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Crl OP No.3520 / 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : **29.03.2023**
PRONOUNCED ON : **06.04.2023**

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Criminal Original Petition No. 3520 of 2021
and
Crl.M.P. No. 2053 of 2021

1. N. Amsaveni
2. Devadoss ... Petitioners

Versus

R.Loganathan ... Respondent

PRAYER : Criminal Original Petition filed under Section 482 of the Criminal Procedure Code seeking to call for the records and quash the proceedings pending against the petitioners in C.C. No. 219 of 2020 on the file of the learned District Munsif cum Judicial Magistrate, Madukkarai.

For Petitioners : Mr. A. M. Rahamath Ali.

For Respondent : Mr. B. Kumarasamy.



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ORDER

The petition is to quash the private complaint in C.C. No. 219 of 2020 on the file of the learned District Munsif cum Judicial Magistrate, Madukkarai for the alleged offences under Sections 120 B, 406, 420 and 506 (ii) of the Indian Penal Code.

2.It is alleged in the complaint that the petitioners were known to the respondent herein; that the respondent was dealing in the sales of medical equipments and is running a company called M/s.Cardio Park and Co; that the first petitioner is a police constable and the second petitioner is her husband; that since the petitioners were known to the complainant, the complainant enrolled the first petitioner in a Chit run by him; that in about nine chits, the first petitioner withdrew the amount on auction and promised to pay Rs.70,000/- per month; that thereafter on 08.04.2017, the complainant paid Rs.2,50,000/- for the medical expenses incurred by the first petitioner; that on 28.09.2017, paid another sum of Rs.1,50,000/-; that on 03.01.2018, paid another sum of Rs.2,00,000/-, thus totaling a sum of Rs.6,00,000/-; that on 03.04.2018, the first petitioner gave a cheque for Rs.6,00,000/-; that when the said cheque



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was presented, it was returned for the reason 'insufficient funds'; that the complainant had filed a complaint under Section 138 of Negotiable Instruments Act in C.C. No. 520 of 2018 on the file of the Fast Track Court No.I at Magisterial Level, Coimbatore that the petitioners were due to pay Rs.4,70,000/- towards the amount due under the Chits and Rs.6,00,000/- towards the loan taken by him; that the first petitioner promised to return the money and failed to keep up the promise; that though the respondent filed a complaint before the Police, no action was taken against the petitioners; that the respondent gave a complaint earlier and the said complaint was quashed by this Court on the ground that the order taking cognizance by the learned Magistrate suffered from procedural lapses; that this Court had given liberty to the respondent to file a fresh complaint if he is advised to do so; and hence they had filed the instant complaint.

3.Mr. A.M. Rahamath Ali, learned counsel for the petitioners would submit that the above allegations would not constitute the offence alleged against the petitioners. It is the admitted case of the complainant that for the alleged loan taken by the first petitioner, she had issued a cheque, which is the subject matter of proceedings before the Fast Track



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Court No.I at Magisterial Level, Coimbatore in C.C. No. 520 of 2018;

that there is absolutely no allegation against the second petitioner except for stating that the second petitioner is the husband of the first petitioner. The allegation only amounts to breach of promise and would not amount to cheating; that there is no allegation to suggest that there was deception at the inception; and that in any event Section 406 of the Indian Penal Code is not made out as there was no entrustment. The learned counsel therefore, submitted that the impugned complaint is an abuse of process of law and prayed for quashing of the complaint.

4.Mr.B.Kumarasamy, learned counsel for the respondent submitted that the first petitioner had participated in the auction and withdrew money in nine Chits. She had promised to pay the Chit amounts in monthly installments of Rs.70,000/-. She was due to pay nearly Rs.4,70,000/- towards the said Chits. She has also taken a loan of Rs.6,00,000/- and towards the discharge of the said loan, she had issued a cheque and the said cheque got dishonoured; that the earlier complaint filed by her was quashed only because the learned Magistrate did not follow the procedure contemplated under law and this Court had granted liberty to file fresh complaint; that the police are refusing to take action



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because the first petitioner is a Police Constable; that the question whether there was deception at the inception or whether it is only a breach of promise ought to be decided only by the trial Court and that factual dispute cannot be decided in a quash petition; that the second petitioner also joined the first petitioner in the acts committed by the first petitioner; and that hence, the second petitioner is also guilty of the offences alleged in the complaint.

5.This Court finds that the allegation is that the respondent was involved in Chit Business and the first petitioner was her customer. She had participated in the auction conducted for withdrawing the Chit amount and took the amounts in nine Chits and promised to pay Rs.70,000/- per month. She had also taken a loan of Rs.6,00,000/- and thereafter, issued a cheque which got dishonoured.

6.This Court finds that as against the second accused there is absolutely no allegation except for a vague allegation that the first and second petitioners, when asked for money had stated that the complainant can do anything that he wants and that they would not pay the money. Apart from that there is no allegation as against the second



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petitioner that he has participated in the alleged deception of the first petitioner. The reading of the complaint would show that all the allegations are only against the first petitioner. The complainant seeks to implicate the second petitioner for the alleged offence of conspiracy. The allegation does not suggest that there was any conspiracy between the second accused and the first accused. There is no allegation to implicate him in the alleged offence under Section 420 of the Indian Penal Code. Even the other offences of breach of trust and criminal intimidation are not made out against the second petitioner / A2. The alleged threat made by him appears to be improbable and an after thought to implicate him. In any event, there is no real threat to attract the offence of criminal intimidation. Therefore, the impugned complaint as against the second petitioner is an abuse of process of law.

7.As against the first petitioner, the quantum as to whether she had made false representation at the very inception or as to whether it is only a breach of promise has to be tried before the trial Court. Though in respect of Rs.6,00,000/- given as loan to the first accused, the respondent has initiated proceedings under Section 138 of the Negotiable Instruments Act, it is for the trial Court to consider the evidence adduced



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before it and adjudicate whether it is only a case of breach of promise or a case of deception at the inception. Hence this Court is not inclined to quash the proceedings in respect of the first petitioner. The learned Magistrate shall consider the evidence without being influenced by any of the observations made in this order.

8. With the above observations, this Criminal Original Petition is partly allowed only in respect of the second petitioner / A2. Consequently, the connected Miscellaneous Petition is closed.

06.04.2023

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

1. The District Munsif cum Judicial Magistrate,
Madukkarai.
2. The Fast Track Court No.I at Magisterial Level,
Coimbatore.
3. The Additional Public Prosecutor,
High Court of Madras,



Chennai.

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SUNDER MOHAN, J

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Dated: 06.04.2023