



1

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 05/06/2023

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

Cr1.OP(MD)No.9575 of 2023
and
Cr1.MP(MD)No.7685 of 2023

Moorthy : Petitioner/Accused

Vs.

1.The State through
The Inspector of Police,
Palani Adivaram Police Station,
Dindigul District.
In Crime No.77 of 2018 : R1/Complainant

2.Madurai Veeran : R2/De-facto Complainant

PRAYER:- Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records relating to the proceedings in Crime No.77 of 2018 on the file of the 1st respondent and quash the same and pass such other or further orders.

For Petitioner : Mr.R.Krishnamoorthy

For 1st Respondent : Mr.B.Nambiselvan
Additional Public Prosecutor

**ORDER**

WEB COPY

This criminal original petition has been filed seeking quashment of the FIR in Crime No.77 of 2018 on the file of the first respondent.

2.The case of the prosecution in brief:-

On 10/04/2018 at about 02.00 pm, the de-facto complainant purchased 4 online lottery tickets, each Rs.150/- from the accused. Later, he was informed that he cannot get any prize. So, he went to the accused and demanded money back. At that time, he refused and picked up quarrel and also criminally intimidated with knife. On the basis of the above said occurrence, he gave a complaint, upon which, a case in Crime No.77 of 2018 was registered for the offences under sections 420, 506(ii) IPC and sections 7(1) and 7(3) of the Lotteries Regulation Act, 1996.

3.Now seeking quashment of the same, this petition has been filed on the ground that none of the allegations mentioned in the FIR attract any of the offences as alleged.



4.Mr.B.Nambiselvan, learned Additional Public Prosecutor takes notice for the first respondent. Since only legal issue has been raised, no notice was issued to the second respondent.

5.Now the allegation against the petitioner is that he committed the offence punishable under sections 7(1) and 7(3) of the Lotteries Act, 1996. The allegation is that de-facto complainant alleged to have purchased 4 online lottery tickets for Rs.150/- each. But later, doubting that no prize will be given, he demanded the money back. At that time, it was refused. When the de-facto complainant himself purchased the online lottery on that date voluntarily, he did not know that online lottery is prohibited in Tamil Nadu. So, without having knowledge, it appears that he purchased the online lottery tickets. But along with the complaint, the copy of the lottery tickets or chit alleged to have been given by the accused was not enclosed. Even during the course of investigation, no such thing has been recovered or seized.



6. So far as the offence under section 420 IPC is concerned, absolutely, the ingredients are not attracted. It has been stated in the complaint that when he demanded money back, he was abused and failed to return the money. So, this will not attract the ingredients of the offence under section 417 IPC.

7. Section 417 IPC reads as under:-

"417. Punishment for cheating. -

Whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year, or with fine or with both.

8. Section 420 IPC reads as under:-

"420. Cheating and dishonestly inducing delivery of property:- *Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security,*



WEB COPY



shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

So reading of these two provisions makes it clear that there must be deception.

9.The essential ingredients of section 420 IPC are that:-

(i) There must be deception i.e., the accused must have deceived someone;

(ii) That by the said deception. The accused must induce a person;

(a) to deliver any property; or

(b) to make, alter or destroy the whole or part of the valuable security or any thing which is signed or sealed and which is capable of being converted into a valuable property.

(iii) That the accused did so dishonestly.



10. Reading of the complaint shows that absolutely, there is no deception on the side of the accused, but he sold the online lottery tickets to the complainant, which was prohibited in Tamil Nadu. But that was purchased by the 2nd respondent voluntarily. So, there is no allegation to the effect that the complainant was deceived by the accused stating that he is selling the genuine lottery tickets. When there is no such allegation, the offence under section 420 IPC is not attracted.

11. Similarly, for attracting the offence under sections 506(ii) IPC, the essential ingredients are not mentioned in the complaint. It has not been mentioned that he was entertained threat. There must be clear indication to the effect that the above threat was real in nature. It has been simply stated that he was threatened with knife point. So, on the face of it, it is seen that the facts have been exaggerated. The fact clearly shows that the second respondent purchased the online lottery. Doubting that he will not get prize, he approached the accused. When that was refused, he made above said complaint containing the exaggeration facts.



WEB COPY

12.The investigation ought to have been undertaken on the line, whether the petitioner sold the prohibited online lottery tickets to the second respondent. It appears that so far, no progress has been made in the investigation on that line. So, the continuation of the prosecution will not amount to clear abuse to process of court and law. On the sole ground, this prosecution is liable to be quashed.

13.In the result, this criminal original petition is **allowed**. The FIR in Crime No.77 of 2018 on the file of the 1st respondent is herein quashed. Consequently, connected Miscellaneous Petition is closed.

05/06/2023

Index:Yes/No
Internet:Yes/No

er



WEB COPY

To,

- 1.The Inspector of Police,
Palani Adivaram Police Station,
Dindigul District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



9

G.ILANGOVAN, J

er

Cr1.OP(MD) No.9575 of 2023

05/06/2023