



Crl.O.P.No.847 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 27.03.2023

Pronounced on : 06.04.2023

CORAM

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.O.P.No.847 of 2021

and

Crl.M.P.No.518 of 2021

V.Ganesan

...Petitioner

Vs.

1.State rep.by the
Sub Inspector of Police,
EDF – II, Team III
Central Crime Branch,
Vepery,
Chennai – 600 007.
(Crime No.81/2015)

2.S.Senthil Babu

...Respondents

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PRAYER: Criminal Original Petition has been filed under Section 482 of the Criminal Procedure Code, to call for the records and quash the proceedings in CC No.3569 of 2020, on the file of the Metropolitan Magistrate (CCB and CBCID, Metro Cases), Egmore, Chennai – 600 008 and quash the same.

For Petitioner : Mr.N.Anbazhagan

For R1 : Mr.A.Damodaran

Additional Public Prosecutor

For R2 : Mr.G.Ashok Kumar

ORDER

The petition seeks quashing of final report in C.C.No.3569 of 2020 for the offences under Sections 406 and 420 IPC.

2.It is alleged in the final report that the petitioner was a producer of movies; that while producing a Tamil movie, he wanted funds to complete the movie; that he represented to the defacto complainant that he would take him as a partner and he would give 30% profit on the invested amount; that believing the representation, initially the defacto complainant invested Rs.20,00,000/- on 30.10.2010; thereafter on 05.04.2014, he had invested another sum of Rs.27,00,000/- and on that day an Agreement was entered into between the



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defacto complainant and the petitioner; that the petitioner had promised an additional profit of 17% for the invested sum; that without repaying the principal and the agreed profit, the petitioner attempted to release the movie; that when the defacto complainant objected to the release of the movie, the petitioner on 25.12.2014 had issued two post-dated cheques for the sum of Rs.48,00,000/-; that he promised to pay the profit later and in case the film suffers a loss, he would pay interest at the rate of 3% per month; that based on the said representation, the second respondent/defacto complainant allowed the petitioner to release the movie; that since the petitioner had made false representation; and that the conduct of the petitioner revealed that he had deceived the petitioner from the inception.

3.Mr.N.Anbazhagan, the learned counsel for the petitioner submitted that the allegations in the impugned final report would show that there was a contract between the petitioner and the second respondent/defacto complainant. Since the film suffered a loss, the petitioner could not keep up his promise. Therefore, the allegations even if accepted to be true would only amount to breach of promise and not cheating. Furthermore, the allegation would not in any manner constitute



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the offence under Section 406 IPC as no entrustment was made to the petitioner.

Hence, he prayed for quashing of the impugned final report.

4.Mr.A.Damodaran, the learned Additional Public Prosecutor submitted that the impugned final report discloses the offence under Section 420 IPC. The manner in which the deception was practiced on the second respondent by the petitioner would show that the offence of cheating has been made out; and that it is not a case of breach of promise but it is a deliberate attempt to deceive the second respondent and hence, prayed for dismissal of the quash petition.

5.The learned counsel for the defacto complainant/ second respondent reiterated the submissions made by the learned Additional Public Prosecutor. He submitted that the second respondent is a gullible person and the petitioner exploiting the same had induced him to part with a huge sum of money. The manner in which the agreement was entered into by initially promising 30% returns and later on increasing it to 47% and subsequently giving an undertaking that he would pay the principal with 3% interest, would show that the petitioner



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deceived the second respondent. In any case, the learned counsel for the second respondent/defacto complainant submitted that this is a matter for trial.

6.This Court on perusal of the impugned final report finds that the offence under Section 406 IPC is not made out. There is no entrustment made to the petitioner, in order to attract the offence of criminal breach of trust. However, this Court finds that there was an Agreement between the petitioner and the defacto complainant on 30.12.2013. The Agreement shows that the petitioner promised 30% interest on the initial invested amount on Rs.19,60,000/-. Thereafter, the defacto complainant paid Rs.27,00,000/- on 03.04.2014; and the petitioner had promised 47% profit on the invested amount. The petitioner had not made any payment to the defacto complainant/second respondent as promised. While so, the defacto complainant/second respondent objected to the petitioner releasing the movie. The petitioner had given one more undertaking letter, wherein, he had promised to pay the principal sum in two instalments, profit on a subsequent date; and that if the project did not yield any profit, he would pay an interest on the said sum of Rs.48,00,000/-. All the above facts, disclose that at every stage, the representation has been made to the defacto complainant to induce him to part



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with money. The allegations *prima facie* disclose the offence under Section 420

I.P.C. In the facts of the instant case, the question whether it was only a breach of promise or cheating has to be adjudicated only during trial. Therefore, this Court is not inclined to quash the impugned final report in so far as the offence under Section 420 IPC. Hence, the impugned final report is quashed only in respect of offence under Section 406 IPC. However, the learned Metropolitan Magistrate may try the case on the basis of evidence adduced before him without being influenced by any of the observations made in this order. The learned Metropolitan Magistrate (CCB and CBCID, Metro Cases), Egmore, Chennai – 600 008 may conduct the trial as expeditiously as possible.

7. With the above observations the criminal original petition is partly allowed. Consequently, the connected miscellaneous petition is closed.

06.04.2023

dk

NCC: Yes / No

Index: Yes/ No

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To

1. The Metropolitan Magistrate (CCB and CBCID, Metro Cases)

Egmore

Chennai – 600 008.

2. The Sub Inspector of Police

EDF – II, Team III

Central Crime Branch

Vepery

Chennai – 600 007.

3. The Public Prosecutor

High Court of Madras

Chennai – 600 104.



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SUNDER MOHAN. J,
dk

Pre Delivery Order in
Crl.O.P.No.847 of 2021
and
Crl.M.P.No.518 of 2021

06.04.2023