



**Crl.O.P.(MD)No. 15690 of 2019**

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22/06/2022

CORAM:

**THE HON'BLE MR JUSTICE G.ILANGOVAN**

Crl.O.P.(MD)No.15690 of 2019

P.Balakrishnan : Petitioner/De-facto  
Complainant

Vs.

1.The Inspector of Police,  
Koppampatti Police Station,  
Thoothukudi District,  
Thoothukudi.  
2.Mandir Amoorthi  
3.Shanmugasundaram  
4.Balasubramanian  
5.Auditor Bala : Respondents

**Prayer:** Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records and set aside the un-numbered Cr.M.P No.-/2019, dated 28/08/2019 in Crime No.59 of 2015 on the file of the Inspector of Police, Koppampatti Police Station, pending before the Judicial Magistrate No.1, Kovilpatti.

For Petitioners : Mr.V.Kathirvelu  
Senior Counsel  
for Mr.K.Prabhu

For Respondents : Mr.SS.Madhavan  
Government Advocate  
(Criminal side)

For R2 to R4 : Mr.S.R.Rajagopal  
for Mr.A.S.Vaigunth

For 5<sup>th</sup> Respondent : Died



***Crl.O.P.(MD)No. 15690 of 2019***

**O R D E R**

**WEB COPY**

This criminal original petition is filed seeking in order to set aside the order made in un-numbered Cr.M.P No.-/2019, dated 28/08/2019 in Crime No.59 of 2015 on the file of the Inspector of Police, Koppampatti Police Station, pending before the Judicial Magistrate No.1, Kovilpatti.

**2.The facts in brief:-**

The petitioner as a complainant filed a complaint stating that he was running a granite quarry in survey Nos. 697 to 705 in Mudakalankulam Village, Kovilpatti Taluk, Thoothukudi District, under due licence and permission. He suffered loss in the business. To mobilise funds, he approached the second accused. He introduced the accused Nos.1, 3 and 4. They promised him to secure Rs.50 crores as loan amount through Bank from a foreigner. Towards the above said transaction, they pressurised him to execute a sale deed in favour of the third accused and a power of attorney in favour of the second accused. Those documents were also executed. Apart from that, signed blank promissory notes were executed and blank cheques were also



***Crl.O.P.(MD)No. 15690 of 2019***

issued. Believing the words of the accused persons, he executed all the above said documents. Again, they pressurised him to execute a promissory note for a sum of Rs.25,00,000/- stating that only on production of those documents, loan will be disbursed. After some-time, it came to his knowledge that on the basis of the power of attorney executed in favour of the second accused, sale deed, which was executed by him, was cancelled, on 07/04/2015 and later sold the same to the first accused. Only at that time, he realised that he was cheated. The worth of cheated property is more than Rs.60 Crores. Based upon the complaint given by the de-facto complainant, a case in Crime No.59 of 2015 was registered for the offences under section 120(B), 406 and 420 IPC. After completing the formalities of investigation, the Investigating Officer found that it is a case of 'Mistake of Fact', on the petition of the de-facto complainant in making such allegations. There was no intention on the part of the accused persons to cheat the complainant. Based upon the sale deed only, the revenue records have been transferred. So, it was closed as 'Mistake of Fact'. Upon the closure report, notice was issued to the complainant. He also appeared before the trial court and made his objection. After perusing the objection and closure report, the trial court chose to



***Crl.O.P.(MD)No. 15690 of 2019***

accept the closure report, by order, dated 26/08/2019.

However, liberty was granted to the complainant, who is the petitioner herein to file a fresh complaint under section 200 Cr.P.C.

3.Challenging the same and to set aside the above said order, this petition came to be filed by the petitioner.

4.Heard both sides.

5.A preliminary objection was raised by the learned counsel appearing for the second respondent to the effect that since final order has been passed by the trial court, the petitioner ought to have exercised the option under section 397 Cr.P.C, by filing appropriate revision petition. Without availing such a course of option, he has directly filed this petition under section 482 Cr.P.C, which does not lie.

6.For the purpose of argument, he would rely upon the judgment of the Hon'ble Supreme Court in a famous case of Madhu Limaye Vs. State of Maharashtra [(19974 SCC 551], which has been uniformly followed by the Hon'ble Supreme Court in the case of Prabhu Chawla Vs. State of Rajasthan



***Crl.O.P.(MD)No. 15690 of 2019***

and another [(2016)16 SCC 30. In that case, a distinction has been made by the Hon'ble Supreme Court between the interlocutory orders and final orders. Against the final order, revision will lie. Against the interlocutory order, no revision will lie.

7.The learned Senior counsel appearing for the petitioner would rely upon the very same judgment for the purpose of argument that as per the judgment of the Hon'ble Supreme Court in Amar Nath Vs. State of Haryana (1977)4 SCC 137: 1977 SCC (Cri) 585, if a situation warrants, inherent power under section 482 Cr.P.C can be invoked. To the same effect, in the judgment of the Hon'ble Supreme Court in the case of Prabhu Chawla Vs. State of Rajasthan and another [(2016)16 SCC 30}, an observation has been made to the effect that when a situation demands, the power under section 482 Cr.P.C can be invoked.

8.Now the question, which arises for consideration is whether in the facts and circumstances of the case, the inherent power under 482 Cr.P.C can be invoked.

9.The learned Senior counsel appearing for the petitioner would submit that in the facts and circumstances



**Crl.O.P.(MD)No. 15690 of 2019**

of the case, when a clear case of cheating is made out, the Magistrate ought to have directed the Investigating Officer to make further investigation. To show the character of the accused, he would also rely upon the evidence of the accused Manthiramoorthy in O.S No.21 of 2016 on the file of the I Additional District and Sessions Judge, Thoothukudi, who was the defendant in the above said suit. During the course of cross examination, he admitted that he was facing two criminal cases. A case in Crime No.11 of 2019 was registered on the basis of the complaint give by one K.C.Diary Products Managing Director Suresh Kumar stating that he was cheated by Manthiramoorthy. Since he failed to arrange Rs.50 crore loan amount, a similar case in Crime No.19 of 2016 was also registered against him on the basis of the above said cheating that he promised to arrange Rs. 20 crores as loan amount. So pointing out this sort of admission, the learned Senior counsel would submit that the *modus operandi* of the accused is to make promise to arrange the loan, get the documents registered in their name and thereafter cheating. According to him, the *modus operandi* of the accused was not properly taken care by the trial court.



***Crl.O.P.(MD)No. 15690 of 2019***

WEB COPY

10. But I am unable to agree with this line of argument. Option has been given to the petitioner to file a private complaint under section 200 Cr.P.C. But he has not exercised. He has not filed any application before the concerned court seeking further investigation. Once, the closure report has been accepted by the trial court and option has been given to him, he has to exercise that option and the question of setting aside the closure report may not arise in the light of such liberty. Even though, a preliminary objection has been raised by the respondents to the effect that section 482 Cr.P.C cannot be invoked, but for the reasons stated above, the petition deserves dismissal.

11. Another argument that was advanced by the learned Senior counsel appearing for the petitioner that the 'B' dairy shows that on 25/09/2018 because of the non appearance of the de-facto complainant, the closure report was accepted. But however, on 26/08/2019, another order has been passed on merits after hearing the objection of the petitioner and in the last portion of order, the date of the order is stated to be 28/08/2019. According to him, this is the discrepancy in the order of the trial court, which shows a complete non-application of mind of the trial



**Crl.O.P.(MD)No. 15690 of 2019**

court. There is a glaring discrepancy in the order.

WEB COPY

12.The entire records have been called from the trial court. It shows that in some of hearings, the de-facto complainant remained absent and in some of the hearings, he appeared. On 06/05/2019, the complainant was absent and for his appearance, posted to 27/05/2019 and at that date, he was present and later, it was adjourned to 26/08/2019. At that time, he was heard and order has been passed. But how in the typed set of papers, which has been filed by the petitioner, the dates are differently mentioned is not clear on record. The official documents can be taken into account. The order has been prepared by the Magistrate on his own hand. So, I find absolutely no ground to doubt the veracity of the court proceedings. Only the documents of the court can be believed and not the typewritten extract of the 'B' Diary, enclosed in the typed set of papers. This ground is also not available to the petitioner.

13.In view of the above facts, this criminal original petition is liable to be dismissed and accordingly, it is **dismissed.**

**22.06.2022**

Internet:Yes/No  
Index:Yes/No

8/11



***Crl.O.P.(MD)No. 15690 of 2019***

## WEB COPY

**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.



**Crl.O.P.(MD)No. 15690 of 2019**

To,

WEB COPY

- 1.The Inspector of Police,  
Koppampatti Police Station,  
Thoothukudi District,  
Thoothukudi.
- 2.The Judicial Magistrate No.1,  
Kovilpatti.
- 3.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.



WEB COPY



***Crl.O.P.(MD)No. 15690 of 2019***

**G.ILANGOVAN, J. ,**

er

**Cr1.O.P. (MD)No.15690 of 2019**

**22/06/2022**