



Crl.O.P.(MD)No.18799 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on: 19.07.2023	Delivered on: 15.09.2023
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THE HON'BLE MR.JUSTICE P.DHANABAL

Crl.O.P.(MD)No.18799 of 2019
and
Crl.M.P.(MD)Nos.11040 &11041 of 2019

1.Gladis Viji

2.Reena

... Petitioners

Vs.

1.The State through
The Deputy Superintendent of Police,
District Crime Branch,
Nagercoil,
Kanyakumari District.
(Crime No.19 of 2008)

2.Nala Chandra Ruby

... Respondents

Prayer : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.99 of 2018 on the file of the Judicial Magistrate I, Nagercoil, Kanyakumari District and quash the charge sheet in C.C.No.99 of 2018 on the file Judicial Magistrate I, Nagercoil, Kanyakumari District as against the petitioners.



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For Petitioners : Mr.Ka.Ramakrishnan

For R1 : Mr.M.Sakthi Kumar,
Government Advocate(Crl.side)

For R2 : Mr.S.Rajasekar

ORDER

This criminal original petition has been filed to quash the charge sheet in C.C.No.99 of 2018 on the file of the Judicial Magistrate I, Nagercoil, Kanyakumari District as against the petitioners.

2.According to the petitioners, the prosecution case is that A1 to A3 formed a trust, in which, A1 is trustee and A2 & A3 are staff of the trust. The defacto complainant, who is the relative of A1, was approached by A1 saying that through her trust, persons, who all are seeking jobs, shall be sent to abroad through them. Believing the same, the defacto complainant collected money from the persons by herself in her home town and has given to A1. Later, since they were not sent to job in foreign countries, the defacto complainant returned back the money to the persons from whom she collected money and she also given some more money to



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A1 by mortgaging her property believing that A1 promised to extend financial assistance to her in construction of her house by getting back the money through the trust. A1 and the second respondent entered into an agreement for a sum of Rs.6,00,000/- dated 07.09.2005. In the above said agreement, it reflects that it only a money transaction for loans between the second respondent and A1. In continuance of the agreement, A1 has issued a cheque for a sum of Rs.5,00,000/- in favour of the second respondent. After receipt of the above said cheque, the second respondent lodged a complaint as against A1 to A3 before the first respondent herein. Based on the same, the first respondent registered FIR in Cr.No.19 of 2008 dated 20.06.2008 for the offence under Sections 120(B), 417, 420, 468, 471 IPC and thereafter, case was referred as "Mistake of Fact". Thereafter, the same was taken up by the learned Judicial Magistrate No.I, Nagercoil and suo motu ordered for further investigation in Crl.M.P.No.2153 of 2009 dated 03.03.2010 by directing the first respondent for further investigation. The first respondent, thereafter, again examined some witnesses and filed charge sheet for the offence under Sections 120(B), 420, 468 and 471 IPC and the same was taken cognizance by the learned Judicial Magistrate No.I, Nagercoil in C.C.No.99 of 2018. Absolutely, there are no materials available in



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the charge sheet as against the petitioners to attract the offences.

Hence, the impugned charge sheet is liable to be quashed.

3.No counter was filed by the respondents.

4.The learned counsel appearing for the petitioners would contend that the first petitioner is running a trust and the second petitioner is staff of the trust. The trust is hiring the persons, who want to go abroad. The first petitioner borrowed a sum of Rs.6,00,000/- from the second respondent and it is only a money transaction between them and thereafter, he gave a cheque for a sum of Rs.5,00,000/-. However, the second respondent lodged a false complaint as against the petitioners and based on the same, the first respondent registered FIR in Cr.No.19 of 2008 dated 20.06.2008 for the offence under Sections 120(B), 417, 420, 468, 471 IPC and thereafter, case was closed as "Mistake of Fact". When the final report was filed before the learned Magistrate, the learned Magistrate suo motu ordered for further investigation and thereafter, again the first respondent examined some witnesses and then, filed final report for the offence under Sections 120(B), 420, 468 and 471 IPC and the same was taken on file in C.C.No.99 of 2018. Even according to the charge sheet, none of the offences are made out and thereby, the case is liable to be quashed.



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5.The learned Government Advocate(Crl.side) appearing for the first respondent would contend that based on the complaint given by the second respondent, FIR was registered and thereafter, investigation was conducted by the Station House Officer and he filed referred charge sheet as “Mistake of Fact” before the learned Magistrate and the learned Magistrate directed to conduct further investigation and thereafter, the same was investigated by the first respondent and as per investigation, prima facie offences are made out and thereby, he filed final report before the learned Judicial Magistrate-I, Nagercoil and the same was taken cognizance in C.C.No.99 of 2018. Therefore, at this stage, this petition is not maintainable and the same is liable to be dismissed.

6.The learned counsel appearing for the second respondent would contend that the petitioners and others formed a trust and they used to sent persons from India to foreign countries and thereby, they induced the second respondent to pay money and thereby, he introduced some persons by collecting money for getting job in abroad. But the petitioners failed to send those persons to foreign countries and thereby, she settled the amount, which was collected by her and thereafter, the accused persons induced the second respondent to pay Rs.6,00,000/- and they will



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financially assist her, after getting money from the trust. Believing the words of the accused persons, the second respondent paid Rs.6,00,000/- through agreement and thereafter, they failed to pay the said amount. Further, the first accused gave a cheque for a sum of Rs.5,00,000/- and the same was also dishonoured. Therefore, the second respondent gave a complaint before the first respondent and FIR was also registered in Cr.No.19 of 2008 dated 20.06.2008 for the offence under Sections 120(B), 417, 420, 468, 471 IPC and thereafter, without conducting proper investigation, the police filed negative report as "Mistake of Fact" and the learned Magistrate, suo motu ordered for further investigation. Thereafter, the first respondent investigated the matter and filed positive report and the learned Magistrate also taken cognizance in C.C.No.99 of 2018 for the offence under Sections 120(B), 420, 468 and 471 IPC. Therefore, there are prima facie materials available and the petitioners cheated the second respondent and committed offence and thereby, this petition is liable to be dismissed.

7.Heard the parties and perused the materials available in the records.

8.On perusal of records shows that the second respondent had given a complaint and after investigation, negative report was filed before the learned Magistrate. The learned Magistrate suo



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motu ordered for further investigation and thereafter, the first respondent investigated the case and filed final report and the same has been taken cognizance by the learned Magistrate in C.C.No.99 of 2018 for the offence under Sections 120(B), 420, 468 and 471 IPC.

9.The main contention of the learned counsel appearing for the petitioners is that the learned Magistrate has no power to order for further investigation by directing particular agency. The learned Magistrate directed the particular officer to investigate the matter and he has no power to pass such order. In support of his contention, he relied upon the judgments of Hon'ble Supreme Court of India in a case of Hemant Dhasmana Vs. Central Bureau of Investigation and another, wherein the Hon'ble Supreme Court held as follows:-

When the Special Judge has opted to order for a further investigation the High Court should have stated to the CBI to comply with that direction. Nonetheless, we are in agreement with the observation of the learned Single Judge of the High Court that the Special Judge or the magistrate could not direct that a particular police officer or even an officer of a particular rank should conduct such further investigation. It is not within the province of



the magistrate while exercising the power under Section 173(8) to specify any particular officer to conduct such investigation, not even to suggest the rank of the officer who should conduct such investigation.

10. In a case of K.Ramasubbu Vs. The State and another reported in (1987) 1 AICLR 569 : (1988) CrIj 214 : (1987) I Crimes 914, this Court held as follows:-

It is needless to say that under S.173(3) Cr.P.C it is open to the Magistrate either to agree with the police report or not to agree with the same and he can direct further inquiry and give suitable directions. Even in cases when the report was filed charging the accused, it is open to the Magistrate either to take cognizance of the offence under S.190(1)(b), Cr.P.C or take the view that the facts disclosed do not make out an offence and decline to take cognizance. In Kamlapati Trivedi Vs. State of West Bengal, it was held-

Thus in the case of an order passed by a Magistrate under sub-section (3) of section 173 of the Code in agreement with the police report does not call for any hearing or the production of any evidence on the part of the accused, as it goes in his favour. If the Magistrate, on the other hand, disagrees with the report submitted by the



police and takes cognizance of the offence, the accused comes into the picture and thereafter shall have the right to be heard and to adduce evidence in support of his innocence. Viewed in this context, all orders passed by a Magistrate acting judicially (such as orders of bail and those passed under subsection (3) of section 173 of the Code discharging an accused or orders taking cognizance of the offence complained of) are parts of an integral whole which may end with a definitive judgment after an inquiry or a trial, or earlier according to the exigencies of the situation obtaining at a particular stage, and which involves, if need be, the adducing of evidence and the decision of the Magistrate on an appreciation thereof. They cannot be viewed in isolation and given a character different from the entire judicial process of which they are intended to form a part.

11.Further, the learned counsel appearing for the petitioners argued that even as per the charge sheet no offences are made out as against the petitioner and already the police have enquired the case and closed as mistake of fact. Hence, no prima facie material



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to proceed with the case further, therefore, pending C.C.No.99 of 2018 on the file of the learned Judicial Magistrate No.I, Nagercoil is abuse of process of Court. To support of his contention, he relied the judgments in a case of Satishchanra Ratanlal Shah Vs. State of Gujarat and another reported in (2019) 9 SCC 148 wherein Hon'ble Supreme Court of India held as follows:-

12.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.

13.Now coming to the charge under Section 415 punishable under Section 420 of IPC. In the context of contracts, the distinction between mere breach of contract and cheating would depend upon the fraudulent inducement and mens rea. (See Hridaya Ranjan Prasad Verma v. State of Bihar, (2000) 4 SCC 168). In the case before us, admittedly the appellant was trapped in economic crisis and therefore, he had approached the respondent no. 2 to ameliorate the situation of crisis. Further, in order to recover the aforesaid amount, the respondent no. 2



had instituted a summary civil suit seeking recovery of the loan amount which is still pending adjudication. The mere inability of the appellant to return the loan amount cannot give rise to a criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, as it is this mens rea which is the crux of the offence. Even if all the facts in the complaint and material are taken on their face value, no such dishonest representation or inducement could be found or inferred.

14. Moreover, this Court in a number of cases has usually cautioned against criminalizing civil disputes, such as breach of contractual obligations [refer to Gian Singh v. State of Punjab, (2012) 10 SCC 303]. The legislature intended to criminalize only those breaches which are accompanied by fraudulent, dishonest or deceptive inducements, which resulted in involuntary and inefficient transfers, under Section 415 of IPC.

12. In a case of Commissioner of Police & ors. Vs. Devender Anand & ors. reported in 2019 (5) CTC 236, the Hon'ble Supreme Court held as follows:-

4.1. Even considering the nature of allegations in the complaint, we are of the firm opinion that no case is made out for taking cognizance of the offence under Section 420/34 IPC. The case involves a civil dispute and for settling a civil dispute, the criminal complaint



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has been filed, which is nothing but an abuse of the process of law.

13.In a case of Rakesh P.Sheth and others Vs. State rep by the Inspector of Police, CCB, Vepery, Chennai-600 007, reported in (2018)1 MLJ (Crl) 215, this Court held as follows:-

24.In the light of the aforesaid judgments, it can only be held that whenever there are sufficient materials to indicate that a complaint manifestly discloses a civil dispute, the inherent powers of this Court under Section 482 Cr.P.C., can be invoked. Likewise, when the complaint prima-facie discloses that the transaction is for recovery of money due on a commercial transaction, the police cannot be transformed into a collection agent by spicing a criminal colour to the complaint.

14.On careful reading of the above said judgments it is clear that the learned Magistrate can direct further enquiry and give suitable directions. But at the same time, the learned Magistrate could not direct the particular police officer or even an officer of particular rank should conduct such further investigation. In the case on hand the learned Magistrate has not ordered to conduct further investigation by the particular officer, thereby, the said



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judgments will not be helpful to decide the case in favour of the petitioner. On careful reading of the said judgments they will not be applicable to the present facts of the case. In the case on the hand, as per the complaint, from the inception, the accused have induced the second respondent to pay the amount and thereby executed agreement.

15.The learned counsel appearing for the second respondent relied upon the judgment of the Hon'ble Supreme Court in a case of Rajeev Kourav Vs. Baisahab and Ors wherein Hon'ble Supreme Court held as follows:-

We do not agree with the submissions made on behalf of the respondent Nos.1 to 3. The conclusion of the High Court to quash the criminal proceedings is on the basis of its assessment of the statements recorded under Section 161 CrPC. Statements of witnesses recorded under Section 161 CrPC being wholly inadmissible in evidence cannot be taken into consideration by the Court, while adjudicating a petition filed under Section 482 CrPC.

On careful perusal of the said judgment it is clear that while quashing the criminal proceedings the statements recorded under Section 161 Cr.P.C., cannot be considered since they are inadmissible in evidence.



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16.In this case already investigating agency filed negative report and thereafter, the learned Magistrate suo motu directed for further investigation. As per Section 173(8) Cr.P.C., the learned Magistrate has power to order for further investigation and thereby, the contention of the learned counsel for the petitioner that the learned Magistrate has no power to order further investigation is not acceptable.

17.As far as the second final report is concerned, since the Magistrate after seeing the records, not satisfied with the investigation and thereby, ordered for further investigation. Therefore, there is no illegality in ordering further investigation.

18.Further, according to the final report, there are prima facie materials available to proceed with the case further and thereby, the learned Magistrate has taken the case on file in C.C.No.99 of 2018 and as per guidelines given by the Hon'ble Supreme Court of India in a case of *M/s Neeharika Infrastructure Pvt. Ltd Vs. State of Maharashtra and others*, this Court need not interfere with the case at this stage. It is for the petitioners to agitate the grounds raised in this petition before the trial Court. Therefore, this



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petition is devoid of merits and deserves dismissal. Accordingly, this criminal original petition is dismissed. Consequently, connected miscellaneous petitions are closed.

15.09.2023

Index :yes/No
Internet:yes/No
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To

- 1.The Judicial Magistrate I,
Nagercoil,
Kanyakumari District.
- 2.The Deputy Superintendent of Police,
District Crime Branch,
Nagercoil,
Kanyakumari District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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P.DHANABAL, J

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Pre-Delivery Order
made in
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