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Crl.O.P.(MD)No.395 of 2021



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 03.04.2023

Delivered on :2023

CORAM:

THE HONOURABLE MRS.JUSTICE **R.THARANI**

Crl.O.P.(MD) No.395 of 2021
and
Crl.M.P.(MD)No.159 of 2021

Durai @ Chermadurai ... Petitioner /Sole Accused
Vs.

1.The State Represented by its
The Inspector of Police,
Vijayanarayanam Police Station,
Tirunelveli District.

In Crime No.25 of 2018 ... 1st respondent / Complainant

2.Sudha ... 2nd respondent /defacto complainant

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records in relating to the impugned F.I.R in Crime No.244 of 2020, on the file of the first respondent and to quash the same as illegal.

For Petitioners : Mr.M.S.Jeyakarthik

For Respondents : Mrs.M.Aasha
Government Advocate (Crl.Side) for R1

: Mr.C.Christopher for R2



ORDER

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This petition is filed to quash the F.I.R in Crime No.244 of 2020, on the file of the first respondent police.

2. The case against the petitioner is that the defacto complainant is a physically challenged person and she was running a chit, in which, the accused joined 4 chits and he received the entire chit amount by giving an undertaking that he will pay the monthly dues without any default. But, the accused did not properly pay the monthly installments and he refused to pay the balance of Rs.88,450/- and hence, the defacto complainant lodged this complaint.

3. On the side of the petitioner, it is stated that the defacto complainant influenced the driver of the Deputy Superintendent of Police and filed a false complaint. The Deputy Superintendent of Police issued a summon and on receipt, the petitioner appeared before the Deputy Superintendent of Police, on 08.08.2020. The Deputy Superintendent of Police insisted the petitioner to pay Rs.88,450/- to the defacto complainant immediately. The petitioner explained that he did not join any chits and that there is no need for paying money to the defacto



complainant. The defacto complainant has no licence or permit to run a chit. The police ought to have taken appropriate legal action against the defacto complainant. The petitioner has no requirements to take part in a chit. The ingredients of the offence under Section 420 of I.P.C is not attracted. There is no specific overt act against the petitioner. The date on which the money was borrowed was not mentioned in the complaint. Since the ingredient of Section 420 of I.P.C are not made out, the F.I.R is to be quashed.

4. On the side of the petitioner, it is further stated that even as per the case of the prosecution, there is no evidence for intention to cheat the defacto complainant. Default in payment of chit amount cannot be treated as intentional cheating. The petitioner periodically paid all the amount. There is no balance to be paid. The defacto complainant has no record to show balance of payment.

5. On the side of the petitioner, a judgment of this Court made in ***Crl.R.C.No.1201 of 2013 (Punitha V. The State of Tamil Nadu rep. by the Inspector of Police), dated 16.10.2014***, is cited, wherein, it is stated as follows:-



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“4. Learned counsel for petitioner submits that even assuming that the complaint allegations were true, as per the First Information Report, the petitioner has paid monthly installments till November 2009. No offence of cheating would be made out unless there was deception at inception. There is no specific allegation in the complaint against the petitioner so as to attract offence u/s.294(b) IPC. Learned counsel submits that there absolutely is no material to show that the petitioner has joined in various chits conducted by the de facto complainant.

.....

7. There is no material whatsoever to show that the complainant had paid money to the petitioner. No written receipts have been produced to support the allegation of the petitioner having joined a chit, received money and of having not repaid the same. Even according to the First Information Report, the petitioner has paid monthly installments upto November 2009 and only thereafter, the petitioner has failed to repay. As rightly contended by learned counsel for petitioner in the absence of the element of deception at inception, no offence u/s.420 IPC would be attracted. As regards offence u/s.294(b) IPC, 161(3) Cr.P.C. statements inform that allegations of verbal abuse are made only against the petitioner's husband. The proceedings against him stands quashed under orders of this Court passed in Crl.O.P.No.5779 of 2010 dated 03.02.2011. There absolutely is no material to support the



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allegations levelled against the petitioner. In the circumstances, the prosecution of the petitioner would be unjustified.”

6. On the side of the petitioner, a judgment of this Court made in ***Crl.O.P.No.10252 of 2005 (V.D.Manicka Mudaliar V. The State by the Inspector of Police), dated 29.01.2010***, is cited, wherein, it is stated as follows:-

8. It is quite apparent that what existed between the parties is only a civil dispute and that the criminal process is sought to be abused towards mulcting pressure on the petitioners herein. Such abuse ought not to be permitted.

7. On the side of the petitioner, another judgment of the High Court of Punjab and Haryana, made in Criminal Mixx.M.No.17873 of 2008 (O&M) (***Ashwani Kumar V. State of Punjab and another***), dated ***16.07.2012***, is cited, wherein, it is stated as follows:-

“Thus, as per the above decision, the distinction between the offence of cheating and mere breach of contract has to be kept in mind. Mere use of words that the accused by false persuasion, assurance and promise had induced the complainant to pay the amount in



installments is not sufficient to constitute the offence of cheating. A perusal of the complaint rather shows that the present case pertains to breach of contract and not a criminal case of offence of cheating.”

8. On the side of the petitioner, another judgment of the Hon'ble Supreme Court reported in **2004-12-SCC-83 (G.Pankajakshi Amma V. Mathal Mathew(D))**, is cited, wherein, it is stated as follows:-

“ According to the first respondent, all these amounts are paid in cash. If these are unaccounted transactions then they are illegal transactions. No court can come to the aid of the party in an illegal transaction. It is settled law that in such cases the loss must be allowed to lie where it falls. In this case as these are unaccounted transactions, the Court could not have lent its hands and passed a decree. For these reasons also the suit was required to be dismissed. ”

9. On the side of the petitioner, a judgment of this Court made in **Crl.R.C.No.1326 of 2007 (Pradeep Jain Vinoth Kumar Mehta V. Inspector of Police)**, dated 22.07.2009, is cited, wherein, it is stated as follows:-

“21. Though the investigating official has not concluded that it was a commercial transaction, the



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facts and circumstances would disclose that the transaction between the de facto complainant and Surana Corporation was only a commercial one. The de facto complainants could not come out with sufficient materials to enable the investigating officer to file a charge against the accused. The source of money could not be accounted by the de facto complainants. Only a part of the amount was paid into the account of Surana Corporation. The said amount also was returned by delivery of gold by Surana Corporation. Even otherwise, the transaction being a commercial one, the de facto complainants should have approached the civil court. But, unfortunately, there was no agreement between the parties. “

10. On the side of the second respondent, it is stated that the defacto complainant is a physically challenged woman, the petitioner has taken a chit amount in advance and he refused to pay the balance and thereby he cheated the defacto complainant.

11. On the side of the prosecution, it is stated that the defacto complainant is running a chit. The petitioner is a member in two chits for a sum of Rs.1,70,000/- and he is a member in two other chits for



a sum of Rs.1,20,000/-. After receiving the chit amount, he failed to pay the balance amount with dishonest disburse, he abused the defacto complainant in filthy language and he threatened the defacto complainant with dire consequences. The prosecution has examined nine witnesses, there are oral and documentary evidence available against the petitioner and the trial is necessary.

12. On the side of the petitioner, it is admitted that the petitioner has joined the chit run by the defacto complainant. The case of the defacto complainant is that there is a balance of Rs.88,450/- to be paid by the petitioner. The case of the petitioner is that he has already paid the entire amount. The petitioner has cited various judgments regarding that balance, in a chit payment cannot be treated as a criminal cheating case and it has to be taken only as a civil liability. There are some other allegations against the petitioner under Sections 294(b) and 506 (I) of I.P.C. Moreover, the first three citations are only from the High Courts and not from the Supreme Court. The last citation is from the Hon'ble Supreme Court and the facts of the case is different from the facts of the present case and hence, the judgment of the Hon'ble Supreme Court is not applicable to the facts of the present case.



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13. Though the petitioner is claiming that the defacto complainant is running an unregistered chit, the petitioner has fairly admitted that he joined the chit. Whether the defacto complainant is having documentary evidence, whether the petitioner has paid the amount in full and whether a balance is to be paid by the petitioner cannot be decided at this juncture and this case requires a trial.

14. With the above observation, this Petition is dismissed.
Consequently, connected Miscellaneous Petition is closed.

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
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R.THARANI. J.

Ls

To

1. The Inspector of Police,
Vijayanarayanam Police Station,
Tirunelveli District.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Pre-delivery order made in
Crl.O.P.(MD)No.395 of 2021

01.06.2023