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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2024

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

**CRL.OP.No.20123 of 2022
and CRL.MP.Nos.13235 & 13237 of 2022
and 8578 of 2024**

1.Dhanraj N. Kochar
2. Suresh Kumar D. Kochar ... Petitioners

Devichand Bafna ... Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records in and connected with CC.No.786 of 2022 on the file of the VII Metropolitan Magistrate, George Town, Chennai, quash the same.

For Petitioners : Mr.Shravan.K
for Mr.J.Muthukumaran

For Respondent : No appearance

ORDER

Petition filed to quash the private complaint instituted for the alleged offence under Sections 406 and 420 of IPC. The accused persons are before this court to quash the said complaint on the ground that the



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complaint on the face does not disclose any ingredients to attract offence under Sections 406 and 420 of IPC. To attract Section 406 of IPC, there should be an entrustment of property or any dominion over property that this dishonest persons are converted for his own use. Whereas the complaint does not even disclose the nature of the document entrusted both allegations of stating that the four cheques bearing Nos.303251 to 303254, promissory notes and two signed blank cheques. It appears that for loan security purpose alone mentioned, without mentioning the date or bank from which those cheques issued. Further, it is contended that to attract offence under Section 420 of IPC, there must be false representation made by a person and accused must have knowledge that the representation is false and also, the representation must be done with an intention to deceive.

2. The learned counsel for the petitioners submitted that even as per the complaint, there was loan transaction between the petitioner and the defacto complainant since 2014. There was a complaint under Section 138 of the Negotiable Instruments Act against the defacto complainant instituted by the petitioners herein and the same got settled through Lok Adalat.



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3. While so, inventing story, supplying some documents are retained by the private complaint been lodged on 24.03.2023 without bereft of details to take cognizance of offence under Sections 406 and 420 of IPC. Despite the fact that the learned Magistrate has taken the complaint on file, without applying his mind and without stating the reason for taking cognizance, the learned counsel appearing for the complainant /respondent would submit that cogent reading of the complaint in *toto* would clearly indicate that the document given as security while availing loan are retained by the petitioners herein with an ulterior motive. Except one cheque, all other cheques are retained by them. The entire detail about the other documents can be spoken by the complainant in the course of the trial.

4. This court, after hearing the rival submission and reading the complaint filed under Section 200 of Cr.P.C., for the offence under Sections 406 and 420 of IPC, finds that the documents relied by the complainant does not lend support to the allegation made in the complaint, particularly, the complaint speaks about the entrustment of document such as four blank cheques, promissory notes and two signed blank papers for loan security purpose. Neither the date nor place



mentioned in the complaint, without such entrustment was made, the cheque number alone is mentioned. But the other particulars like from which bank the said cheque was issued and whether the account was maintained by the petitioner are not disclosed, the complaint only say about the accused have retained the certain documents to get monetary benefit and even if one go by the complaint, these documents ought to have been given to the petitioners in the year 2014 and one complaint under Section 138 of the Negotiable Instruments Act been lodged by the petitioners herein as against the complainant in the year 2017. Thereafter till 2022, there is nothing to show that the petitioners had in their possession certain documents of the complainant illegally and attempted to retain those documents to gain monetary benefit.

5. Under these circumstances, this court finds that the private complaint on a whole reading and the document indicates that it does not constitute offence under Sections 406 and 420 of IPC to take cognizance. The trial court has not applied its mind while taking cognizance except making a reference that the statement applied and document perused prima facie against A1 and A2 satisfied. For the said reason, petition to quash in CC.No.786 of 2022 is allowed. Consequently, the petitions to



stay and vacate stay petitions are disposed of.

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Index: Yes/No
Speaking/Non-speaking order
gv

To

1. The VII Metropolitan Magistrate,
George Town, Chennai.



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Dr.G.JAYACHANDRAN,J.

gv

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