



Crl.O.P(MD).No.19215 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED :29.08.2023

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THE HONOURABLE MR.JUSTICE P.DHANABAL

Crl.O.P(MD).No. 19215 of 2019 and
Crl.M.P(MD).No.11276 of 2019

S. Shiyamala

... Petitioner

-Vs-

1. The State rep. by
the Inspector of Police,
S.S.Colony Police Station (Crimes),
Madurai City,
(Crime No.990 of 2014)

2.P. Mayil Raj

... Respondents

PRAYER:- Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records pertaining to the case in C.C.No.1231 of 2019 pending on the file of the learned Judicial Magistrate No.V, Madurai, Madurai District and quash the same as against the petitioner.

For Petitioner : Mr. R. Anand

For Respondent No.1 : Mr. M.Sakthikumar
Government Advocate (Crl. Side)

For Respondent No.2 : Mr. C.M. Arumugam



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ORDER

This Criminal Original Petition has been filed to call for records in C.C.No.1231 of 2019 on the file of the Judicial Magistrate No.V, Madurai and quash the same as against the petitioner.

2. According to the petitioner, the second respondent filed a complaint before the first respondent. On the basis of the complaint, the first respondent registered a First Information Report in Crime No.990 of 2014 on the file of the first respondent police for the offences under sections 406 and 420 IPC.

3. The case of the prosecution is that on 12.08.2013, the defacto complainant / 2nd respondent herein had a contract with the accused persons for the purpose of purchasing four Mini Vans bearing Regn.Nos.TN-59-AS-9360, TN-59-AS-5482, TN-59-AS-9326, TN-59-AS-9402 for a sum of Rs.4,60,000/-. One of the condition for buying the same is that the accused No.1 has to clear out the existing loan with the private finance company and thereupon, he has to get no objection



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certificate also. Accepting the said terms, the accused persons are said to have received the said amount and entrusted the possession of said vehicles to the second respondent. Thereafter, they failed to get no objection certificate and thereby, cheated to the tune of Rs.4,60,000/-. In fact, soon after the registration of the First Information Report, all the accused filed a petition in Crl.O.P(MD).No.17828 of 2014 to quash the First Information Report and the same was withdrawn since the investigation was completed.

4. According to the petitioner, the offence under Section 420 IPC would not attract since the evidences collected by the Investigating Officer do not suggest that the petitioner, with the element of cheating, right from the first inception has acted and thereby, induced the 2nd respondent by making him to part with the huge amount. Insofar as Section 406 IPC is concerned, there is no essential ingredient materials for attracting Section 406 IPC. Therefore, the charge sheet as against the petitioner is liable to be quashed.

5. No counter has been filed by the respondents.



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6. The learned counsel appearing for the petitioner would contend that based on the complaint given by the second respondent the first respondent registered First Information Report in Crime No.990 of 2014 for the offences under sections 406 and 420 IPC alleging that the petitioner along with other accused sold three mini vans for a sum of Rs.4,60,000/- to the defacto complainant on condition that they have to obtain no objection certificate, but, they have failed to get no objection certificate and thereby, cheated a sum of Rs.4,60,000/-. He would further submit that the petitioner is a partner of the first accused and further, her name was not found in the sale agreement and hence, she is no way connected with this case and prayed to quash the charge sheet as against the petitioner.

7. The learned counsel appearing for the second respondent would submit that the petitioner is a partner of first accused and she has also directly participated in the offence and thereby, the complaint has been given against this petitioner. Already investigation was conducted and as per investigation, prima facie materials available as against the



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petitioner. Therefore, this Criminal Original Petition is liable to be dismissed.

8. The learned Government Advocate (Crl. Side) appearing for the first respondent would submit that based on the complaint given by the second respondent first respondent registered First Information Report in Crime No.990 of 2014 and the investigation in this case has been completed and final report was filed before the concerned Court. He would further submit that the petitioner is also a partner of first accused and during the sale agreement her name is also mentioned and she has also directly participated in the occurrence and thereby, it is a matter for trial.

7. I have heard the learned counsel appearing on either side and perused the materials available on record.

8. On perusal of the affidavit it is seen that the second respondent had an agreement with the accused persons for the purchase of three mini vans for a sum of Rs.4,60,000/- and in that agreement, the petitioner's name is find place. However, as per the investigation of the



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first respondent, this petitioner has also involved in the occurrence and she is also a partner of A1, this facts have to be decided during the trial.

As far as the offence under Sections 406 and 420 IPC are concerned according to the petitioner, there is no materials to constitute the offence.

9. But as per the investigation and final report there are materials available to proceed the case as against this petitioner and as per the prosecution, the petitioner has also directly participated in the occurrence and she is also a partner of A1 and hence, it needs elaborate trial. Therefore, at this stage, this court applied the guidelines issued by the Hon'ble Apex Court in the case of ***Neeharika Infrastructure Pvt Ltd vs. State of Maharastra and Others reported in 2021 SCC Online SC 315***, and decline to quash the Charge sheet and accordingly, this Criminal Original Petition is dismissed.

9. At this juncture, the learned counsel appearing for the petitioner represented before this Court that the personal appearance of the petitioner before the trial Court may be dispensed with.



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10. As far as dispensing with the personal appearance of the petitioner before the trial Court is concerned, it can only be decided by the trial Court on application filed by the petitioner. If any application filed by the petitioner, on such application, the trial Court is directed to consider the same in accordance with law. All the grounds raised by the petitioner in this petition can be agitated before the trial Court. Considering the facts and circumstances, it is appropriate to direct the trial Court to dispose of C.C.No.1231 of 2019 as early as possible preferably within a period of four months from the date of receipt of a copy of this order. Consequently, the connected Miscellaneous Petition is closed.

29.08.2023

Index : Yes/No
Internet : Yes/No
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- To
1. The Inspector of Police,
S.S.Colony Police Station (Crimes),
Madurai City,
 2. The Additional Public Prosecutor
Madurai Bench of Madras High Court
Madurai.



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P.DHANABAL, J.

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