



Crl.O.P.No.3163 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2023

CORAM

THE HON'BLE Mr. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.3163 of 2017

&

Crl.M.P.Nos.2304 & 2305 of 2017

1.Sunita Nil Yadav
2.Ramesh Chandra
3.Kamaka yadav

... Petitioners

Vs

T.M.Balagurusamy

... Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records in C.C.No.23 of 2016 pending on the file of District Munsif cum Judicial Magistrate at Vaniyambadi and quash the same.

For Petitioners : Mr.Ramesh Jain for
for Mr.K.P.Anantha Krishna
For Respondent : Mr.A.P.Sathya Moorthy
for Mr.M.N.Balakrishnan

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.23 of 2016 pending on the file of District Munsif cum Judicial Magistrate at Vaniyambadi.

2. The respondent filed a private complaint for the offence



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punishable under Section 420 and 120B of IPC, alleging that the first accused is the Chairman, second accused is the Vice President and other accused are Trustees of Sridhar University, Pilani, Rajasthan. The accused authorised the respondent as a Co-ordinator for the State of Tamil Nadu, Karnataka and Kerala for the period 2013-2014 and provided certificate of authorisation dated 17.05.2013. In this regard, the accused received refundable deposit of Rs.75 Lakhs from all the three States, which is authorised to provide information, enrolment and other related assistants to the students willing to study at Sridhar University, in its regular programme in various courses. Believing the advertisement of the accused, the students had applied for their respective courses through the respondent counseling center. They have paid respective fees for their enrolment. Totally 971 students had applied and approached the respondent for their enrolment. However, when the students approached for their admission, they were denied admission and enrolment of the students for the period 2013-2014. Hence, the complaint.

3. On receipt of the complaint, the Trial Court had taken cognizance in C.C.No.23 of 2016 for the offences under Sections 420 and 120B of IPC and issued summons to the accused.

4. The learned counsel appearing for the petitioners submitted



that the petitioners are arrayed as A3 to A5. They are nothing to do with the offence as alleged by the respondent. Even according to the respondent, the first and second accused authorised him to represent on behalf of State of Tamil Nadu, Karnataka and Kerala. The petitioners are nothing to do with the collection of amount from the first and second accused. Even according to the respondent, all the allegations pertaining only as against A1 and A2.

5. In support of his contention, he relied upon the Judgment reported in **2011 SCC Online SC 1321** in the case of ***Thermax Limited and others Vs. K.M.Johny and others***, in which the Hon'ble Supreme Court of India held that the essential ingredient for an offence under Section 420, there has to be dishonest intention to deceive another person. He also relied upon the Judgment reported in **2019 SCC Online Mad 2096** in the case of ***Amala Valentine Vs. State of Tamil Nadu, Rep. by the Inspector of Police and another***, in which the Hon'ble Supreme Court of India held that the allegations made in the complaint is merely a breach of contract and the same cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right from the beginning of the transaction.



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6. Per contra, the learned counsel appearing for the respondent submitted that admittedly the petitions are trustees of Sridhar University, Pilani, Rajasthan. There are specific allegations as against all the accused. They induced and deceived the students and having been collected more than Rs.1 Crore from the poor students, and all of them were denied admission and enrolment as students. Therefore, the offence under Section 420 is clearly attracted as against them.

7. Heard the learned counsel appearing on either side and perused the materials available on record.

8. There are totally five accused, in which the petitioners are arrayed as A3 to A5. Admittedly, the petitioners are Trustees of Sridhar University. The crux of the complaint is that the respondent is a Co-ordinator of State of Tamil Nadu, Karnataka and Kerala during the period 2013-2014 and also provided certificate authorisation dated 17.05.2013. As per the common advertisement, the accused had received a sum of Rs.75 Lakhs from all the three States as refundable deposit. Thereafter, they denied the admission and enrolment as students. Therefore, even from the inception viz., advertisement, they submit the forms, and had dishonest intention to cheat the students. Thereafter, they were collected more than Rs.1 Crore from the poor students and they were denied the



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admission and enrolment. Though it is refundable deposit, the accused failed to refund the same. It shows that they had dishonest intention even from the very inception of their advertisement and cheated the students. Therefore, the ingredients are clearly made out to attract the offences under Section 420 and 120B of IPC. That apart, the petitioners, being Trustees, also liable to be punished for the offences under Section 420 and 120B of IPC. Therefore, the Judgments cited by the petitioners are not helpful to the case on hand.

9. In view of the above, this Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petitions are closed.

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Index:Yes/No
Internet:Yes/No

To

The District Muncif cum Judicial magistrate,
Vaniyambadi.



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G.K.ILANTHIRAIYAN,J.

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