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Crl.O.P.No.29675 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2024

CORAM

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.O.P.No.29675 of 2022
and Crl.MP Nos.18175 & 18176 of 2022

B.VIMAL KUMAR
S/O. BASKARAN,
NO.512-56/D4,
GANGA NAGAR,
HASTHAMPATTY,
SALEM 636 007.

...

PETITIONER

Vs.

1.THE STATE OF TAMILNADU REP BY
INSPECTOR OF POLICE,
ST.THOMOUS MOUNT POLICE STATION,
CHENNAI 600 016.

2.ARAVIND PRABHU
MANAGER (CHENNAI BRANCH),
BRUHAT LOGISTICS PVT. LTD,
NO.5/66, BUTT ROAD,
ICICI BANK BUILDING,
ST.THOMAS MOUNT,
CHENNAI 600 016.

...

RESPONDENTS

Prayer : Criminal Original Petition filed under Section 482 of Cr.P.C .to call for the records in C.C.No.215 of 2022 on the file of the Judicial Magistrate Court No.I, Alandur, Kancheepuram District and quash the same.



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For Petitioner : Mr.S.Karthikeyan
for M/s.R.Pandimeena

For 1st Respondent : Mr.S.Udaya Kumar
Govt. Advocate (Crl.side)

For 2nd Respondent : Mr.R.Ganeshkumar

ORDER

This petition is filed to quash the final report filed against the petitioner for the offences under Section 408 & 420 of IPC.

2. The sum and substance of the allegation in the final report is that the petitioner was working as Commercial Manager in the defacto complainant's company; and that he had misappropriated certain properties belonging to the company such as conference table, Canol printer, wireless keyboard and mouse, Memory device, Apple iPhone12 Pro Max 256 GB Mobile and Charger; and that he had also started a company and did similar business of that of the defacto complainant and had lured the customers of the defacto complainant.

3. The learned counsel for the petitioner would fairly submit that subsequent to the filing of the final report, the trial has commenced and LW1 was examined as PW1; that the allegations in the charge sheet would show



that the offence under Section 408 & 420 IPC are not made out. The learned counsel, in any event, would submit that these two offence cannot go together and antithetical to each other, as observed by the Hon'ble Supreme Court in **2024 SCC Online 2248 [Delhi Race Club (1940) Ltd. And others v. State of Uttar Pradesh and another.**

4. The learned Government Advocate (crl.side) appearing for the respondent and the learned counsel appearing for the defacto complainant would however submit that there are allegations in the final report which constitute both the offences under Section 408 & 420 of IPC; that the issue has to be only adjudicated in the trial court.

5. Heard the learned counsel for the petitioner as well as the second respondent and the learned Government Advocate (crl.side) and perused the records.

6. In view of the fact that the trial has commenced, without going into the merits of the rival contentions, this court is of the view that while deciding the case, the trial court shall bear in mind the observations made by the Hon'ble Supreme court which reads as follows -



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30. *The distinction between mere breach of contract and the offence of criminal breach of trust and cheating is a fine one. In case of cheating, the intention of the accused at the time of inducement should be looked into which may be judged by a subsequent conduct, but for this, the subsequent conduct is not the sole test. Mere breach of contract cannot give rise to a criminal prosecution for cheating unless fraudulent or dishonest intention is shown right from the beginning of the transaction i.e. the time when the offence is said to have been committed. Therefore, it is this intention, which is the gist of the offence. Whereas, for the criminal breach of trust, the property must have been entrusted to the accused or he must have dominion over it. The property in respect of which the offence of breach of trust has been committed must be either the property of some person other than the accused or the beneficial interest in or ownership' of it must be of some other person. The accused must hold that property on trust of such other person. Although the offence, i.e. the offence of breach of trust and cheating involve dishonest intention, yet they are mutually exclusive and different in basic concept. There is a distinction between criminal breach of trust and cheating. For cheating, criminal intention is necessary at the time of making a false or misleading representation i.e., since inception. In criminal breach of trust, mere proof of entrustment is sufficient. Thus, in case of criminal breach of trust, the offender is lawfully entrusted with the property, and he dishonestly misappropriated the same. Whereas, in case of cheating, the offender fraudulently or dishonestly induces a person by deceiving him to deliver any property. In such a situation, both the offences cannot co-exist simultaneously.*

31. *At the most, the court of the Additional Chief Judicial Magistrate could have issued process for the offence punishable under [Section 420](#) of the IPC i.e. cheating but in any circumstances no case of criminal breach of trust is made out. The reason being that indisputably there is no entrustment of any property in the case at hand. It is not even the case of the complainant that any property was lawfully entrusted to the appellants and that the same has been dishonestly misappropriated. The case of the complainant is plain and simple. He says that the price of the goods sold by him has not been paid. Once there is a sale, [Section 406](#) of the IPC goes out of picture. According to the complainant, the invoices raised by him were not cleared. No case worth the name of cheating is also made out.*



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7. It is well settled that the offences of cheating and criminal breach of trust cannot go together as the ingredients are different. In the case of cheating, the property is obtained by deception. Whereas, in the case of criminal breach of trust, the property is lawfully entrusted and thereafter misappropriated. Thus, both the offences cannot exist simultaneously. Therefore, the trial court shall consider the case on merits, taking into consideration the law on the subject and subject to the prosecution establishing the facts alleged in the final report.

8. With the above observations, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petitions are also dismissed.

06.12.2024

Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
Internet: Yes/No
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SUNDER MOHAN, J.

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To

1.THE INSPECTOR OF POLICE,
ST.THOMOUS MOUNT POLICE STATION,
CHENNAI 600 016.

2. THE JUDICIAL MAGISTATE NO.1,
ALANDUR, KANCHEEPURAM DISTRICT.

3.THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

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