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Crl.O.P.Nos.21369 of 2023 and
Crl.M.P.Nos.14708, 14709 of 2023
and 10307 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :29.07.2024

Pronounced on :02.08.2024

CORAM:

THE HONOURABLE DR JUSTICE G.JAYACHANDRAN

Crl.O.P.Nos.21369 of 2023 and
Crl.M.P.Nos.14708, 14709 of 2023 and 10307 of 2024

1.Mr.A.K.Saravanan

2.Mrs.Kalpana

3.Mr.Kittusamy

4.K.K.K.Ravindranath

.. Petitioners

/versus/

1.The State represented by
Inspector of Police,
Central Crime Branch,
Coimbatore City.

2.M.Pandithurai

.. Respondents

Criminal Original Petition has been filed under Section 482 of Cr.P.C., to call for the records Final Report pertaining to C.C.No.1584 of 2023 pending on the file of Judicial Magistrate No.VII, Coimbatore, and quash the same by allowing this Criminal Original Petition.



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For Petitioners	:Mr.A.Nataraj, Senior Counsel for Mr.C.P.Palanichamy
For R1	:Mr.S.Udayakumar, Government Advocate (Crl.Side)
For R2	:Mr.S.R.Rajagopal, Senior Counsel for M/s Thangavadhana Balakrishnan

ORDER

The petitioners are accused 1, 2, 5 and 6 in C.C.No.1584 of 2023 on the file of the Judicial Magistrate No.VII, Coimbatore. Based on the complaint given by Pandithurai alleging offences under Sections 120(B), 406, 420, 409, 468, 471, 34 & 506(i) of IPC, the case in Crime No.11 of 2023 dated 22.03.2023 came to be registered by CCB, Coimbatore. On completion of investigation, Final Report filed against these petitioners for the offences under Sections 120(B), 406, 420, 409, 468, 471, 34 & 506(i) of IPC.



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2. The petitioners contend that M/s Saravana Construction is a registered partnership firm with the first and second petitioners as partners, carrying on the business of undertaking civil contracts with various Government authorities. The partnership firm was reconstructed in the year 2019 by inducting one Rishi Ganesh, S/o Pandithurai. The said Pandithurai is the defacto complainant. At the time of inducting Rishi Ganesh, he was minor and therefore, he was represented by one Meenatchi Sundaram as his guardian. On 26.04.2020, when the said Rishi Ganesh attained majority, amendment to the partnership firm was carried out on 30.04.2020 wherein, it was decided to operate bank account jointly by the first petitioner A.K.Saravanan and Rishi Ganesh. Soon thereafter, Rishi Ganesh went Abroad to pursue his studies. He never engaged in the day to day affairs of the firm and infact, Rishi Ganesh's father Pandithurai, who is the defacto complainant, was the real partner and financier for the firm and he was controlling the affairs of the firm on behalf of Rishi Ganesh.



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3. Dispute arose between the partners and the matter was referred to Mediation. A Retired Judicial Officer and Divisional Engineer (Highways) were Mediators and Memorandum of Understanding was entered between the partners on 18.10.2021. As per the Memorandum of Understanding, it was agreed to relieve Rishi Ganesh and Meenatchi Sundaram from the partnership firm by paying Rs.27,78,50,000/- to them. A sum of Rs. 14,36,00,000/- already received by them from the firm and out of the balance of Rs.13,42,50,000/-, it was agreed to deposit Rs.3,75,00,000/- in the account of Rishi Ganesh and Meenatchi Sundaram. A sum of Rs.6,25,00,000/- to be given as cash and the balance Rs.3,42,50,000/- to be paid within the period of six months. Further, it was agreed that the loan borrowed by the firm from the various third parties to be repaid by the existing partners. From the date of Memorandum of Understanding, the first petitioner had been solely operating the bank accounts.

4. The first petitioner complying the terms of MoU, partly discharged the debts. Though there is some delay in making further



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payment, there was absolutely no intention to breach the terms of MoU.

Whiles, the said Rishi Ganesh had filed a suit in O.S.No.61 of 2022 on the file of District Munsif, Palani and got an exparte interim injunction to freeze the bank account of the firm. Later, the interim order was stayed by the Madurai Bench of Madras High Court in C.R.P.(MD)No.1403 & 1404 of 2022. After the stay granted by the High Court, Rishi Ganesh withdrawn all the proceedings in O.S.No.61 of 2022 on 24.08.2023. Thereafter, the defacto complainant/2nd respondent started threatening to present the blank cheques given to him as a security and also to alienate the petitioners property by misusing the documents given to him on trust. Hence, the first petitioner lodged a complaint before the first respondent police. Since no action was taken on the complaint by the jurisdictional police, the same was reported to the higher officials and thereafter, application under Section 156(3) of Cr.P.C., before the Judicial Magistrate, Coimbatore was filed. Inspite of the direction of the Judicial Magistrate to register the case and investigate, vide its order dated 22.11.2022 in Crl.M.P.No.28603 of 2022, the first respondent had not investigated the matter but closed the same without any enquiry.



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5. In the said circumstances, the petitioners have filed another suit in O.S.No.214 of 2022 on the file of the II Additional Sub Judge, Coimbatore to direct Pandithurai and his son Rishi Ganesh to render proper accounts and till such time not to utilise the documents including the cheques given to them.

6. Infuriated on coming to know about the institution of the above said suit, the second respondent through the first respondent police started threatening the first petitioner to withdraw the suit and execute the sale deed in respect of his family property which worth more than Rs.50 crores, failing which, he and his family members will be arrested and put to humiliation. The petitioners had filed application for direction not to harass. The High Court vide order dated 28.02.2023 in Crl.O.P.No.4425 of 2023 directed the respondent police to follow appropriate guidelines while conducting investigation on the complaint given by Pandithurai. In the said circumstances, FIR No.11 of 2023 dated 22.03.2023 been registered against the petitioners and others as if the cheques of the partnership firm were misused by the first petitioner and money in the



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account was discreetly withdrawn. Further by fabricating resolution of the firm, properties of the firm been alienated by the petitioners.

7. The averment in the complaint are concocted and bristles a pure civil dispute between the partners which is already the subject matter of the suit in O.S.No.214 of 2023 filed for retention of account while so there cannot be offence under Section 406 or 420 of IPC which requires fundamental ingredient of entrustment and inducement with deceptive intention.

8. Per contra, the learned Senior Counsel appearing for the defacto complainant submitted that the petitioners promising lucrative returns had added the minor son of the complainant as a partner in the business and he invested Rs.27,78,50,000/- and his friends invested about Rs.27 crores. While so, having found that the petitioners manipulating the accounts by withdrawing money through online, he decided that his minor son has to be relieved from the partnership firm. The dispute was referred to Mediation and as per the accounts produced



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by the petitioners, settlement was arrived. Even after, a month after the settlement, the first accused has not paid the money and when he met the petitioners for honouring the terms of the agreement, the defacto complainant was threatened by the petitioners and their henchmen.

9. The learned Senior Counsel appearing for the defacto complainant alleged that around 243 cheques to the tune of Rs.40 crores been withdrawn from the partnership firm account, without signature of the complainant's son, though he is one of the authorised signatory. Further, the resolution of the firm also found to be fabricated. These facts have come to light only after the MOU entered between the parties, based on the accounts submitted by the first accused. Since the crime of cheating and criminal breach of trust has been committed by the first accused and his family members in connivance with the Branch Manager where the account of partnership firm was maintained, the petitioners are liable to face prosecution.

10. Heard the learned counsel appearing for the petitioners and



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learned Government Advocate (Crl.Side) appearing for the first respondent and the learned Senior Counsel appearing for the second respondent.

11. The learned Government Advocate (Crl.Side) had produced the CD file regarding the status of investigation.

12. On perusal of the records, this Court finds that the partnership between the petitioners and the minor son of the complainant, who was represented by Meenatchi Sundaran, the relative of the defacto complainant, is admitted. Misunderstanding between the partners has led to reconstitution of the partnership firm. The dispute between the parties has led to Mediation and in the Mediation, the parties have arrived at a settlement dated 18.10.2022. It is alleged that the petitioners have breached the terms of settlement and the petitioners have not paid the agreed amount. That apart, it is also alleged that the fund in the partnership firm account, which should have operated jointly by the first petitioner and the son of the complainant Rishi Ganesh, fraudulently been



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allowed to operate by the first petitioner alone. This has been done in connivance with the Bank Manager, who is arrayed as A4. The money so illegally withdrawn has gone to the account of the accused 2, 5 and 6, who are the other petitioners. The investigation has led to collection of evidence, which are incriminating in nature and the petitioners have not honoured the term of compromise arrived through the Mediation. More particularly, the statement of Uma Shankar, Manager, Canara Bank indicates that out of 70 cheques, six cheques dated 30.04.2020 were signed only by the first petitioner and the same has been cleared. After reconstitution of the firm inducting Rishi Ganesh as partner, 64 cheques were jointly signed by Saravanan the first petitioner and Rishi Ganesh, son of the defacto complainant/Pandithurai. The distribution of the money from the account of the partnership to the accounts of the other accused been spoken by the Bank Managers of the respective accounts holders. The evidence collected had disclosed withdrawal of partnership firm money from the bank account unilaterally by the first accused without authorised co-signatory signature. For the said reason, the Bank Manager had added as A4. Between 30.04.2020 to 18.10.2021 A1 had



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signed 243 cheques of the partnership firm and withdrawn a sum of Rs.22,74,06,438/- without the signature of the co-signatory Rishi Ganesh. The said act satisfies the necessary ingredient to charge the petitioner for the offence under Sections 409 and 420 of IPC.

13. In the said circumstances, since enough materials have been collected during the course of investigation to proceed against these petitioners, this Court finds that this petition to quash the final report deserves to be dismissed.

14. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petitions are closed.

02.08.2024

Index:yes/no
Speaking order/non speaking order
Neutral citation:yes/no
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To

- 1.The Judicial Magistrate No.VII, Coimbatore.
- 2.The Inspector of Police, Central Crime Branch,
Coimbatore City.
- 3.The Public Prosecutor, High Court, Madras.

Dr.G.JAYACHANDRAN,J.



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delivery Order made in
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