner herein had



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obtained money for the purpose of getting the Government job for the second Respondent. Only to threaten the Petitioner and to cause harassment to him, a simple cheque case had been converted into a criminal case by registering the FIR in Crime No.77 of 2021 for the offence under Section 420 IPC. The Petitioner suffered incarceration.

3. The learned Counsel for the Petitioner relied on the judgment of the Hon'ble Supreme Court in ***Criminal Appeal Nos.1269 and 1270 of 2021 (Sripati Singh (since deceased) through his son, Gaurav Singh Vs. The State of Jharkhand and another) dated 28.10.2021***, wherein the Hon'ble Supreme Court had held as under:-

“8..... It is contended that from the very complaint and the statement of witnesses recorded by the learned Judicial Magistrate it is evident that no criminal offence is made out in the instant case. Even if the case as put forth in the complaint is taken note, at best the transaction can be considered as an advancement of loan for business purpose and even if it is assumed that the said amount was not repaid it would only give rise to civil liability and the appellants could have only filed a civil suit for recovery of the loan. The statement of the witnesses, more particularly the daughter of the complainant would indicate the longstanding relationship between the parties and also the monetary transaction which in any event does not constitute a criminal



offence. It is contended that under any circumstance, the offence as alleged under [Section 420](#) of IPC cannot be sustained. Insofar as the offence alleged against the respondent No.2 under [section 138](#) of N.I. Act, the same would also not be sustainable when the complainant himself has relied on the loan agreement wherein reference is made to the cheque being issued as security for the loan. The learned counsel contends that the High Court in fact has taken note of these aspects, proceeded in its correct perspective and has arrived at a just conclusion, which does not call for interference. He therefore, contends that the above appeals be dismissed.

10. While considering the above aspects, it is evident that the learned Magistrate having referred to the complaint and sworn statement of the complainant and the witnesses has taken cognizance, issued summons and has consequently arrived at the conclusion that the discharge as sought by the respondent No.2 cannot be accepted. The High Court on the other hand having referred to the rival contentions has concluded as follows: “20. From the aforesaid facts and from the documents of the complainant, this Court finds that long standing 'business transaction and inability of refunding a loan has been given a colour of criminal offence of cheating punishable under [Section 420](#) of the Indian Penal Code. A breach of trust with mens rea gives rise to a criminal prosecution. In this case when I go through the evidence before charge of the complainant and the documents of the complainant, I find that there were long standing business transactions between the parties. Since 2011 money was advanced by the complainant and his family members to the accused and the complainant witness admits that money was also transferred



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from the account of the accused to the account of daughter of the complainant. From the evidence, I find that there is no material to suggest existence of any mens rea. Thus, this case becomes a case of simplicitor case of nonrefunding of loan, which cannot be a basis for initiating criminal proceeding. The Hon'ble Supreme Court in the case of Samir Sahay alias Sameer Sahay versus State of UP & Anr. reported in (2018) 14 SCC 233 held that when the dispute between the parties was ordinarily a civil dispute resulting from a breach of contract on the part of the appellant by non refunding of amount advanced, the same would not constitute an offence of cheating. In this case also, I find that it is true case that the amount of loan has not been refunded, thus, this cannot come within the purview of cheating, though the complainant by suppressing the material facts, has tried to give a different colour. Thus, I find that no case punishable under [Section 420](#) of the Indian Penal Code can be made out in this case."

4. The learned Additional Public Prosecutor for the first Respondent vehemently objected to the submission of the learned Counsel for the Petitioner stating that perusal of the contents of the FIR, it is found that it is a clear case of cheating under the guise of getting the Government job. On 10.05.2019, the Petitioner was working as Personal Assistant to the former Member of Parliament. Totally, a sum of Rs.6,00,000/- was given to the



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Petitioner, among which a sum of Rs.4,00,000/- was withdrawn from the account of the mother-in-law of the second Respondent. The Petitioner had not arranged the job. The second Respondent/complainant lodged the complaint. On the basis of the same, the first Respondent had registered the case in Crime No.77 of 2021 dated 03.11.2021. As a surety, the Petitioner had given the cheque, which was later dishonored. Statutory notice was also sent. At that stage, the Petitioner herein by way of reply submitted that it is not a legally enforceable debt.

5. It is the further contention of the learned Additional Public Prosecutor that the investigation had been completed and at the initial stage, the accused was arrested on 03.10.2021 for job rocketing. Bail was not granted. The facts of the reported ruling are different. The choice is available to the second Respondent to proceed with the case under Section 138 of Negotiable Instruments Act or to lodge a criminal complaint regarding the conduct of the Petitioner in obtaining money from the second Respondent under the guise of getting the Government job. *Mens rea* is attracted. Receipt of money under the guise of getting the Government job attracts the provisions under Section 420 IPC. The argument of the learned



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Counsel for the Petitioner is to be treated as valuable defence of the accused, which can be considered only by the trial Court and not by this Court by exercising the extraordinary powers/inherent powers under Section 482 Cr.P.C.

6. The learned Counsel for the second Respondent would submit that the second Respondent is the complainant. The second Respondent had approached the then Member of Parliament for admitting his child in Kendra Vidyalaya at Thanjavur. At that time, the Petitioner herein, who was serving as Personal Assistant to the then Member of Parliament, developed friendship with the second Respondent. In due course of time, they came to know each other. The Petitioner herein wanted to know as to why after completing B.Pharm and MBA., the second Respondent had not applied for a Government job. The second Respondent was not interested. The Petitioner persuaded upon him that he will get the Government job as Drug Inspector, where he is treated as a Government Gazetted Officer and can sign in Green ink, thereby induced the second Respondent to get the Government job. He had applied for the post of Drug Inspector. He had appeared for the examination. He was not willing to influence the Officials



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of the Tamil Nadu Public Service Commission. The Petitioner insisted the second Respondent that he knew the members of the Tamil Nadu Public Service Commission. He can select the second Respondent for the job and pestered him to part with the amount. The second Respondent was not willing at all. Still he took Rs.6,00,000/- from the second Respondent under the guise that after selection and the results are published, the balance amount to be paid. After Rs.6,00,000/- was paid, there was no information that the second Respondent was selected. Therefore, the second Respondent sought return of money, for which the Petitioner issued the cheque. The second Respondent issued statutory notice, after dishonour of the cheque. For the statutory notice sent by the second Respondent, the Petitioner sent reply stating that the second Respondent does not have resources to part with Rs.6,00,000/-. Therefore only, he had found that the Petitioner had cheated him. Only after receiving the reply notice, the second Respondent approached the police for appropriate action against the Petitioner.

7. It is the principle of Election that the second Respondent can avail any avenue for the relief. He can also pursue Section 138 of Negotiable Instruments Act, but here it is the case, where under the guise of getting



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employment the Petitioner insisted the second Respondent to part with the amount. Therefore, he felt that he had been cheated by the Petitioner. Therefore, he had lodged the complaint. After taking cognizance of the offence by the learned Judicial Magistrate concerned, the Petitioner had approached this Court seeking to quash the Charge Sheet. The second Respondent had also received summons to attend the Court as a witness. Therefore, what are all argued by the learned Counsel for the Petitioner shall be treated as valuable defence available to the Petitioner before the trial Court and not before this Court. Therefore, the learned Counsel for the second Respondent sought to dismiss this petition.

8. On consideration of the rival submissions, it is found that the submission of the learned Counsel for the Petitioner that Section 138 of Negotiable Instruments Act and Section 420 IPC will not be simultaneously invoked is found justified as the second Respondent had not opted to file the complaint under Section 138 of Negotiable Instruments Act, but had approached the police for the conduct of the Petitioner in having obtained a sum of Rs.6,00,000/- under the pretext of getting a Government job. After getting the amount, the second Respondent was expecting the Government



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job. But it had not materialized. Therefore, the second Respondent sought return of the money, for which the Petitioner issued the cheque. However, it bounced.

9. After issuance of the statutory notice, the Petitioner herein denied that the second Respondent had the resources to part with such huge amount, which provoked him to approach the police Officials instead of the Civil Court. As per the contents of the FIR, *prima facie* ingredients of cheating is attracted. Whether Section 138 of Negotiable Instruments Act and Section 420 IPC can be invoked simultaneously are considered to be valuable defence available to the Petitioner.

10. On consideration of the ruling cited by the learned Counsel for the Petitioner, it is found that the ingredients of the reported decision are different. In the reported decision, it was a private complaint, where it had been stated that it is a business transaction between them and while invoking the offence under Section 138 of Negotiable Instruments Act, the complainant in that case had invoked Section 420 IPC. Here, it is not the case. It is a clear case of the second Respondent that the Petitioner misused



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his official position, thereby induced the second Respondent to part with huge amount, when he was not willing to enter into Government service as Drug Inspector.

11. On perusal of the FIR and the Charge Sheet, it is found that the ingredients of the offences are made out. It is not a fit case for invoking the discretion of this Court under Section 482 of Cr.P.C. In the light of the above, the ruling cited by the learned Counsel for the Petitioner is not applicable to the facts of the present case.

12. On consideration of the rival submissions made on either side, the submission of the learned Additional Public Prosecutor for the first Respondent is found acceptable, in the light of the final report laid before the learned Judge concerned and the contents of the FIR, as *prima facie* case is made out against the Petitioner herein. Therefore, it is not a fit case for quashing of the Charge Sheet.

In the result, this Criminal Original Petition is dismissed. The learned Judicial Magistrate No.II, Thanjavur is directed to dispose of



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the case in C.C.No.147 of 2022 within a period of three months from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petition is closed.

Internet :Yes./No
Index :Yes/No
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25.11.2022

To

- 1.The Judicial Magistrate No.II,
Thanjavur.
- 2.The Inspector of Police,
District Crime Branch,
Thanjavur,
Thanjavur District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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SATHI KUMAR SUKUMARA KURUP, J.

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