



Crl.O.P.No.30942 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2023

CORAM

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.O.P.No.30942 of 2019

and

Crl.M.P.No.16806 & 16807 of 2019

1.Kuppu Mani
2.Shankar

... Petitioners

Vs.

1. The Inspector of Police,
Adyamankottai Police Station,
Dharmapuri District.

2. Gopal

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code seeking to call for the records pertaining to the CC No.262/2014 pending on the file of Judicial Magistrate-II Dharmapuri and quash the same.

For Petitioners : M/s.M.Selvam

For Respondent : Mr.A.Damodaran, Addl. Public Prosecutor [R.1]

: No appearance [R.2]



ORDER

The petition is filed to quash the final report for the offence under Section 420 IPC.

2. It is alleged in the final report that A.1 had borrowed Rs.2,00,000/- from the de facto complainant and repaid only Rs.1,25,000/- and promised to repay the balance amount of Rs.75,000/- as early as possible; and that A.2 and A.3 assured the de facto complaint that A.1 would keep up his promise.

3. The learned counsel for the petitioner submitted that admittedly the loan was borrowed by A.1 from the de facto complainant. He had paid Rs.1,25,000/- out of Rs.2,00,000/- borrowed by him. The only allegation against the present petitioners is that they had guaranteed the repayment of the loan by A.1. The learned counsel further submitted that even if the allegations are accepted, the allegation in the impugned complaint cannot be sustained as against the petitioners. Hence, no offence under Section 420 IPC is made out.



4. The learned Additional Public Prosecutor would submit that in the impugned final report there are allegations which have to be adjudicated only before the Trial Court and prayed for dismissal of the quash petition.

5. This Court finds that admittedly A.1 had taken a loan of Rs.2,00,000/- and repaid Rs.1,25,000/- to the de facto complainant. He had not repaid the balance of Rs.75,000/-. Even the said act cannot be said to be cheating by any stretch of imagination. It is only a case of breach of promise. In any case, there is no allegation against the petitioners that they had practiced any deception on the de facto complainant. The petitioners allegedly assured the de facto complainant that they would ensure A.1's repayment of the loan. Guaranteeing the repayment of loan which has not been paid by the principal borrower, by itself would not constitute the offence of cheating. This Court finds that the impugned prosecution on such allegation as against the petitioners is a clear abuse of process of law. Hence, the impugned complaint is quashed.



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WEB COPY 6. Accordingly, the Criminal Original Petition stands allowed.

Consequently, the connected Miscellaneous Petitions are closed.

28.04.2023

Index : Yes/No
Internet : Yes/No
Neutral Citation :Yes/No
shr

To

1. The Inspector of Police,
Adyamankottai Police Station,
Dharmapuri District
2. The Judicial Magistrate-II Dharmapuri.



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SUNDER MOHAN. J,

shr

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