



Crl.O.P.(MD).No.13913 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :07.09.2023

CORAM:

THE HONOURABLE MR. JUSTICE P.DHANABAL

Crl.O.P.(MD).No.13913 of 2021

and

Crl.M.P(MD) No.7232 of 2021

1.Janakiraman

2. Sundharamoorthi

... Petitioners

Vs.

1. The Inspector of Police
Valandur, Madurai.

2. Ammavasi

..Respondents

PRAYER: This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, to call for the records in Crime No. 32 of 2019 pending investigation on the file of the first respondent police and quash the same as against the petitioners.

For Petitioners : Mr.R.Ponkarthikeyan

For R-1 : Mr.R.M.Anbunithi
Additional Public Prosecutor

For R-2 : Mr.Babu Rajendran

ORDER

This Criminal Original Petition has been filed to quash the First Information Report in Crime No. 32 of 2019 on the file of the first respondent police.



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2. When the matter is taken for hearing the learned Additional Public Prosecutor represented that already charge sheet was filed as against these petitioners and the same was also taken on file in C.C. No. 520 of 2022 by the learned Judicial Magistrate, Usilampatti. However the learned counsel for the petitioners would contend that as against these petitioner no offences are made out and even according to the First Information Report the petitioners only assured the defacto complainant to repay the amount borrowed by the first accused if he fails to repay the said amount. Apart from this allegation no any allegation is made as against the petitioners. Though charge sheet is filed the allegations are bald and vague allegations. The above said assurance given by the petitioners will not constitute any offence and thereby the First Information Report as well as the charge sheet in C.C. No.520 of 2022 on the file of the learned Judicial Magistrate, Usilampatti is pure abuse of process of law and thereby liable to be quashed.

3. The learned counsel appearing for the second respondent would contend that the first accused borrowed a money from the second respondent and he failed to repay the amount and when the same was questioned by the second respondent these petitioners assured to pay the money if the main accused failed to repay the money. Therefore as assured by the second and third accused they failed to fulfil the promise



thereby they also cheated the second respondent. Already the first respondent investigated the case and as per the investigation *prima facie* materials available as against these petitioners and thereby filed final report and cognizance was taken in C.C. No.520 of 2022 by the learned Judicial Magistrate, Usilampatti therefore at this stage the petitioners have to face the trial and it is liable to be dismissed.

4. Heard both sides and perused the materials available on record.

5. It is admitted by both parties that A1 is the main accused and he borrowed amount from the defacto complainant and at the time of borrowal these petitioners are not present in the place of occurrence. Thereafter when the defacto complainant asked about repayment of money these petitioners assured that they will repay the money if A1 fails to pay the amount to the defacto complainant. These petitioners are only guarantors. So far as section 420 of IPC is concerned inroder to attract the ingredients from the inception these petitioners have no intention to cheat the defacto complainant. In this case A1 borrowed money and these petitioners have given assurance and these are all the subsequent to previous transactions between A1 and the defacto complainant, thereby the assurance given by the petitioners will not constitute any offence under Section 420 of IPC,since they are only



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guarantors. Therefore even after filing of charge sheet by the respondent police the ordeal of trial is abuse of process of law and hence as against these petitioners who are A2 and A3 the First Information Report and the Charge sheet in C.C. No.520 of 2022 on the file of the learned Judicial Magistrate, Usilampatti is liable to be quashed.

6. Accordingly this Criminal Original Petition is allowed and the First Information Report and the Charge sheet in C.C. No.520 of 2022 on the file of the learned Judicial Magistrate, Usilampatti are hereby quashed. Consequently connected miscellaneous petition is closed.

07.09.2023

Index : Yes / No
Internet : Yes / No
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To

- 1.The Judicial Magistrate, Usilampatti
2. The Inspector of Police
Vandalur, Madurai.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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P.DHANABAL, J.

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