



WEB COPY



CrI.O.P.No.18997 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.08.2024

CORAM

THE HONOURABLE DR.JUSTICE **G.JAYACHANDRAN**

CrI.O.P.No.18997 of 2024

N.S.Jayanthi

... Petitioner

Vs.

1.S.Nandhini

2.S.Lakshana

3.S.Kameshwaran

... Respondents

Prayer: Criminal Original Petition is filed under Section 528 of B.N.S.S, 2023, praying to set aside the docket order, dated 21.05.2024 and pass the order directing the Judicial Magistrate II at Poonamallee Court to take the private complaint, dated 19.12.2023 (E-file No.ATN20220019864C202400001, dated 27.01.2024) filed by petitioner on record and to conduct the enquiry and to call upon the complainant to produce all his witnesses and examine them on oath.

For Petitioner : Mr.S.Kathiravan



Crl.O.P.No.18997 of 2024

ORDER

WEB COPY The private complaint under Section 200 of the Code of Criminal Procedure for offences under Sections 419, 420 and 406 IPC, presented before the Judicial Magistrate was returned saying that a reading of the complaint indicates only a civil transaction and therefore a private complaint cannot be entertained.

2. The learned counsel for the petitioner referring the complaint and the judgment of the Hon'ble Supreme Court rendered in *A.M.Mohan Vs. State* reported in *2024 Live Law SC 197* would submit that when a private complaint apparently discloses commission of cognizable offence, the Judicial Magistrate cannot return the complaint saying it is civil in nature. The complaint should be taken on file, only after examining the complainant and other witnesses it should be decided as to whether process should be issued or not under Section 203 of the Code of Criminal Procedure.

3. The learned counsel would also submit that the agreement entered into between the complainant and the accused person would



CrI.O.P.No.18997 of 2024

clearly show that there is inducement to part away Rs.5,00,000/- promising to pay 10% of the investment as monthly return by investing the money in share market. Later it has been found that the accused has not invested in the share market and accused has not expertized in the share business. Therefore, he would contend that the deceptive intention at the inception is very clear in the complaint.

4. However, the learned Judicial Magistrate failed to take the complaint on file. This private complaint has been presented before the learned Judicial Magistrate on 19.12.2023. Hence, the same is dealt as per the old provision under the Code of Criminal Procedure. Section 200 of the Code of Criminal Procedure reads as follows:-

200. Examination of complainant.- *A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate:*

Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses--



(a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or

(b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under Section 192:

Provided further that if the Magistrate makes over the case to another Magistrate under Section 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them.

5. It is thus clear from a reading of Section 200 of the Code of Criminal Procedure that examination of the complainant and the witness on oath will arise only when the Magistrate takes cognizance of the offence found in the complaint. Unless the Court takes cognizance of the offence for reasons stated, the subsequent process under Section 202 of the Code of Criminal Procedure will not arise. The contention of the learned counsel is that in any event the statement under oath of the complainant and the witnesses to be recorded and the result of the enquiry or investigation if any under Section 202, the Magistrate can



CrI.O.P.No.18997 of 2024

dismiss the complaint, if he is of the opinion that there is no sufficient ground for proceeding. It is contended that without recording the statement of oath the Magistrate cannot return the complaint with a pre-concluded finding that the complaint is purely civil transaction.

6. The contention of the petitioner herein cannot be countenanced for the reason that the complaint filed under Section 200 Cr.P.C. should disclose a *prima facie* case of commission of offence which should be taken cognizance. If the complaint is bereft of information and purely civil in nature, the Magistrate need not take a trouble of examining the complainant and proceed further and dismiss it under Section 203 of the Code. The complainant cannot improve his case beyond what is stated in the written complaint, unlike FIR which only sets the law in motion for enquiry or it is not encyclopedia of the entire offence.

7. When a party choose to file a complaint under Section 200 Cr.P.C the entire facts, evidence and the ingredients to proceed against the accused for this offence specified in this complaint should be explicit. The complaint under consideration first of all discloses only the



CrI.O.P.No.18997 of 2024

fact that the money was collected by the accused person promising interest at 10% per month i.e,120% per annum, which is not been honored after one payment of Rs.50,000/-. The breach of said contract is purely civil dispute.

8. The learned counsel for the petitioner would submit that in this connection when the complainant gave a police complaint, Kameshwan, A3 undertook to repay the money and gave a cheque and that cheque was returned since the account was closed long back.

9. This Court find that a pure civil transaction of money lending expecting interest, on breach been given a criminal colour. Precisely when such matters were considered by the Hon'ble Supreme Court on various occasions had said that police or the complainant cannot give a criminal colour to the civil transaction and make the case fit for prosecution. In such cases the Court under Section 482 of Cr.P.C can rightly interfere.



CrI.O.P.No.18997 of 2024

10. This is a converse case where the Magistrate who has applied his mind and found that this matter cannot be taken cognizance, since it is purely civil in nature. This Court find that the docket order of the Judicial Magistrate dated 21.05.2024 falls well within the parameters of the judicial pronouncement regarding private complaint.

11. Hence, this Criminal Original Petition is dismissed as devoid of merits.

08.08.2024

Index : Yes/No
Neutral Citation : Yes/No
dsa

To

1.The Judicial Magistrate II,
Poonamallee.

2.The Public Prosecutor,
High Court of Madras,
Chennai.



WEB COPY



Crl.O.P.No.18997 of 2024

Dr.G.JAYACHANDRAN,J.

dsa

Crl.O.P.No.18997 of 2024

08.08.2024