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Crl.O.P.No.4235 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 17.03.2023

Pronounced on : .03.2023

CORAM:

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.O.P.No.4235 of 2021

and

Crl.M.P.No.2689 of 2021

1.Christopher Selvin.S,

2.Christopher Robin.S,

3.Nithiya Shree

... Petitioners

Vs.

1.State of Tamil Nadu,

Rep. By the Inspector of Police,

Cyber Crime Cell,

Central Crime Branch,

Vepey, Chennai – 600 007.

2.Mr.R.Krilosh Kumar IAS,

Managing Director,

TASMAC,

4th Floor, C.M.D.A,

Tower – II, Gandhi Irwin Bridge Road,



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Egmore, Chennai – 600 008.

...Respondents

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Prayer: This Criminal Original Petition has been filed to call for the records in impugned CC.No.5309 of 2020 on the file of Hon'ble Metropolitan Magistrate Court, Egmore filed for the alleged offences punishable under Section 420 of the Indian Penal Code & Section 66 D of the IT Act, 2008 and quash the same.

For Petitioners : Mr.S.V. Pravin Rathinam

For R1 : Mr.Leonard Arul Joseph Selvam
Government Advocate (Crl.Side)

For R2 : Mr.K.Sathishkumar
Standing Counsel.

O R D E R

This petition is to quash a final report in C.C.No.5309 of 2020 for the alleged offences under Sections 420 IPC and 66 D of Information Technology Act, 2000.

2. It is alleged in the final report that the first and second petitioners are running a company by name Melon Ventures Private Limited and the said company is involved in the business of running website like www.fresherslive.com. The third petitioner is a content writer in the company run



by the first and second petitioners. The first and second petitioners, in order to make quick profit through more web traffic to their company, instructed the third petitioner to write false articles about TASMAC online liquor sales with an intention to make a trending news and earn money through it. Accordingly, the third petitioner wrote an article on 19.05.2020 titled “*Tamil Nadu TASMAC Online Booking: How to purchase Liquor Online in Tamil Nadu at www.tasmaco.in?*” and in the said article the third petitioner had stated that the TASMAC had given details as to how to order liquor online in the TASMAC website. The petitioners with an intention to cheat the general public published a false news and thereby “dishonestly” induced the general public to click the web link hitting more traffic to the accused company which is capable of being converted to valuable profit. Thus, the petitioners had common intention of earning profit by cheating by publishing fake news articles.

3.Mr.S.V.Pravin Rathinam, the learned counsel for the petitioners submitted that the petitioners had bonafidely believed that the TASMAC had allowed online sales. They were generally in the business of educating public on providing guideline articles on topics such as how to apply for TN e - pass etc. When they



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were questioned by the police, they had explained to them that on coming to know that the articles published by them was under a mistaken impression, they immediately, directed their content team to change the news article content on 12.05.2020 and they had changed to "NO APP IS AVAILABLE and NEWS IS FAKE". He would submit that like the petitioners, there were other websites like livechennai.com and republicworld.com which have published similar articles. The petitioners have been singled out for prosecution by the respondents. Because of the false article, they had not gained wrongfully and the allegation in the final report that they are likely to get profit is a bald statement without any basis.

4. The learned Additional Public Prosecutor, submitted that these petitioners were the first to publish the false articles and the other websites published it subsequent to the publication of the petitioners' article. The petitioners had not only created a false impression among the general public that the TASMAC was selling liquor online but had gained wrongfully because of their increase in the number of hits in the web link which could be converted into valuable profit.



5.The learned counsel appearing for the defacto complainant/2nd respondent submitted that the petitioners were not under any mistaken impression, they had published the news article with clear intention to deceive the public. They had given stepwise procedure to download the App and for Registration. This is suffice to show that the petitioners had deliberately made a false representation and that it is not a case of innocent publication as claimed by the petitioners.

6.This Court finds that the petitioners' conduct is certainly a reprehensible conduct. The petitioners had certainly published a false article. The reading of the Final Report does not suggest that it was under a mistaken impression. It was not just an article stating that TASMAC is selling liquor but it gives a stepwise procedure to order liquor online. This procedure appears to have been invented by the petitioners. The petitioners even assuming that they had borrowed an article from another website ought to have verified the information before publishing such information. This had definitely caused nuisance and embarrassment to the second respondent. But the question is whether the said conduct and false representation would constitute the offences alleged. It has to be remembered that the framers of the Penal Code did not intend to punish all wrongful or immoral



acts as could be seen from their note annexed along with the original draft of the

Penal Code prepared in 1837. In Note (H), which is a Note on the Chapter of

Offences relating to Marriage, the framers stated thus:

“...We cannot admit that the Penal Code is by any means to be considered as a body of ethics, that the legislature ought to punish acts merely because those acts are immoral, or that, because an act is not punished at all, it follows that the legislature considers that act as innocent. Many things which are not punishable are morally worse than many things which are punishable. The man who treats a generous benefactor with gross ingratitude and insolence deserves more severe reprehension than the man who aims a blow in passion, or breaks a window in a frolic; yet we have punishment for assault and mischief, and none for ingratitude. The rich man who refuses a mouthful of rice to save a fellow creature from death may be a far worse man than the starving wretch who snatches and devours the rice; yet we punish the latter for theft, and we do not punish the former for hard-heartedness.”



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The Hon'ble Supreme Court has extracted the above portion in two of its Judgments viz. ***R.Sai Bharathi vs. J.Jayalalitha and others***, reported in 2003 (4) CTC 577 (SC) : 2004 (2) SCC 9 at Para No.56 and in ***Subramanian Swamy vs. Union of India***, reported in 2016 (7) SCC 221 (Para 90).

8. Therefore, the question is whether the act of the petitioners would constitute the offences under Section 420 IPC and Section 66 D of the Information Technology Act. In order to constitute the offence of cheating the following ingredients have to be established.

(a) **Deception** – a false representation would amount to deception. The explanation to Section 415 I.P.C., states that dishonest concealment of facts is also a deception.

(b) **Fraudulently or Dishonestly.**

(c) (i) Induces the person so deceived to deliver any property to any person.

(ii) or to consent that any person shall retain any property.

(iii) intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived and such act or omission causes or is likely to cause damage or harm to that person in body, mind



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repetition of property. However, for the aggravated form of cheating under

Section 420 IPC, the following ingredients are essential :-

(a) dishonestly, induce the person deceived to deliver property to any person.

(b) to make, alter or destroy the whole or any part of the valuable security or anything which is signed or sealed which is capable of being converted to valuable security. The observations of the Hon'ble Supreme Court in ***Vijay Kumar Ghai and others vs. State of West Bengal and others*** reported in (2022) 7 SCC 124 which is extracted hereunder would make that clear.

36. As observed and held by this Court in R.K. Vijayasathya v. Sudha Seetharam 28, the ingredients to constitute an offence under Section 420 are as follows:

(i) a person must commit the offence of cheating under Section 415 and

(ii) the person cheated must be dishonestly induced to:

(a) deliver property to any person: or

(b) make, alter or destroy valuable security or anything signed or sealed and capable of being converted into valuable security. Thus, cheating is an essential ingredient for an act to constitute an offence under Section 420 IPC.



In the instant case, admittedly, there was neither any delivery of property nor was any person induced to make alter or destroy any valuable security pursuant to the false representation made by the petitioners. Therefore, the offence under Section 420 I.P.C., is not made out.

9.The next question is whether the offence of cheating punishable under Section 417 I.P.C., is made out. The first ingredient is that there must be deception. The next ingredient is that the deception must be made dishonestly or fraudulently. Dishonestly has been defined in Section 24 of I.P.C which reads as follows :

“24."Dishonestly" – Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing “ dishonestly”.

It is well settled that it is sufficient to show either “ wrongful gain to the deceiver or wrongful loss to the deceived”. Both need not coexist. The impugned final report does not state as to whether there was any wrongful gain to the petitioners pursuant to the alleged deception. The only vague averment is that the petitioners



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got more web traffic to their company which increased their business. There is no material in the impugned final report in support of the said averment. It is only an *ipse-dixit* of the first respondent. The impugned final report also does not state that any wrongful loss was caused to any person. Hence, 'dishonestly' has not been established.

10. It has to be seen whether the allegation establish the other ingredient namely “Fraudulently”. The said term is defined in Section 25 of the Indian Penal Code which reads as follows.

“25. "Fraudulently" – A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise.”

The Penal Code does not define “intent to defraud”. However, the Hon'ble Supreme Court in ***Dr. Vimala vs. Delhi Administration*** reported in ***AIR 1963 SC 1572*** held as follows:-

“15.To summarize : the expression "defraud" involves two elements, namely, deceit and injury to the person deceived. Injury is something other than economic loss that is,



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deprivation of property, whether movable or immovable, or of money, and it will include any harm whatever caused to any person in body, mind, reputation or such others. In short, it is a non-economic or non-pecuniary loss. A benefit or advantage to the deceiver will almost always cause loss or detriment to the deceived. Even in those rare cases where there is a benefit or advantage to the deceiver, but no corresponding loss to the deceived,

The Hon'ble Supreme Court had held that defraud involves two elements namely deceit and injury. Deceit is established in this case. However, the averment in the final report do not suggest that there was any injury (i.e.,) something other than the economic loss caused to any person deceived. The injury other than the economic loss is causing harm to any person in body, mind, reputation to the person deceived. The term “Injury” is defined in Section 44 of IPC. Admittedly, the persons deceived in the instant case are the general public. There is no such allegation that any person was harmed in body, mind or reputation. Thus, the alleged acts do not fall within the definition of 'dishonestly' or 'fraudulently' which is an essential ingredient of cheating. Hence, the offence of cheating is not made out. For the very same reasons, the offence of cheating by impersonation under Section 66 D of the Information Act is not made out.



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11. However, we may add that the petitioners have certainly used the name of “TASMAC” wrongly and unauthorizedly. TASMAC had certainly suffered hardship and nuisance because of enquiry by the general public besides embarrassment. The TASMAC ought to have resorted to appropriate remedies in civil law against the petitioners. This Court is of the view that till a legislation is enacted to curb such acts resort to the offences in the Penal Code for prosecution, in the absence of necessary ingredients may not be appropriate.

11. For the aforesaid reasons, the impugned Final Report is liable to be quashed. Hence, the Criminal Original Petition is allowed. Consequently, the connected miscellaneous petition is closed.

.03.2023

dk

Index: Yes/No

Speaking Order / Non-Speaking Order

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Neutral Citation: Yes / No

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- 1.The Inspector of Police,
Cyber Crime Cell,
Central Crime Branch,
Vepery, Chennai – 600 007.
- 2.R.Kirlosh Kumar IAS
Managing Director, TASMACH,
4th Floor, CMDA Tower – II,
Egmore, Chennai – 600 008.
- 3.The Public Prosecutor
High Court of Madras,
Chennai.



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SUNDER MOHAN, J

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Pre-delivery order in

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and

Crl.M.P.No.2689 of 2021

.03.2023