



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 04.01.2022

Delivered on : 16.02.2022

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

Crl.O.P.(MD)No.18717 of 2019

and

Crl.M.P.(MD)Nos.10992 & 10993 of 2019

K.Jegadesan

... Petitioner/ Sole Accused

vs.

1.The Inspector of Police,
Theni Police Station,
Theni District.
in Crime No.432 of 2018.

... 1st Respondent/
Complainant

2.Rajesh

... 2nd Respondent/
Defacto Complainant

PRAYER : Criminal Original Petition filed under Section 482 Cr.P.C, to call for the records relating in C.C.No.23 of 2019 on the file of the Judicial Magistrate, Theni, Theni District and quash the same.

For Petitioner : Mr.S.Saravanakumar

For Respondents : Mr.M.Muthumanikkam

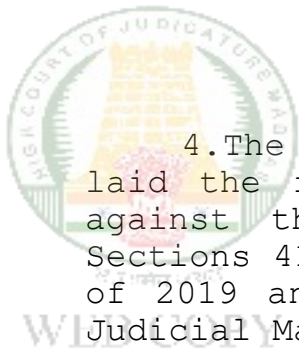
Government Advocate (Crl. side) for R1
No appearance for R2

O R D E R

This Criminal Original Petition has been filed, invoking Section 482 Cr.P.C., seeking orders to call for the records relating to C.C.No.23 of 2019 pending on the file of the Court of the Judicial Magistrate, Theni, and quash the same.

2.The petitioner is the sole accused in C.C.No.23 of 2019 on the file of the Court of the Judicial Magistrate, Theni.

3.On the basis of the complaint lodged by the second respondent, FIR came to be registered in Crime No.432 of 2018 against two persons including the petitioner herein for the alleged offences under Sections 211, 420 and 511 IPC.



4.The first respondent, after completing the investigation, has laid the final report under Section 173 Cr.P.C. dated 05.12.2018 against the present petitioner for the alleged offences under Sections 419 and 420 IPC and the case was taken on file in C.C.No.23 of 2019 and the same is pending on the file of the Court of the Judicial Magistrate, Theni.

5.Admittedly, the second respondent is an advocate and he lodged the complaint before the first respondent alleging that on 24.05.2018, he came to know that one Subburam had issued a public notice in the Malai Malar Newspaper and that his sale deed was found missing, that the defacto complainant, on enquiry, came to know that the said Subburam had mortgaged the said sale deed with the Central Bank of India, Srirengapuram Branch and got a loan of Rs.3,50,000/-, that the said Subburam had also given a police complaint before the Theni Police Station as if his document was found missing, that the defacto complainant has then come to understand that the said Subburam has given a false advertisement and false complaint to the police authorities, for which, the petitioner has aided and helped the said Subburam and that both Subburam and the petitioner had conspired together and by suppressing the loan obtained from the bank, they had cheated the bank and that they had also cheated the police authorities by lodging a false complaint.

6.After investigation, the first respondent, on coming to know that the said Subburam was not at all involved in the incident, has excluded him and filed the final report only against the present petitioner. In the final report, it has been alleged that the petitioner even after knowing that the sale deed of the said Subburam was already pledged with the Central Bank of India and that with an intention to cheat, the said Subburam has lodged a false complaint before the police as if the document got misplaced and also gave a public notice in the newspaper and that thereby, the petitioner had cheated the said Subburam and committed the offences under Sections 419 and 420 IPC.

7.Before entering into further discussion, it is necessary to consider the ingredients of the offence with which the petitioner was charged. Section 419 IPC prescribes the punishment for the offence of cheating by personation, which is, defined in Section 416 IPC. Section 420 IPC deals with the cheating and dishonestly inducing delivery of property. For both the offences under Sections 419 and 420 IPC, the basic offence is under Section 415 IPC which defines cheating. The essential ingredients of the offence of cheating are

- (1) deception of any person;
- (2) (a) fraudulently or dishonestly inducing that person:
 - (i) to deliver any property to any person or
 - (ii) to consent that any person should retain any property, or



(b) intentionally inducing that person to do or omit to do anything which that person would not do or omit to do the deception and which act or omission causes damage or harm to that person in body, mind, reputation or property.

8.The above provision has two parts and in the first part, the person must dishonestly or fraudulently induce the complainant to deliver the property and in the second part, the person should intentionally induce the complainant to do or omit to do a thing. To put it in other way, in the first part, the inducement must be dishonest or fraudulent and in the second part, the inducement should be intentional.

9.The ingredients to attract Section 419 IPC are that pretention by a person to be some other person or knowingly substituting one person for another or representing that he or any other person is a person other than he or such other person really is.

10.In order to bring home a charge under Section 419 IPC, the person said to be deceived must be shown to have been cheated by personation. In order to attract Section 420 IPC, it has to be established not only that he has cheated some one but also that by doing so, he has dishonestly induced the person who was cheated to deliver any property, etc., Bearing the above legal position in mind, let us consider the case on hand.

11.As already pointed out, the second respondent / complainant is a practising advocate, who has set the law in motion, by lodging the complaint.

12.According to the defacto complainant, the petitioner and one Subburam had committed cheating and thereby, caused loss to the Central Bank of India and that they had also cheated the police authorities by lodging a false complaint as if the sale deed of the said Subburam was found missing.

13.Admittedly, the Central Bank of India, who is said to have suffered loss at the hands of the petitioner and the said Subburam, has not preferred any police complaint nor any other action against them.

14.It is also not the case of the first respondent that they have registered a case against the petitioner and the said Subburam for having cheated them by giving a false complaint as if the sale deed of the said Subburam was found missing.

15.In the charge sheet, the first respondent has specifically alleged that the petitioner had cheated the said Subburam by giving a false complaint before the police and by giving a false public



notice in the newspaper as if the sale deed of the said Subburam was found missing.

16. Admittedly, the said witness Subburam has not lodged any complaint against the petitioner. Neither the defacto complainant nor the prosecution has shown as to who had cheated whom by personation.

17. It is also not the case of the prosecution that the petitioner had dishonestly induced the said Subburam or any other person to deliver any property.

18. Considering the above, it is clear that the prosecution has not shown any *prima facie* case that the petitioner had cheated somebody. The prosecution has also not shown any material to infer that wrongful loss was caused to somebody or that the petitioner had received wrongful gain and in the absence of any such ingredients, the charges under Section 420 IPC does not get attracted.

19. Hence, this Court concludes that since the prosecution has not shown *prima facie* case for the alleged offences under Sections 419 and 420 IPC, the charges are liable to be quashed.

20. In the result, this Criminal Original Petition is allowed and the proceedings in C.C.No.23 of 2019 pending on the file of the Judicial Magistrate, Theni, are quashed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (As)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Csm

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,
Theni.



2.The Inspector of Police,
Theni Police Station,
Theni District.

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

Crl.O.P. (MD) No.18717 of 2019
and
Crl.M.P. (MD) Nos.10992 & 10993 of 2019
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SB (CO)
KB (04.04.2022) 5P 4C