



Crl OP Nos.6014, 6154 & 6262 / 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON : **05.04.2023 & 10.04.2023**

PRONOUNCED ON : **13.04.2023**

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Criminal Original Petition Nos. 6014, 6154 & 6262 of 2021
and

Crl.M.P. Nos. 3940, 3939, 4059, 4060, 4134 & 4135 of 2021

Crl.O.P. No.6014 of 2021

- 1.Mr.Arun Mammen,
Managing Director,
MRF Limited,
No.11, Boat Club Road,
3rd Avenue,
R.A.Puram, Chennai – 600028.
- 2.Mr.Ranjit Jesudasen,
Director,
MRF Limited,
No.8, Valli Ammai Achi Street,
Kotturpuram,
Chennai – 600085.
- 3.Mr.KandathilMammenMammen
Managing Director,
MRF Limited,
“Deerhurst”, No.17, Boat Club Road
3rd Avenue, R.A.Puram
Chennai – 600028.
- 4.Ms.Ambika Mammen
Director,
MRF Limited,
“Deerhurst”, No.17, Boat Club Road



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3rd Avenue, R.A.Puram
Chennai – 600028.

5.Mrs.CibiMammen
Director,
MRF Limited,
No.11, Boat Club Road
3rd Avenue, R.A.Puram
Chennai – 600028.

6.Mr.Jacob Kurian
Director,
MRF Limited
New No.21, Old No.11
2nd Avenue, Harrington Road,
Chetpet, Chennai – 600031.

7.Mr.Rahul MammenMappillai,
Managing Director,
MRF Limited,
No.12, Boat Club Road
3rd Avenue, R.A.Puram,
Chennai – 600028.

8.Ms.Vimla Abraham,
Director,
MRF Limited,
Padinjarekara
Mount Wardha, Muttambalam,
P.O.Kottayam – 686 004.

9.Mr.Samir MappillaiTharain
Director
MRF Limited
“Deerhurst”, No.17, Boat Club Road
3rd Avenue, R.A.Puram
Chennai – 600028.



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10.Mr.Varun Mammen,
Director,
MRF Limited,
Old No.3A, New No.6,
River Side Road,
Kottupuram,
Chennai – 600085.

... Petitioners

Versus

Mr.Kamal Gupta

... Respondent

PRAYER : Criminal Original Petition filed under Section 482 of the Criminal Procedure Code seeking to call for the records on the file of the IX Metropolitan Magistrate Court, Saidapet in C.C. No. 936 of 2021 and quash the same.

For Petitioners : Mr. V. Karthik, Senior Counsel for
Mr. N.Damodaran.

For Respondent : Mr. Abdul Saleem, Senior Counsel for
M/s.AAV Partners.

Crl.O.P. No.6154 of 2021

M/s.MRF Limited
Represented by its General Manager Marketing Operations
Mr.Biju George, age 55
No.124, Creams Road,
Chennai – 600 006.

... Petitioner

Versus

Mr.Kamal Gupta

... Respondent



Crl OP Nos.6014, 6154 & 6262 / 2021

PRAYER : Criminal Original Petition filed under Section 482 of the Criminal Procedure Code seeking to call for the records on the file of the IX Metropolitan Magistrate Court, Saidapet in C.C. No. 936 of 2021 and quash the same.

For Petitioner : Mr. B. Kumar, Senior Counsel for
Mr. M. Vijayan for M/s.King & Partridge.

For Respondent : Mr. Abdul Saleem, Senior Counsel for
M/s.AAV Partners.

Crl.O.P. No.6262 of 2021

Mr.Sheik Mohammed Nizar

... Petitioner

Versus

1.Mr.Kamal Gupta

2.M/s.MRF Limited

Represented by its Managing Director,
Mr.Arun Mammen,
124, Creams Road,
Chennai – 600 006.

3.Mr.Arun Mammen,

Managing Director,
MRF Limited,
No.11, Boat Club Road,
3rd Avenue,
R.A.Puram, Chennai – 600028.

4.Mr.Ranjit Jesudasen,

Director,
MRF Limited,
No.8, Valli Ammai Achi Street,
Kotturpuram,



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Chennai – 600085.

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5.Mr.KandathilMammenMammen
Managing Director,
MRF Limited,
“Deerhurst”, No.17, Boat Club Road
3rd Avenue, R.A.Puram
Chennai – 600028.

6.Ms.Ambika Mammen
Director,
MRF Limited,
“Deerhurst”, No.17, Boat Club Road
3rd Avenue, R.A.Puram
Chennai – 600028.

7.Mrs.CibiMammen
Director,
MRF Limited,
No.11, Boat Club Road
3rd Avenue, R.A.Puram
Chennai – 600028.

8.Mr.Jacob Kurian
Director,
MRF Limited
New No.21, Old No.11
2nd Avenue, Harrington Road,
Chetpet, Chennai – 600031.

9.Mr.Rahul MammenMappillai,
Managing Director,
MRF Limited,
No.12, Boat Club Road
3rd Avenue, R.A.Puram,
Chennai – 600028.

10.Ms.Vimla Abraham,
Director,
MRF Limited,



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Padinjarekara
Mount Wardha, Muttambalam,
P.O.Kottayam – 686 004.

11.Mr.Samir MappillaiTharain
Director
MRF Limited
“Deerhurst”, No.17, Boat Club Road
3rd Avenue, R.A.Puram
Chennai – 600028.

12.Mr.Varun Mammen,
Director,
MRF Limited,
Old No.3A, New No.6,
River Side Road,
Kottupuram,
Chennai – 600085.

... Respondent

PRAYER : Criminal Original Petition filed under Section 482 of the Criminal Procedure Code seeking to call for the records on the file of the IX Metropolitan Magistrate Court, Saidapet in C.C. No. 936 of 2021 and quash the same.

For Petitioner : Mr. S. Sivaraman.

For Respondent : Mr. Abdul Saleem, Senior Counsel for
M/s.AAV Partners for R1.



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COMMON ORDER

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The petitions have been filed to quash the private complaint in C.C. No. 936 of 2021 for the alleged offences under Sections 406, 418, 420 and 120 (b) of Indian Penal Code.

2.It is alleged in the complaint that the complainant and the first accused are the joint owners of the property being land measuring an extent of 2 acres and 4 cents comprised in Survey Nos. 46/2A1A1, 46/2A1A2, 46/2A1A3 and 46/2A1A4 in Mathur Village, Mathavaram; that they jointly developed the said property by constructing a warehouse; that since the complainant had certain financial difficulties it was decided that the first accused would help the complainant by providing financial assistance and the complainant would transfer his share in the above property to the first accused; that the first accused did not provide any financial assistance as promised by him and hence, the complainant dropped the idea of transferring his share in favour of the first accused; that while so, the first accused dishonestly, without the complainant's knowledge entered into a lease agreement with the accused 2 to 12 to unlawfully enrich himself; that the lessees, viz., accused 2 to



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12, were aware of the fact that the property was jointly owned by the complainant and the first accused; that they in conspiracy with the first accused entered into the lease agreement in order to deprive the complainant of his 50% share in the rental income; that the actual rental income for the said property would be Rs. 20,00,000/- and the lessees unlawfully took the said property on a lesser rent of Rs. 14,00,000/- per month from the first accused; and that since the accused in conspiracy committed misappropriation and cheating of the funds of the complainant, they are liable for the offences under Section 120(b), 406, 418 and 420 of the Indian Penal Code.

3.Mr. B. Kumar, learned Senior counsel for the petitioner in Crl.O.P. No. 6154 of 2021 submitted that the petitioner earlier took the premises on lease from both the complainant and the first accused. However, they could not continue the lease after 2016 because of floods in the area and they had to vacate the premises. Thereafter, the first accused represented that he was the absolute owner of the property in question and produced an unregistered sale deed, which showed that the complainant had handed over possession to the first accused and had



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received sale consideration. Believing the representation to be true, the petitioner entered into a lease agreement with the first accused on 03.11.2018. The rent was fixed at Rs. 17.25 per square feet. The petitioner had been paying rent regularly to the first accused for nearly 2 years. While so, they were shocked to receive a notice from the counsel for the complainant stating that the petitioner had unlawfully entered into a lease agreement with the first accused knowing fully well that the complainant and the first accused are the joint owners of the property and thereby, denying the rent to be paid to the complainant. The learned Senior Counsel submitted that there were exchange of notices thereafter and finally on 30.10.2020, they decided to vacate the premises in view of the dispute between the complainant and the first accused. The learned Senior Counsel submitted that even assuming that the petitioner had erroneously entered into a lease agreement with the first accused, the said act would not attract any of the offences alleged in the complaint. Admittedly, they had not deceived the complainant in any manner. Even assuming that the first accused had falsely claimed title over the property and executed lease in favour of the petitioners, it would not constitute any of the offences alleged. In any event, the complainant has not denied the unregistered sale deed executed by him, in which it is



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stated that the complainant handed over possession to the first accused.

That apart, the first accused had paid consideration to the complainant for the same. The question as to whether this document is valid or not has to be adjudicated only before a Civil Court and *prima facie* if there is evidence to show that the petitioner had acted bonafide, they cannot be prosecuted for the offences. In the facts and circumstances of the case, the petitioner had acted bonafide by believing the first accused. That apart, on coming to know of the dispute, they had vacated the property immediately. All this would show that they were not involved in the alleged offences.

4.Mr. V.Karthik, learned Senior Counsel for the petitioners in Crl.O.P. No. 6014 of 2021 submitted that the directors have been falsely implicated in the impugned complaint; that there cannot be vicarious liability for the offences under the Penal Code; and that there is nothing in the impugned complaint to show that the petitioners had conspired to commit the alleged offences. The learned Senior Counsel further submitted that the eighth petitioner / A10 Vimala Abraham had ceased to be a Director from 05.02.2019. The learned Senior Counsel also pointed out that none of the offences were made out against the petitioners.



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WEB COPY 5. Mr. S. Sivaraman, learned counsel for the petitioner/A1 in Crl.O.P. No. 6262 of 2021 submitted that the complainant on receipt of the consideration absconded and has come up with the impugned complaint as an after thought. The sale deed could not be registered because the property was under mortgage with a Bank. The complainant was instrumental for the delay in redeeming the property from the bank. In any case, he would submit that the petitioner is a co-owner admittedly and if he had used the property, it would not amount to misappropriation. He may be accountable only civilly. The impugned complaint is to only harass the petitioner and no offence is made out as against him.

6.Mr.Abdul Saleem, learned Senior counsel for the complainant in all the petitions submitted that A2 to A12 had earlier entered into a lease agreement. In the said lease agreement, the complainant and the first accused were shown as lessors jointly. Therefore, they were aware of the fact that the property in question was jointly owned by the complainant and the first accused. However, dishonestly they had entered into a lease agreement for the second time with the first accused alone. The act of A2



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to A12 was to unlawfully enrich themselves by paying lesser rent to the first accused though the market rental value of the property was nearly Rs. 20,00,000/-. A2 to A12 had denied the complainant of his share of Rs. 10,00,000/- per month as rental income. The first accused was entrusted with the property and he had dishonestly misappropriated the same in conspiracy with A2 to A12. The first accused had also committed acts of cheating. The learned Senior counsel relied upon the Judgment of the Hon'ble Supreme Court of India in **Mushtaq Ahmed vs. Mohd. Habibur Rehman Faizi** reported in (1996) 7 SCC 440, wherein it has been held that in a petition under Section 482, the Court shall not enter into a debatable area of deciding which of the versions were true. Hence, the learned Senior Counsel submitted that the question as to whether A2 to A12 had entered into the lease agreement under a bonafide impression or in conspiracy with the first accused cannot be decided in a quash petition.

7.This Court finds that the first accused and the complainant had bought the property jointly. The first accused claiming to be the absolute owner of the property had executed lease in favour of A2 to A12. It is claimed by the first accused that he obtained possession from the



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complainant by virtue of an unregistered sale deed and had also paid sale consideration to the complainant. The question as to whether this unregistered sale deed is valid and enforceable are matters which have to be decided only before the Civil Court. The first accused claims protection under Section 53-A of the Transfer of the Property Act, 1882. The issue in the instant quash petition is not whether the first accused had acquired absolute title over the property by virtue of the unregistered sale deed. The issue is whether A2 to A12 had entered into a conspiracy with the first accused for the purpose of committing breach of trust and cheating.

8.It is now well settled that even if a sale is made by falsely claiming title, the said sale would not amount to cheating the rival claimant for the property. The same would apply to a situation where a party who is entitled to half share in the property claims absolute title and executes lease in favour of third parties. In the instant case, it is not the case of the complainant that anybody made any representation to him and thereby, he was deceived and made to deliver any property. In such circumstances, the offence of cheating would not be made out. The Hon'ble Supreme Court of India in ***Mohammed. Ibrahim and Others vs.***



State of Bihar and Another reported in ***(2009) 8 Supreme Court Cases***

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751, while dealing with a case of a sale made by a person claiming title falsely held as follows:-

“20. When a sale deed is executed conveying a property claiming ownership thereto, it may be possible for the purchaser under such sale deed, to allege that the vendor has cheated him by making a false representation of ownership and fraudulently induced him to part with the sale consideration. But in this case the complaint is not by the purchaser. On the other hand, the purchaser is made a co-accused.

21. It is not the case of the complainant that any of the accused tried to deceive him either by making a false or misleading representation or by any other action or omission, nor is it his case that they offered him any fraudulent or dishonest inducement to deliver any property or to consent to the retention thereof by any person or to intentionally induce him to do or omit to do anything which he would not do or omit if he were not so deceived. Nor did the complainant allege that the first appellant pretended to be the complainant while executing the sale deeds. Therefore, it cannot be said that the first accused by the act of executing sale deeds in favour of the second accused or the second accused



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by reason of being the purchaser, or the third, fourth and fifth accused, by reason of being the witness, scribe and stamp vendor in regard to the sale deeds, deceived the complainant in any manner.”

9.The above observations would squarely apply to the facts of the instant case. Hence, it cannot be said that the first accused had cheated the complainant. The cheating or deception is said to have been made only to A2 to A12. In such circumstances, even if A2 to A12 were aware of the alleged false statement made by the complainant in the absence of any deception practiced on the complainant, the offence under Section 420 of Indian Penal Code is not made out. It is needless to say that the first ingredient for the offence of cheating under Section 415 of the Indian Penal Code is deception. The said ingredient is not made out in the instant case. Thus, applying the principle laid down by the Hon'ble Supreme Court in the case cited supra, this Court holds that the offence of cheating is not made out.

10.As regards the offence under Section 406 of the Indian Penal Code, it is the case of the complainant that property was entrusted to the first accused and he had misappropriated it in connivance with A2 to



A12. The question of entrustment made by the complainant in favour of the first accused pre-supposes that the complainant is a owner and in that capacity he had entrusted the property to the first accused. However, besides the fact that admittedly the first petitioner and the complainant are the joint owners, it cannot be said that he had entrusted the property to the first accused within the meaning of Section 405 of the Indian Penal Code. That apart, the possession of the property was handed over after receiving sale consideration which is recorded in the unregistered sale deed. The complainant has not denied the fact of execution of the said sale deed and cannot justifiably refute the said document. His only case is that the said document is invalid since it is not registered. However, the said document can be used for collateral purposes viz., to show that the complainant had handed over possession after receiving sale consideration. As stated earlier even otherwise, there cannot be any entrustment in the case of joint owners. The meaning of the word 'entrustment' has been elaborated by the Hon'ble Supreme Court of India in ***Rashikumar Vs. Mahesh Kumar Bhada*** reported in (1997) 2 SCC 397, which is extracted hereunder:-

“13.....The expression "entrustment" carries with it the implication that the person handing over any



property or on whose behalf that property is handed over to another, continues to be its owner. Entrustment is not necessarily a term of law. It may have different implications in different contexts. In its most general significance, all its imports is handing over the possession for some purpose which may not imply the conferment of any proprietary right therein. The ownership or beneficial interest in the property in respect of which criminal breach of trust is alleged to have been committed, must be in some person other than the accused and the latter must hold it on account of some person or in some way for his benefit.”

11.Further, the Hon'ble Supreme Court of India in ***Velji Raghavji Patel Vs.State of Maharashtra*** reported in ***AIR 1965 SC 1433***, had held that where one partner chooses to use the property for his own purpose, he may be accountable to the other partner civilly and the offence of misappropriation would not be made out. The relevant observations are extracted hereunder:-

“9.Mr. Chatterjee finally contends that the act of the appellant will at least amount to dishonest misappropriation of property even though it may not amount to criminal breach of trust and, therefore, his



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conviction could be altered from one under s.409 to that under s.403. Section 403 runs thus :

"Whoever dishonestly misappropriates or converts to his own use any moveable property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

It is obvious that an owner of property, in whichever way he uses his property and with whatever intention will not be liable for misappropriation and that would be so even if he is not the exclusive owner thereof. As already stated, a partner has, undefined ownership along with the other partners over all the assets of the partnership. If he chooses to use any of them for his own purposes he may be accountable civilly to the other partners. But he does not thereby commit any misappropriation. Mr. Chatterjee's alternative contention must be rejected."

Thus, for the above reasons, this Court finds that none of the offences are made out against the petitioners and hence, the impugned complaint is liable to be quashed.

12. Accordingly, these Criminal Original Petitions are allowed and



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the C.C. No. 936 of 2021 on the file of the IX Metropolitan Magistrate Court, Saidapet is quashed. Consequently, the connected Miscellaneous Petitions are closed.

13.04.2023

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

The IX Metropolitan Magistrate,
Saidapet.

SUNDER MOHAN, J



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Dated: 13.04.2023