



Crl.O.P.(MD)No.1989 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 11.01.2023

Pronounced on : 20.01.2023

CORAM

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.O.P.(MD).No.1989 of 2020

and

Crl.M.P.(MD).Nos.988 and 990 of 2020

1.K.Chandrasekar

2.C.Thenmozhi

... Petitioners

Vs.

M.C.Ravikumar

...Respondent

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records of the impugned proceedings pertaining under Section 200 Cr.P.C. in C.C.No.1171 of 2019 on the file of the learned Judicial Magistrate No.1, Madurai and quash the same as illegal.

For Petitioners : Mr.S.M.A.Jinnah

For Respondent : Mr.S.Palanivelayutham
for Mr.S.Muthumalai Raja



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ORDER

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The Criminal Original Petition is filed to quash the complaint in C.C.No.1171 of 2019 on the file of the learned Judicial Magistrate No.1, Madurai for the offences under Section 406, 420 and 506(ii) of IPC.

2. The case of the complainant/respondent is that the petitioners were running a pawn broker shop and were collecting deposits in the name of Ganesh Finance. The petitioners are partners in the said firm. They had induced the general public to deposit huge sum in their firm. Believing their words, the respondent/complainant deposited a sum of Rs.7,00,000/- in the said business. The petitioners promised to repay the said deposit. Further, the respondent came to know that the petitioners were collecting deposits without obtaining the requisite licence and permission. The respondent filed a complaint before the Police. However, no action was taken against the petitioners. Hence, the respondent chose to file a private complaint.

3. Mr.S.M.A.Jinnah, learned counsel for the petitioners submitted that the first petitioner is no more and the second petitioner is his wife. She had no role in the business run by her husband. In any case, the deceased first petitioner



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and the respondent were partners and entered into a partnership deed on 02.05.2008 and the partnership business was called as M/s.Ganesh Finance.

They had dissolved the partnership by a Memorandum of Understanding on 09.03.2017 as per which both the first petitioner and the respondent had stated that they had no claims as against each other. The respondent had given police complaints and the Police had rightly closed the said complaints stating that the respondent has not produced any proof to show that he had deposited money in the firm run by the first petitioner. The learned counsel for the petitioners relied upon the proceedings of the Inspector of Police, District Crime Branch, Madurai dated 26.06.2018, wherein, the Inspector of Police had stated on a query made to him under the Right to Information Act that the complaint lodged by the respondent herein was kept pending, since the respondent had not produced any proof for deposit. The Inspector of Police further found that the case was civil in nature and had closed the complaint filed by the respondent on 09.11.2019. The learned counsel for the petitioners further submitted that the second petitioner has nothing to do with the business and in any event, the allegations on the complaint would show that the entire transaction is civil in nature even if the allegations in the complaint are accepted to be true, the offences under Sections 406, 420 and 506(ii) of IPC are not made out.



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4. Mr.S.Palanivelayutham, learned counsel for the respondent submitted that the partnership deed and the Memorandum of Understanding relied upon by the petitioners cannot be looked into at the stage of quashing. He would further submit that those two documents are fabricated documents and the respondent is not a party to those documents as claimed by the petitioners. Further, the learned counsel submitted that the respondent had deposited Rs.7,00,000/- with M/s.Ganesh Finance in which both the petitioners are actively involved. After the demise of the first petitioner, the second petitioner who is his wife, is running the said business and it cannot be said that she has no role in the said firm. The learned counsel further submitted that since the Police did not take action on the complaint given by the respondent, he was forced to file the impugned complaint.

5. a) On perusal of the allegations in the impugned complaint, this Court finds that it is the case of the complainant that he made a deposit of Rs.7,00,000/- in the account of the first accused in the year 2016. The first accused promised to repay the said deposit with interest at the rate of 1% every month. However, he deliberately failed to repay the said amount and when questioned, both the petitioners threatened and criminally intimidated him. The allegations in the complaint, even if accepted to be true, do not disclose the



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offence under Section 406 IPC. The deposit amount would not amount to entrustment within the meaning of Section 406 IPC. The deposit is made pursuant to a contract between the first petitioner and the respondent. The respondent as per the complaint was promised 1% interest per month for the said transaction. In such circumstances, the deposit would not amount to entrustment, which is an essential ingredient of the offence under Section 406 IPC.

b) As regards the offence under Section 420 IPC, there is nothing to suggest in the impugned complaint as to what was the deception practised by the accused and more particularly, by the second petitioner, who is the wife of the first petitioner. Even according to the complaint after the deposit was made, the first petitioner failed to make payment to the complainant. In the absence of any specific allegation as to the nature of deception practised by the petitioners to induce the respondent to deposit the amount, mere non-payment of an alleged amount received by the petitioners would not amount to cheating. A reading of the instant complaint would show that there is no such allegation.

c) Further, this Court finds that the Police have closed the complaint rightly because the entire transaction appears to be civil in nature and no



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document has been produced by the respondent before the Police evidencing payment of money to the firm. To a specific query made by this Court as to the proof for payment of money, the learned counsel for the respondent referred to certain cash deposits made in the name of one Muthiah Travels and the learned counsel was not able to substantiate as to how those deposits made in the name of Muthiah Travels would evidence the alleged payment made by the respondent. Further, the nature of threat or intimidation made by the petitioners have also not been spelt out.

6. On an overall reading of the complaint, it is clear that a civil transaction is sought to be projected as cheating and breach of trust. Further, there is nothing on record even to suggest that the petitioners received money from the defacto complainant. In this context, the partnership deed and the Memorandum of Understanding produced by the petitioners assume significance. It is true that the documents, which are not relied on by the complainant, cannot be looked into at the stage of quash petition. However, in the instant case, besides the allegations being civil in nature and the Police have rightly closed the complaint, the petitioners' case with regard to alleged transaction appears to be more probable. That apart, the second petitioner has no role in the said transaction and the respondent has not stated as to how the



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second petitioner is involved in the alleged transaction though he had included the second petitioner in the complaint and vaguely stated that she was also involved in the transaction.

7. For all the above said reasons, the impugned complaint deserves to be quashed as against the second petitioner. Hence, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are closed.

20.01.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
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SUNDER MOHAN, J.

Lm

**Pre-delivery Order made in
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20.01.2023