



Crl.O.P.No.31746 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.03.2023

CORAM

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.O.P.No.31746 of 2019

and

Crl.M.P.No.17394 of 2019

1.R.Swarnalatha

2.P.Rajendran

...Petitioners

Vs.

1.State rep. By its,
The Inspector of Police,
R-5, Virugambakkam Police Station,
Virugambakkam, Chennai.

2.Lakshmi

..Respondents

Prayer:- Criminal Original Petition filed under Section 482 of Cr.P.C., calling for the records relating to the proceedings of the FIR in Crime No.432 of 2019 dated 28.09.2019 on the file of the 1st respondent and quash the same.



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For Petitioner : Mr.D.Padmanabhan

For Respondents : Mr.A.Damodaran

Additional Public Prosecutor for R1

Mr.K.Suthan for R2

ORDER

This Criminal Original Petition is filed to quash the First Information Report registered in Crime No.432 of 2019 for the offence under Section 420 of I.P.C.

2.It is alleged in the First Information Report that the de-facto complainant had lent a sum of Rs.6,00,000/- to the petitioner in the year 2014; that the petitioner had promised to repay the said sum within one year; that he did not make payment and hence, the de-facto complainant requested him to execute documents confirming the receipt of money; that on 25.02.2016, the petitioners executed document in stamp paper confirming the receipt of Rs.6,00,000/-; that thereafter, the petitioners ignored the calls made by the de-facto complainant. It is further alleged in the impugned First Information Report that the money was borrowed from



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her brother, Y.Srinivas Rao to give loan to the petitioners and that he was asking for return of money.

3.The learned counsel appearing for the petitioners would submit that the allegations in the First Information Report would show that it is the case of money transaction and that there is no allegation to show that there was deception at the very inception. The de-facto complainant's brother had already filed a suit in O.S.No.112 of 2018 on the file of the Principal Junior Civil Judge at Anakapalle against the 2nd petitioner herein for recovery of a sum of Rs.2,34,000/-. The learned counsel therefore, submitted that a civil transaction is sought to be given a criminal colour.

4.The learned Additional Public Prosecutor submitted that the impugned First Information Report alleges the offence of cheating and only the investigation would reveal as to whether there was deception at the inception or it is a case of breach of promise and hence, prayed for dismissal of the quash petition.

5.Though notice was sent to the 2nd respondent / de-facto complainant



and a counsel has entered appearance, there was no representation on behalf of the de-facto complainant on 21.03.2023. Hence, it was posted under the caption 'for orders' today. Even today, there is no representation for the 2nd respondent.

6.This Court on a reading of the impugned First Information Report finds that it is the case of the de-facto complainant that she had lent a sum of Rs.6,00,000/- to the petitioners. When they did not repay the said sum, they had executed documents on 25.02.2016 evidencing the receipt of money. It is well settled that merely because the loan amount has not been repaid, it would not amount to cheating. There is nothing in the impugned First Information Report to suggest that the petitioners practised deception at the very inception of the contract. Further, it is seen that the de-facto complainant's brother has also filed a suit before the Principal Junior Civil Judge at Anakapally against the 2nd petitioner. The 2nd petitioner has also filed a written statement in the said suit. This Court finds that the allegations only reveals a case of breach of promise and the ingredients of cheating are not made out.



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7. In view of the above, the impugned First Information Report is liable

to be quashed. This Criminal Original Petition is allowed. No costs.

Consequently, connected miscellaneous petition is closed.

23.03.2023

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Internet : Yes/No

Index: Yes/No

Speaking / Non-speaking order

Neutral Citation : Yes/No

To

1. The Inspector of Police,
R-5, Virugambakkam Police Station,
Virugambakkam, Chennai.

2. The Public Prosecutor
High Court of Madras,
Madras.



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SUNDER MOHAN, J.

KKN

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