



WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2024

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

CRL.OP No. 26736 of 2022
& Crl. MP. Nos. 16466 & 16467 of 2022

- 1 ARULMOZHI VARMA
- 2 CHAKKARAVARTHI
- 3 ANANDARAJ

[PETITIONERS]

Vs

- 1 THE STATE REP BY ITS
THE INSPECTOR OF POLICE CENTRAL CRIME
BRANCH SALEM CITY CR.NO.6 OF 2016
- 2 M.NEELAMEGAM

[RESPONDENT]

PRAYER : This petition has been filed under Section 482 of Cr.P.C, to call for the records in C.C.No.681 of 2022 pending on the file of the Chief Judicial Magistrate Salem and quash the same in so far as the petitioners.



For Petitioners : Mr.K.Sukumaran
For R1 : Mr.S.Vinoth kumar,
Government Advocate (crl. side)
For R2 : Not appeared

ORDER

The petitioners herein filed this petition to call for the records in C.C.No.681 of 2022 pending on the file of the Chief Judicial Magistrate Salem and quash the same in so far as the petitioners.

2. The case of the prosecution is that the fifth and sixth accused approached the defacto complainant stating that they are from Hermoine Financial Solutions Pvt Ltd and the said finance company was run by the first accused family members. Further, they asked the defacto complainant to invest in the the said company and also they gave assurance to him. Thereafter, the defacto complainant invested Rs.2,00,00,000/- and thereafter they cheated the defacto complainant. Hence, the defacto complainant lodged a complaint before the respondent police and FIR was registered in crime No. 6/2016 and after investigation final report has been filed. Hence, the petitioner filed this petition to quash the final report.

3. The learned counsel for the petitioner submits that the petitioners are not directors of the said company and also there is no material to show



that they were cheated the defacto complainant. Further, as per Form 32 of the first accused company the petitioners are no way connected with the first accused company as Chairman or Managing Director or Director to that effect he produced the form wherein the petitioner name is not mentioned as Directors or Managing Director, as the petitioners are not directors of the accused company there is no material against them to prove that they were cheated the depositors. They are not holding any post in the said company as to how they are responsible for the depositors. Hence they are not liable to be prosecute prayed to allow this petition.

4. Further he relied the judgement of the Supreme Court in the case of R.Kalyani Vs. Janak C.Mehta and others reported in 2009 1 SCc 516 :

26. 21. Whereas, thus, no allegation whatsoever has been made against the respondent No.1, the only allegation against the respondent No.2 was that he had forwarded the said letter dated 10.1.2002 to National Stock Exchange. The act of forgery on/or fabrication of the said letter had been attributed to Respondent No.3. Respondent Nos.1 and 2 herein were sought to be proceeded against on the premise that they are vicariously liable for the affairs of the company.

29. The allegations contained in the First Information Report, therefore, do not disclose an offence against the respondent Nos 1 and 2. They have in their individual capacity been charged for commission of offences of cheating, criminal breach of trust and forgery.

29. As there had never been any interaction between the appellant and them, the question of any representation which is one of the main ingredients for



constituting an offence of cheating, as contained in [Section 415](#) of the Indian Penal Code, did not and could not arise.

5. Further, it is argued that there is no criminal liability existed against the petitioners hence the prosecution against them is vexatious one and liable to be set aside.

6. By way of reply, the learned Government Advocate (Crl. side) submits that it case was registered based on the complaint of the defacto complainant as per the complainant more than three hundred depositors/ victims were cheated by the petitioners along with other accused had collected money with the promise to repay the money but they failed. Hence, the case. Near about three crores involved in this case and also petitioners actively participated in the offence, the victims have categorically stated that these petitioners accompanied with others gave false promise.

7. On seeing the facts of the case, so far three hundred victims were identified and also investigation reveals that the petitioners were actively participated in the offence. Hence, this Court is not inclined to allow this petition. The petitioners can work out their remedy before the Trial Court. Accordingly, this petition is dismissed. No Costs. Consequentially, connected miscellaneous petition(s) is/are closed.



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T.V.THAMILSELVI, J.

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To

<https://www.mhc.tn.gov.in/judis>



1. The Public Prosecutor, High Court, Madras.
2. The Judicial Magistrate Salem.

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