



WEB COPY



Crl OP No.25396 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.04.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Criminal Original Petition No.25396 of 2019

and

Crl.M.P.Nos.13580 & 13582 of 2019

1. Nazeera Afzal Rahman

2. Afzal Rahman

... Petitioners/Accused

Versus

Ms.Preetha Prasad

... Respondent/Complainant

Prayer : Criminal Original Petition has been filed under Section 482 of the Criminal Procedure Code seeking to call for the records pertaining to the proceedings in C.C.No.2926 of 2019 on the file of the learned IX Metropolitan Magistrate, Saidapet, Chennai, quash the same.

For Petitioners : Mr.Vigneswar Elango
for M/s.P.Elango

For Respondent : Mr.S.Anil Sandeep



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ORDER

This Criminal Original Petition has been filed to quash the private complaint for the alleged offence under Section 420 of the Indian Penal Code.

2. It is alleged in the complaint that during April 2014, the accused with a dishonest intention borrowed money from the complainant stating that they were going through some financial difficulties; that the respondent believing the petitioners had lent a sum of Rs.15,10,000/- between the period from April to December 2015; that the respondent instituted a suit for recovery of the loan amount with interest against both the petitioners in OS No.5166 of 2016 and the said suit was decreed; that the petitioners by misusing the relationship between them and the respondent had played fraud on the petitioners to lend money to the tune of Rs.15,10,000/- and thus committed an offence under Section 420 of IPC.

3. The learned counsel for the petitioners would submit that the impugned complaint was filed on 08.08.2019 and the alleged loan was given to the petitioners between April and December 2015. The



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impugned complaint after the suit was filed for recovery of money is nothing but an abuse of process of law. There is nothing in the impugned complaint to show that the deception was practiced by the petitioners at the very inception of the contract. Admittedly, the petitioners and the respondent were good friends and known to each other for several years. Therefore, it cannot be said that the money was given as loan on the basis of any alleged deception. The learned counsel further submitted that the Suit in OS No.5166 of 2016 was also decreed subsequently.

4. The learned counsel for the respondent would submit that the conduct of the parties would show that the petitioners had deceived the respondent even at the inception. They had no intention to repay the loan amount. The conduct of the petitioners in filing a written statement and contesting the suit and making false averments would show that they have no intention to repay the money. The learned counsel further submitted that merely because the suit was filed for recovery of money and it cannot be said that the impugned complaint under Section 420 is not sustainable.

5. This Court on perusal of the impugned complaint finds that the



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petitioners and the respondent were known to each other for over 30 years. There is nothing in the impugned complaint to show that any false representation was made by the petitioners for obtaining loan from the respondent. Admittedly, the loan was obtained to meet the educational expenses of the children and also for household expenses. The allegations at best only disclose a case of breach of promise. There is nothing in the impugned complaint to suggest that the petitioner practiced deception at the very inception. Further it is seen that the respondent had already obtained a decree in OS No.5166 of 2016 on 16.10.2020 against the petitioners.

6. In such circumstances, this Court is of the view that the impugned complaint is an abuse of process of law and it is liable to be quashed in respect of second petitioner and the Criminal Original Petition is allowed. As far as the first petitioner is concerned, this Criminal Original Petition was dismissed as withdrawn by the order dated 27.03.2023. Consequently, the connected miscellaneous petitions are closed.

jv

18.04.2023



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Index: Yes/No
Speaking Order / Non-Speaking Order
Neutral Citation: Yes / No

To

The IX Metropolitan Magistrate,
Saidapet,
Chennai



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SUNDER MOHAN, J.

jv

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