IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.10.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.Nos.19271 & 24124 of 2021
and Crl.M.P.Nos.10565, 10566, 13311 & 13312 of 2021

1. Ramakrishnan
2. Santha
3. Nanthini ...Petitioners in Crl.O.P.19271/2021

Murugan ...Petitioner in Crl.O.P.24124/2021

Vs.

1. The State by
   The Inspector of Police,
   District Crime Branch,
   Nagapattinam.

2. T.Subramaniyan ... Respondents in both Crl.O.Ps.

Common Prayer: Criminal Original petitions filed under Section 482 of Code of Criminal Procedure, to call for the entire records pertaining to the case in C.C.No.587 of 2021 pending on the file of the learned Judicial Magistrate No.I, Nagapattinam, and quash the same as against the petitioners.

For Petitioners in Crl.O.P.No.19271/2021	: No appearance
For Petitioners in Crl.O.P.No.24124/2021	: Mr.Lourdu Paul Maurya
For Respondents in both Crl.O.Ps.	
For R1	: Mr.A.Gopinath Government Advocate (Crl. Side)
For R2	: Mr.U.Kathiravan

COMMON ORDER

These petitions have been filed to quash the proceedings in C.C.No.587 of 2021, on the file of the learned Judicial Magistrate No.I, Nagapattinam, thereby taken cognizance for the offences under Sections 406, 420, 468, 471 r/w. 109 of IPC, as against the petitioners.

2. The petitioners in Crl.O.P.No.19271 of 2021 are arrayed as A2 to A4 and the petitioner in Crl.O.P.No.24121 of 2021 is arrayed as A5. The case of the prosecution is that all the accused in order to cheat the defacto complainant that too after after knowing the fact that he was retired from service and he was in possession of terminal benefits, induced him to pay a sum of Rs.45,00,000/- and also received 45 sovereign of gold jewels in order to save the property by paying income tax. On the complaint, the first respondent registered the FIR. After

completion of investigation, they filed final report and the same has been taken cognizance by the learned Judicial Magistrate No.I, Nagapattinam in C.C.587 of 2021. There are totally nine accused, in which the petitioners are arrayed as A2 to A5.

3. The learned counsel appearing for the petitioners submitted that the entire allegations are made only as against the first accused an no iota of evidence to attract any of the offence as against the petitioners. They are close relatives and in fact, the fifth accused is the husband of the fourth accused and he is a non-resident of India. The charge designed in two folds. Insofar as the first fold is concerned, the first accused is said to be an officer working in ONGC, by showing her official status, and after knowing that the defacto complainant who had retired and was in possession of liquid cash, had represented falsely as if she needs to settle and to pay certain tax due to the Income Tax Office so as to get her ceased amount to be returned, after making such representation, the first accused said to have met the defacto complainant in person on 26.10.2018, when she had along with the petitioners. Believing her words, the defacto complainant on various occasions through various persons had paid a sum of Rs.45 lakhs, on the fullest hope that as and

when the payment disbursed from the income tax department, the first accused would return back the same with considerable commission. The second limp of the charge is that the first accused had entrusted the seventh accused as an income tax officer by which the first accused has strengthen her fake representation and she made further request to part with a notable quantity of jewels, so that she could satisfy the income tax department, thereby would get her case cleared of which would be resulted in the receipt of a huge amount. On the false representation, the second respondent had entrusted 45 sovereign of gold which belonged to her daughter.

4. He further submitted that insofar as the petitioners are concerned, they are close relatives of the first accused and nothing to do with the allegations as alleged by the prosecution. In order to attract the provisions under Section 109 of IPC, none of the witnesses have stated about the role played by the petitioners. There are no allegations made against the petitioners in order to attract the offence under Sections 406, 420, 468, 471 r/w. 109 of IPC. In support of his contention, he relied upon the following judgments:-

(i) (2009) 11 SCC 203 – Chunduru Siva Ram Krishna and anr Vs. Peddi Ravindra Babu & anr.

(ii) (2002) 2 SCC 636 – G.Sagar Suri and anr Vs. State of UP and ors.

(iii) (2013) 6 SCC 740 – Chandran Ratnaswami Vs. K.C.Palanisamy and ors.

(iv) 2019 SCC OnLine Mad 5944 – Ashok Giri & anr Vs. State Rep. by Inspector of Police & anr.

(v) 2015 SCC OnLine Pat 4939 – Keshar Sao & ors Vs. The State of Bihar & anr

(vi) (2018) 14 SCC 233 – Samir Sahay @ Sameer Sahay Vs. State of Uttar Pradesh & anr.

5. Heard the learned counsel appearing on either side and perused the material placed before this Court.

6. It is true that in order to attract the offence of 420 of IPC, the person must be induced fraudulently or dishonestly to deliver any property to any person. Next it is doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. Further it depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for

this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed.

7. Whereas in the case on hand, there are specific allegations as against the petitioners and they also went along with the first accused and induced the second respondent to pay a sum of Rs.45,00,000/- Therefore, the judgments cited by the learned counsel appearing for the petitioners are not helpful to the case on hand.

8. On perusal of the statement recorded under Section 161 of Cr.P.C., from all the witnesses revealed that the second accused had first got acquainted with the defacto complainant and become good friends. The second accused only had gathered all the information as to financial capacity of the defacto complainant and all the accused including the petitioners had projected the first accused as an officer of ONGC and thereafter they had contributed to false projection in order to deceive the defacto complainant to the tune of Rs.45,00,000/- and thereafter obtained 45 sovereign of gold from the defacto complainant.

9. The petitioners had acted active role in order to deceive the second respondent to pay a sum of Rs. 45,00,000/- and also 45 sovereign of jewels under the guise to clear income tax problem and to return the same as soon as the income tax department disburse the first accused share of sale proceed of her ancestral property. The ingredients for the offence under Section 107 of IPC is clearly attracted when all the accused persons visited the defacto complainant and thereafter on several occasion they were received a sum of Rs.45,00,000/- and also 45 sovereign of jewels from the second respondent. Therefore, there are ingredients to attract the offence under Section 107 of IPC and as such all the accused are liable to be prosecuted under Sections 406, 420, 468, 471 r/w 109 of IPC.

10. It is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in ***Crl.A.No.579 of 2019*** dated ***02.04.2019*** in the case of ***Devendra Prasad Singh Vs. State of Bihar & Anr.,*** wherein it is held as follows:-

" 12.So far as the second ground is concerned, we are of the view that the High Court while hearing the

application under Section 482 of the Cr.P.C. had no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their statements and, therefore, there was no prima facie case made out against respondent No.2. In our view, this could be done only in the trial while deciding the issues on the merits or/and by the Appellate Court while deciding the appeal arising out of the final order passed by the Trial Court but not in Section 482 Cr.P.C. proceedings.

13.In view of the foregoing discussion, we allow the appeal, set aside the impugned order and restore the aforementioned complaint case to its original file for being proceeded with on merits in accordance with law.

11. The Hon'ble Supreme Court of India dealing in respect of the very same issue in ***Crl.A.No.1572 of 2019*** dated 17.10.2019 in the case of ***Central Bureau of Invstigation Vs. Arvind Khanna,*** held as follows:

"19. After perusing the impugned order and on hearing the submissions made by the learned senior counsels on both sides, we are of the view that the impugned order passed by the High Court is not sustainable. In a petition filed under Section 482 of Cr.P.C., the High Court has recorded findings on

several disputed facts and allowed the petition. Defence of the accused is to be tested after appreciating the evidence during trial. The very fact that the High Court, in this case, went into the most minute details, on the allegations made by the appellant-C.B.I., and the defence put-forth by the respondent, led us to a conclusion that the High Court has exceeded its power, while exercising its inherent jurisdiction under Section 482 Cr.P.C.

20.In our view, the assessment made by the High Court at this stage, when the matter has been taken cognizance by the Competent Court, is completely incorrect and uncalled for."

12. Further the Hon'ble Supreme Court of India also held in the order dated ***02.12.2019*** passed in ***Crl.A.No.1817 of 2019*** in the case of ***M.Jayanthi Vs. K.R.Meenakshi & anr,*** as follows:

"9. It is too late in the day to seek reference to any authority for the proposition that while invoking the power under Section 482 Cr.P.C for quashing a complaint or a charge, the Court should not embark upon an enquiry into the validity of the evidence available. All that the Court should see is as to whether there are allegations in the complaint which form the basis for the ingredients that

constitute certain offences complained of. The Court may also be entitled to see (i) whether the preconditions requisite for taking cognizance have been complied with or not; and (ii) whether the allegations contained in the complaint, even if accepted in entirety, would not constitute the offence alleged.

....

13. A look at the complaint filed by the appellant would show that the appellant had incorporated the ingredients necessary for prosecuting the respondents for the offences alleged. The question whether the appellant will be able to prove the allegations in a manner known to law would arise only at a later stage..................."

13. In view of the above discussions, this Court is not inclined to quash the proceeding and both the Criminal Original Petitions stand dismissed. Consequently, connected miscellaneous petitions are closed.

10.10.2023

Internet: Yes
Index : Yes/No
Speaking/Non Speaking order

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To

1. The Judicial Magistrate No.I,
   Nagapattinam,

2. The Inspector of Police,
   District Crime Branch,
   Nagapattinam.

3.The Public Prosecutor,
   High Court, Madras.

G.K.ILANTHIRAIYAN. J,

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