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Crl.O.P No.16978 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2024

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.O.P No.16978 of 2023

and

Crl.M.P.Nos.10910 & 17169 of 2023

Saranya
W/o.Ramakrishnan

... Petitioner

vs.

1.State represented by
Inspector of Police,
DCB, Tiruppur.
Crime No.4 of 2022

2.Arumugam
S/o.Sivasubramanian

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the entire records pursuant to the case in Crime No.4 of 2022 on the file of first respondent police and quash the same.

For Petitioner : Mr.K.Sudhakar

For Respondents : Mr.A.Damodaran
Additional Public Prosecutor [R1]
Mr.T.K.S.Bharathy Anandraj [R2]



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ORDER

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2. Heard Mr.K.Sudhakar, learned counsel for petitioner and Mr.A.Damodaran, learned Additional Public Prosecutor, appearing for first respondent and Mr.T.K.S.Bharathy Anandraj, learned counsel appearing for second respondent.

3. The second respondent gave a complaint before the first respondent to the effect that he had paid a sum of Rs.1,09,01,722/- to the petitioner for the period from 03.06.2019 to 31.10.2020. Out of this amount, the petitioner had only returned part of the amount and a sum of Rs.49,00,000/- is due and payable by the petitioner. Since the repeated demands made by the second respondent did not yield any result, a complaint came to be given before the first respondent. The first respondent, on receipt of the complaint, registered a First Information Report in Crime No.4 of 2022 for offence u/s.420 IPC.



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4. Learned counsel for petitioner submitted that even if the allegations made in the complaint are taken as it is, no offence of cheating has been made out.

5. *Per contra*, learned counsel for second respondent submitted that the entire amount was transferred to the petitioner through bank transactions and more than one crore was paid to the petitioner and out of the same, the petitioner had repaid a sum of Rs.59,79,784/- and the balance amount of nearly Rs.49,00,000/- is due and payable. Learned counsel further submitted that the petitioner had intentionally stopped paying the amount and the cheque that was given by the petitioner was also dishonoured and the petitioner was also hastily selling the immovable properties with a view to deprive the second respondent from getting back the money. Learned counsel, therefore, submitted that the first respondent must be directed to continue further with the investigation and to file a final report within the time frame fixed by this Court.

6. This Court has carefully considered the submissions made on



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either side and the materials available on record.

7. In order to constitute an offence of cheating, the intention to cheat must be available from the inception. Culpable intention at the very inception cannot be presumed on the failure to keep up a promise subsequently. In the instant case, admittedly the petitioner had only repaid a part of the amount and the balance is yet to be repaid by the petitioner. This act on the part of the petitioner, at the best, can only constitute a breach of contract and it will not constitute an offence of cheating. Useful reference can be made to the judgment of this Court in ***T.Chandrasekhar v. The State represented by Inspector of Police, Central Crime Branch, Land Grabbing Cell and another [(2011) 3 MLJ (Crl.) 644]***. Reference can also be made to the judgment of this Court in ***R.Jayaraman and others v. K.Ganesan and others [(2019) 1 MLJ (Crl.) 460]***.

8. In the light of the above judgment and after taking into consideration the judgment of the Apex Court in ***Abhishek v. State of Madhya Pradesh [2023 SCC OnLine SC 1083]***, this Court is of the considered view that the continuation of criminal proceedings against the



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petitioner will result in abuse of process of law since no offence has been made out against the petitioner.

In the result, this Criminal Original Petition is allowed and the First Information Report in Crime No.4 of 2022 on the file of first respondent is hereby quashed. It goes without saying that the quashing of the First Information Report will not come in the way of the petitioner to work out her remedy before the competent civil Court to recover the money from the petitioner. Consequently, connected miscellaneous petitions are closed.

03.01.2024

Index : Yes/No
Speaking Order/Non-Speaking Order
Neutral citation : Yes/No
gm

To

- 1.The Inspector of Police,
DCB, Tiruppur.
Crime No.4 of 2022
- 2.The Public Prosecutor,
High Court of Madras,
Madras.



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N. ANAND VENKATESH., J

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