



Crl.O.P.(MD) No.12561 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.08.2023

CORAM:

THE HONOURABLE MR. JUSTICE P.DHANABAL

Crl.O.P.(MD) No.12561 of 2020
and Crl.MP(MD)Nos.5707 of 2020 and 1574 of 2021

1. Pushra @ Bushra
2. A.Sheikahamed Kabeer @ Shaik
3. Mohammed Mohaitheen @ Mohame

... Petitioners

Vs

1. The Sub Inspector of Police,
Kottar Police Station, Nagercoil,
Kanyakumari District. Cr.No. 916 of 2020.
2. A.Mohamed Musthafa

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to quash first information report in Cr.No. 916 of 2020, on the file of the first respondent and quash the same, as illegal in respect of the petitioners as illegal as against the petitioners/accused.



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For Petitioners : Mr. G.Anto Prince

For Respondents : Mr.R.M.Anbunithi (R1)
Additional Public Prosecutor

Mr.P.T.Ramesh Raja (R2)

ORDER

This Criminal Original Petition has been filed to quash the first information report in Cr.No. 916 of 2020, on the file of the first respondent as illegal, as against the petitioners/accused.

2.The case of the prosecution is that the defacto complainant/second respondent had purchased a property comprising in R.S.No.S4/14 of Vadiveeswaram South Village measuring an extent of two cents. For that, the defacto complainant has paid a sum of Rs.20 lakhs by way of two cheques, one in favour of A1 and A2 for a sum of Rs.7,50,000/- and another one in favour of the third accused for a sum of Rs.12,50,000/-. Subsequently, the defacto complainant measured the property and found that only 1 Cent 350 Sq.links was available. Therefore, the defacto complainant requested to return the proportionate amount of Rs.6.5 lakhs from the accused persons for the lesser area, as they promised. Hence, the present FIR has been



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registered as against the accused persons.

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3. According to the petitioners the dispute between the parties is civil in nature. Originally, there was a dispute between the defacto complainant and the first accused. These petitioners are arrayed as A2 to A4 and they are in noway connected with the sale transaction. These petitioners are not the owner of the property. The defacto complainant has purchased the property on 23.09.2016, but after lapse of four years, the alleged FIR has been registered alleging that these petitioners along with A1 have cheated the defacto complainant and based on the complaint, FIR in Cr.No.916 of 2020 under Sections 406, 417, 418, 420 and 506(i) r/w 149 IPC. These petitioners are innocent and not committed any offence, as alleged by the prosecution. The present case was registered by the respondent Police, only based on the direction issued by the learned Magistrate, under section 156(3) of Cr.P.C. The petitioners are innocent and falsely implicated in this case with a malafide intention. It is a clear process of abuse of law. Hence, the pending FIR is liable to be quashed.



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4.No counter was filed by the defacto complainant/second respondent. However, he has filed a petition to vacate the stay.

5.The learned counsel appearing for the petitioners would contend that the first petitioner/A2 is the wife of A1 and the second petitioner/A3 is the father of A2 and the third petitioner/A4 is the father of A1. During the pendency of this petition, the third petitioner, who was arrayed as A4 in the FIR died. The petitioners are in noway connected with the above said crime and they are not parties to the alleged forged document. In fact, the alleged occurrence took place on 23.09.2016 and the FIR has been registered, after a lapse of four years. The defacto complainant ought to have measured the property, prior to purchase of the property. The matter is civil in nature and no offences are made out as against the petitioners. Therefore, the pending FIR is a clear abuse of process of law.

6.Further, the learned counsel for the petitioners also contended that originally the property belongs to A4/third petitioner herein by ancestrally and the property was allotted him, through a family partition as per partition deed, dated 16.08.2019, wherein the extent of the property was



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clearly mentioned as 2 cents. Thereafter, A4 has settled the property in favour of A1, through settlement deed, dated 30.11.2014. In the said document also the extent of property was mentioned as 2 cents. Thereby, the petitioners have sold the property to an extent of two cents. Therefore, neither the petitioners nor the first accused have any intention to cheat the second respondent/defacto complainant.

7.The learned counsel appearing for the second respondent would contend that the petitioners have cheated the second respondent by making a representation that the property available is to an extent of two cents and believing their words, he purchased the property for a sum of Rs.20 lakhs, thereafter, he measured the property and found that only 1 Cent 350 Sq.links was available. Thereafter, he requested the petitioners and A1 to return back the proportionate amount. Further, A1 and A2 are having joint account and cheque was collected in the joint account of A1 and A2, to the tune of Rs. 7,50,000/- and as instructed by the first accused, a cheque for a sum of Rs. 12.50 lakhs was issued in favour of the second petitioner / third accused. The fourth accused is the attestor of the above said document. Therefore, from the beginning, all the petitioners have an intention to cheat the defacto



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complainant, by suppressing the extent of the land.

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8.The second respondent to support his contention relied upon the Judgment of Hon'ble Apex Court in ***Jagadish Vs Udayakumar and Another, in Criminal Appeal No.56 of 2020*** and Order of this Court in ***Raja Vs The Inspector of Police and another in Crl.O.P.(MD)No.8493 of 2019*** and prays to dismiss the petition.

9.The learned Government Advocate appearing for the first respondent would contend that based on the complaint given by the second respondent under section 156(3) of Cr.P.C., the learned Magistrate has forwarded the same to the first respondent and based on the complaint, the first respondent has registered a case in Cr.No.916 of 2020, dated 16.09.2020 for the offences under Sections 406, 417, 418, 420, 506(i) read with 149 IPC and the same is pending for investigation. Since this Court has granted interim stay to investigate further, the first respondent Police is not in a position to continue the investigation. Hence, the petition is liable to be dismissed.



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10.This Court heard both sides argument and perused the records.

11.It is an admitted fact that the first accused is the owner of the property and the second respondent has purchased the property on 23.09.2016. However, the present complaint has been given on 16.09.2020 . On a perusal of the FIR, it reveals that the defacto complainant has purchased the property, without measuring it and after purchase of the property, he measured the property after six months and came to know that the property is only 1 cent 350 sq.links and not 2 cents as stated in the document. The second respondent, being the purchaser is bound by the principle of Caveat Emptor and he has to enquire with all documents and measurement of the property and prior to purchase, he has to measure the property. But, the second respondent has purchased the property without measuring the same.

12.The petitioners have also produced the copy of documents with regard to the parental deeds of the land, pertaining to the year 1963, the extent of property is mentioned as 2 cents and the settlement deed also reveals that the extent of property is 2 cents. The same extent is also mentioned in the present sale deed, which was purchased by the second respondent. Thereby,



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there is no intention on the petitioners to cheat the second respondent. If the accused persons sold the property to an excess extent than the extent mentioned in parental deeds, then the offence would be made out. But the sale deed contains the same extent, as mentioned in the previous documents, ie., parental deeds.

13.Further, the first accused alone has executed the sale deed in favour of the second respondent. However, as per the contention of the second respondent, the cheque was given in favour of the first accused to the joint account of the first and second accused for a sum of Rs.7,50,000/- and at the instruction of first accused, cheque was given in the name of the second petitioner/third accused for a sum of Rs.12,50,000/- by the second respondent. Therefore, mere fact that depositing the cheque in the joint account and issuance of cheque to the third accused at the instruction of first accused are not sufficient to constitute the offence mentioned in the FIR. The second respondent is at liberty to work out his remedy through civil proceedings.

14.The learned counsel for the petitioners relied upon the following Judgments of Hon'ble Apex Court:



1. In ***R.K.Vijayasarathy and Others Vs Sudha Seetharaman and others*** in Criminal Appeal No.238 of 2019 and Special Leave Petition (Crl) NO.1434 of 2018, dated 15.02.2019, wherein, the Hon'ble Apex Court has held as follows:

*“13 **Section 405** of the Penal Code reads thus:*

*“**Section 405.- Criminal breach of trust.-** Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits “criminal breach of trust”.*

*A careful reading of **Section 405** shows that the ingredients of a criminal breach of trust are as follows:*

- i) A person should have been entrusted with property, or entrusted with dominion over property;*
- ii) That person should dishonestly misappropriate or convert to their own use that property, or dishonestly use or dispose of that property or willfully suffer any other person to do so; and*
- iii) That such misappropriation, conversion, use or disposal should be in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract which the person has made, touching the discharge of such trust.*

Entrustment is an essential ingredient of the offence. A person who dishonestly misappropriates property entrusted to them contrary to the terms of an obligation imposed is liable for a criminal breach of trust and is punished under Section 406 of the Penal Code.



14. *Section 415* of the Penal Code reads thus:

“Section 415. Cheating.- Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to “cheat”.

The ingredients to constitute an offence of cheating are as follows:

- i) there should be fraudulent or dishonest inducement of a person by deceiving him;*
- ii) (a) the person so induced should be intentionally induced to deliver any property to any person or to consent that any person shall retain any property, or*
(b) the person so induced should be intentionally induced to do or to omit to do anything which he would not do or omit if he were not so deceived; and
- iii) in cases covered by (ii) (b) above, the act or omission should be one which caused or is likely to cause damage or harm to the person induced in body, mind, reputation or property.*

A fraudulent or dishonest inducement is an essential ingredient of the offence. A person who dishonestly induces another person to deliver any property is liable for the offence of cheating.

15 *Section 420* of the Penal Code reads thus:

“Section 420. Cheating and dishonestly inducing deliver 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 to being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven



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years, and shall also be liable to fine.” The ingredients to constitute an offence under [Section 420](#) are as follows:

i) A person must commit the offence of cheating under Section 415; and

ii) The person cheated must be dishonestly induced to

(a) deliver property to any person; or

(b) make, alter or destroy valuable security or anything signed or sealed and capable of being converted into valuable security.

Cheating is an essential ingredient for an act to constitute an offence under [Section 420](#).”

2. In *N.Raghavendar Vs State of Andhra Pradesh, CBI in Criminal*

Appeal No.5 of 2020, dated 13.12.2021, wherein, the Hon’ble Apex

Court has held as follows:

“48. It is equally well-settled that the phrase ‘dishonestly’ emphasizes a deliberate intention to cause wrongful gain or wrongful loss, and when this is coupled with cheating and delivery of property, the offence becomes punishable under Section 420 IPC. Contrarily, the mere breach of contract cannot give rise to criminal prosecution under Section 420 unless fraudulent or dishonest intention is shown right at the beginning of the transaction. It is equally important that for the purpose of holding a person guilty under Section 420, the evidence adduced must establish beyond reasonable



doubt, mens rea on his part. Unless the complaint showed that the accused had dishonest or fraudulent intention 'at the time the complainant parted with the monies', it would not amount to an offence under Section 420 IPC and it may only amount to breach of contract."

3. In ***Satishchandra Ratanlal Shah vs The State Of Gujarat*** in ***2019(9)SCC 148***, wherein, the Hon'ble Apex Court has held as follows:

"12. Having observed the background principles applicable herein, we need to consider the individual charges against the appellant. Turning to [Section 405](#) read with 406 of [IPC](#), we observe that the dispute arises out of a loan transaction between the parties. It falls from the record that the respondent no.2 knew the appellant and the attendant circumstances before lending the loan. Further it is an admitted fact that in order to recover the aforesaid amount, the respondent no. 2 had instituted a summary civil suit which is still pending adjudication. The law clearly recognizes a difference between simple payment/investment of money and entrustment of money or property. A mere breach of a promise, agreement or contract does not, ipso facto, constitute the offence of the criminal breach of trust contained in [Section 405](#) IPC without there being a clear case of entrustment.

13. In this context, we may note that there is nothing



either in the complaint or in any material before us, pointing to the fact that any property was entrusted to the appellant at all which he dishonestly converted for his own use so as to satisfy the ingredients of [Section 405](#) punishable under [Section 406](#) of IPC. Hence the learned Magistrate committed a serious error in issuing process against the appellants for the said offence. Unfortunately, the High Court also failed to correct this manifest error”

15. On careful perusal of the said Judgments, it is clear that in order to attract the offence under Section 420 IPC, the person cheated must be dishonestly deliver a property to any person, make, alter or destroy valuable security or anything signed or sealed and capable of being converted into valuable security and cheating, is an essential ingredient to constitute offence under Section 420 IPC and the fraudulent and dishonest intention is shown right from the beginning of the transaction. In the case on hand also the matter is civil in nature and the property was sold based on the extent mentioned in the parental documents and no intention to cheat the second respondent from the beginning of transaction. The said judgments are squarely applicable to the present facts of the case.



16.The learned counsel appearing for the second respondent relied upon the Judgment of the Hon'ble Apex Court in ***K. Jagadish vs Udaya Kumar G.S.***, in Criminal Appeal No.56 of 2020, dated 10.01.2020.

“9. It is thus well settled that in certain cases the very same set of facts may give rise to remedies in civil as well as in criminal proceedings and even if a civil remedy is availed by a party, he is not precluded from setting in motion the proceedings in criminal law.

10. In Pratibha Rani v. Suraj Kumar and another this Court summed up the distinction between the two remedies as under:

“21. There are a large number of cases where criminal law and civil law can run side by side. The two remedies are not mutually exclusive but clearly coextensive and essentially differ in their content and consequence. The object of the criminal law is to punish an offender who commits an offence against a person, property or the State for which the accused, on proof of the offence, is deprived of his liberty and in some cases even his life. This does not, however, affect the civil remedies at all for suing the wrongdoer in cases like arson, accidents etc. It is an anathema to suppose that when a civil remedy is available, a criminal prosecution is completely barred. The two types of actions are quite different in content, scope and import. It is not at all intelligible to us to take the stand that if the husband



dishonestly misappropriates the stridhan property of his wife, though kept in his custody, that would bar prosecution under [Section 406](#) IPC or render the ingredients of [Section 405](#) IPC nugatory or abortive. To say that because the stridhan of a married woman is kept in the custody of her husband, no action against him can be taken as no offence is committed is to override and distort the real intent of the law.”

11. In [Rajesh Bajaj v. State NCT of Delhi](#) and others² this Court observed:

“10. It may be that the facts narrated in the present complaint would as well reveal a commercial transaction or 1 (1985) 2 SCC 370 2 (1999) 3 SCC 258 money transaction. But that is hardly a reason for holding that the offence of cheating would elude from such a transaction. In fact, many a cheatings were committed in the course of commercial and also money transactions. One of the illustrations set out under [Section 415](#) of the Indian Penal Code [Illustration f] is worthy of notice now:

“(f) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and thereby dishonestly induces Z to lend him money, A not intending to repay it. A cheats.”

11. The crux of the postulate is the intention of the person who induces the victim of his representation and



not the nature of the transaction which would become decisive in discerning whether there was commission of offence or not. The complainant has stated in the body of the complaint that he was induced to believe that the respondent would honour payment on receipt of invoices, and that the complainant realised later that the intentions of the respondent were not clear. He also mentioned that the respondent after receiving the goods had sold them to others and still he did not pay the money. Such averments would prima facie make out a case for investigation by the authorities.

12. The High Court seems to have adopted a strictly hypertechnical approach and sieved the complaint through a colander of finest gauzes for testing the ingredients under [Section 415 IPC](#). Such an endeavour may be justified during trial, but certainly not during the stage of investigation. At any rate, it is too premature a stage for the High Court to step in and stall the investigation by declaring that it is a commercial transaction simpliciter wherein no semblance of criminal offence is involved.”

12. The aforesaid view was reiterated in [Kamladevi Agarwal v. State of West Bengal](#) and others as under:

“9. Criminal prosecution cannot be thwarted at the initial stage merely because civil proceedings are also pending. After referring to judgments in [State of Haryana v. Bhajan Lal](#)⁴ and [Rajesh Bajaj v. State NCT](#)



of Delhi² this Court in 3 (2002) 1 SCC 555 4 1992 Supp (1) SCC 335 [Trisuns Chemical Industry v. Rajesh Agarwal](#)⁵ held: (SCC p. 690, paras 7-8)

“7. Time and again this Court has been pointing out that quashing of FIR or a complaint in exercise of the inherent powers of the High Court should be limited to very extreme exceptions (vide [State of Haryana v. Bhajan Lal](#)⁴ and [Rajesh Bajaj v. State NCT of Delhi](#)⁵).

8. In the last referred case this Court also pointed out that merely because an act has a civil profile is not sufficient to denude it of its criminal outfit. We quote the following observations: (SCC p. 263, para 10) ‘10. It may be that the facts narrated in the present complaint would as well reveal a commercial transaction or money transaction. But that is hardly a reason for holding that the offence of cheating would elude from such a transaction. In fact, many a cheatings were committed in the course of commercial and also money transactions.’”

After referring to various decisions it was finally concluded as under:

“17. In view of the preponderance of authorities to the contrary, we are satisfied that the High Court was not justified in quashing the proceedings initiated by the appellant against the respondents. We are also not



impressed by the argument that as the civil suit was pending in the High Court, the Magistrate was not justified to proceed with the criminal case either in law or on the basis of propriety. Criminal cases have to be proceeded with in accordance with the procedure as prescribed under [the Code](#) of Criminal Procedure and the pendency of a civil action in a different court even though higher in status and authority, cannot be made a basis for quashing of the proceedings.”

13. [In R. Kalyani v. Janak C. Mehta](#) and others⁶ this Court culled out propositions concerning interference under [Section 482](#) of the Code as under:

“15. Propositions of law which emerge from the said decisions are:

(1) The High Court ordinarily would not exercise its inherent 5 (1999) 8 SCC 686 6 (2009) 1 SCC 516 jurisdiction to quash a criminal proceeding and, in particular, a first information report unless the allegations contained therein, even if given face value and taken to be correct in their entirety, disclosed no cognizable offence. (2) For the said purpose the Court, save and except in very exceptional circumstances, would not look to any document relied upon by the defence.

(3) Such a power should be exercised very sparingly. If the allegations made in the FIR disclose commission of an offence, the Court shall not go beyond the same and pass an order in



favour of the accused to hold absence of any mens rea or actus reus.

(4) If the allegation discloses a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue.

14. In the light of the principles as mentioned hereinabove, we have no hesitation in concluding that the High Court erred in quashing the criminal proceedings. We, therefore, allow this appeal, set aside the decision rendered by the High Court and direct that criminal proceedings shall be taken to logical conclusion in accordance with law.

17. On careful reading of the said Judgment, it will not be applicable to the instant facts of the case. In the case on hand there was sale transaction between the parties and dispute is with regard to the extent of property and based on the documents only the extent of the property was mentioned in the sale deed and no inducement is made by the petitioners and no deception.

18. In view of the above discussion, the FIR registered against the petitioner in Cr.No.916 of 2020 is liable to be quashed.



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19. Accordingly, the FIR in Cr.No.916 of 2020 pending on the file of the first respondent is hereby quashed in respect of the petitioners alone.

20. Accordingly, this Criminal Original Petition stands allowed.

Consequently the miscellaneous petitions are closed.

29.08.2023

NCC : Yes/No
Index : Yes / No
Internet: Yes/ No
PNM

To

1. The Sub Inspector of Police,
Kottar Police Station, Nagercoil,
Kanyakumari District. Cr.No. 916 of 2020.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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P.DHANABAL, J.

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ORDER IN
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