



Crl.O.P.(MD)Nos.5111 of 2021 & 12495 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.03.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

Crl.O.P.(MD)Nos.5111 of 2021 & 12495 of 2023 &
Crl.M.P.(MD)Nos.2936 of 2021, 9795 & 9796 of 2023

Crl.O.P.(MD)No.5111 of 2021

A.Ameensha

...Petitioner

vs.

1.The State,
Rep. by Inspector of Police,
Ilayangudi Police Station,
Ilayangudi,
Sivagangai District.
Crime No.148/18.

2.Malarvizhi

... Respondents

Prayer: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to call for the records in C.C.No.11 of 2020 on the file of the District Munsif cum Judicial Magistrate Court, Ilayangudi and quash the same as against the petitioner.

For Petitioner : Mr.S.Parthasarathy
For Mr.R.Venkata Varathan



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For Respondents : Mr.M.Sakthikumar,
Government Advocate (Criminal Side)
for R1
Mr.N.Anandha Padmanabhan,
Senior Counsel assisted by
Mr.C.Jeyaprakash for R2

CrI.O.P.(MD)No.12495 of 2023

1.Malarvizhi
2.Indhuja
3.Deepak

...Petitioners

vs.

1.The Inspector of Police,
District Crime Branch,
Sivagangai District.
(Crime No.1 of 2022)

2.S.A.Ameensha

... Respondents

Prayer: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to call for the records in C.C.No.104 of 2023 on the file of the Judicial Magistrate Court No.II, Sivagangai and quash the same.

For Petitioners : Mr.N.Anandha Padmanabhan,
Senior Counsel assisted by
M.C.Jeyaprakash

For Respondents : Mr.M.Sakthikumar,
Government Advocate (Criminal Side)
for R1
Mr.S.Parthasarathy
For Mr.R.Venkata Varathan for R2



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COMMON ORDER

The petitioner Thiru.Ameensha in Crl.O.P.(MD)No.5111 of 2021 is the defacto complainant in C.C.No.104 of 2023 on the file of the Judicial Magistrate No.II, Sivagangai. The second respondent T.Malarvizhi in the above Criminal Original Petition is the first accused in C.C.No.104 of 2023.

2. The first petitioner Tmt.Malarvizhi in Crl.O.P.(MD)No. 12495 of 2023 is the defacto complainant in C.C.No.11 of 2020 on the file of the District Munsif cum Judicial Magistrate, Ilayangudi. The second respondent Thiru.Ameensha in the above Criminal Original Petition is the accused in C.C.No.11 of 2020.

3. Since the parties are one and the same in both the Criminal Original Petitions, a common order is passed.



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FIRs and Final Reports:

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4. For the sake of convenience, the parties are referred to by their names.

5. Tmt.Malarvizhi lodged a complaint with the Sub Inspector of Police, Ilayangudi Police Station, Sivagangai on 07.07.2018 stating the following.

5.1. Tmt.Malarvizhi's husband was doing real estate business and he died in the year 2014. While he was alive, he executed a Sale Agreement with Thiru.Ameensha on 27.09.2012 in respect of his 1/3rd share in S.No.196/2 of Thiruvallur Village, Ilayangudi Taluk. According to her, Thiru.Ameensha handed over four Demand Drafts bearing Nos. 849435, 849436, 849438 and 849437 for a sum of Rs.15,00,000/- on 16.09.2016 and obtained her signature in a 100 rupee stamp paper. When the Demand Drafts were presented before the State Bank of India, Ilayangudi the same were returned for the reason that the Demand Drafts



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were given wrongly. When she enquired about the same with Thiru.Ameensha, he evaded her. Therefore she filed a suit in O.S.No.22 of 2017 before the District Munsif, Ilayangudi against Thiru.Ameensha. On 28.06.2018 she attended the Court for a hearing with her daughter Indhuja and son Deepak. When they were returning home at about 12.45 hours, Thiru.Ameensha waylaid them and abused them in filthy language. He also slapped her on her cheeks and threatened her with dire consequences.

5.2. Based on the complaint given by Tmt.Malarvizhi, FIR in Crime No.148/2018 was registered by the Sub Inspector of Police, Ilayangudi Police Station against Thiru.Ameensha for the offences punishable under Sections 341, 294(b), 323, 420 and 506(2) IPC. The Inspector of Police, Ilayangudi Police Station after concluding investigation, laid a final report before the Judicial Magistrate, Ilayangudi against Thiru.Ameensha for the offences punishable under Sections 341, 294(b), 323, 420, 511 and 506(ii) IPC. Seeking to quash the above final report, Thiru.Ameensha filed Crl.O.P.(MD)No.5111 of 2021.



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6. Thiru.Ameensha lodged a complaint with the Sub Inspector of Police, District Crime Branch, Sivagangai on 27.01.2022 stating the following.

6.1. Karunanithi (since deceased) entered into a Sale Agreement with Thiru.Ameensha for a sale of his property in S.No.196/2 of Thiruvallur Village, Ilayangudi Taluk measuring 2 acres 35 cents for a total sale consideration of Rs.62,50,000/-. Since Karunanithi expired, his legal heirs Tmt.Malarvizhi, her daughter Indhuja and son Deepak executed a sale deed on 15.09.2016 and all of them signed in the sale deed. Though in the sale deed, it was mentioned that the purchaser has paid the total consideration of Rs.62,50,000/- in a piecemeal manner to D.Karunanithi and his legal heirs, they did not come forward to register the sale deed. They did not also return the sum of Rs.62,50,000/- paid by him. In fact, he purchased stamp papers for a sum of Rs.4,36,500/- for executing the sale deed and it was also presented for registration before the Sub Registrar, Ilayangudi on 16.09.2016. According to him, all the three accused Tmt.Malarvizhi, Indhuja and Deepak with the dishonest intention of cheating him, did not come forward to register the sale deed.



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6.2. Based on the complaint given by Thiru.Ameensha, FIR in Crime No.1/2022 was registered by the Sub Inspector of Police, District Crime Branch, Sivagangai against Tmt.Malarvizhi, Indhuja and Deepak for the offences punishable under Sections 406, 468, 471, 420 and 120B IPC. The Inspector of Police, District Crime Branch, Sivagangai after concluding investigation laid a final report in C.C.No.104 of 2023 before the Judicial Magistrate No.II, Sivagangai against all the three accused for the aforesaid offences. Seeking to quash the above final report Tmt.Malarvizhi (A1), Indhuja (A2) and Deepak (A3) filed Crl.O.P. (MD)No.12495 of 2023.

The Arguments:

7. Mr.N.Anandha Padmanabhan, learned senior counsel assisted by Mr.C.Jeyaprakash, learned counsel for Tmt.Malarvizhi and others argued that



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(i) Karunanithi (deceased) owned 1/3rd share in the land in S.No.196/2 of Thiruvallur Village, Ilayangudi Taluk in respect of which, a registered Sale Agreement was executed on 27.09.2012 between Karunanithi (deceased) and Thiru.Ameensha and a sum of Rs.30,00,000/- was paid towards advance. Karunanithi died on 21.11.2014 leaving behind Tmt.Malarvizhi (wife), Indhuja (daughter) and Deepak (son) as his legal heirs.

(ii) Though in the complaint Thiru.Ameensha had stated that he paid the entire sale consideration of Rs.62,50,000/-, he did not actually pay the same and there is a huge balance amount to be paid by him. In fact, the original Sale Agreement executed between Karunanithi (deceased) and the Thiru.Ameensha was subsequently cancelled and a General Power of Attorney dated 06.01.2016 was executed and registered in favour of Thiru.Ameensha on 06.01.2016. Though a sale deed was prepared on 15.09.2016 and was presented before the Sub Registrar Office, Ilayangudi on 16.09.2016, Thiru.Ameensha did not pay the balance amount.



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(iii) Thiru.Ameensha created bogus endorsements in the General Power of Attorney dated 06.01.2016 and also created a bogus receipt dated 06.01.2016 as if the entire sale consideration of Rs. 62,50,000/- was received by Tmt.Malarvizhi and others on 06.01.2016.

(iv) When Tmt.Malarvizhi and others attended the Court proceedings on 28.06.2018 in O.S.No.22 of 2017 before the District Munsif, Ilayangudi, Thiru.Ameensha abused her in filthy language, assaulted her and threatened her with dire consequences. The Court diary extract of District Munsif Court, Ilayangudi would go to show that Tmt.Malarvizhi and others attended the Court proceedings on 28.06.2018. Thiru.Ameensha has thus committed the offences punishable under Sections 341, 294(b), 323, 420, 511 and 506(ii) IPC and therefore there is no reason to quash the final report in C.C.No.11/2020 on the file of the District Munsif cum Judicial Magistrate Court, Ilayangudi.



(v) It is settled law that in order to attract 420 IPC, the prosecution must show dishonest intention right from the very beginning and in the instant case, there is no such intention on the part of Tmt.Malarvizhi and others to deceive Thiru.Ameensha.

(vi) All the allegations made in the complaint of Thiru.Ameensha are false.

(vii) There is no falsification of document as contended by Thiru.Ameensha to attract the offences punishable under Sections 406, 468 and 420 IPC. On the contrary, Thiru.Ameensha had created a cash receipt on 06.01.2016 forging the signatures of Tmt.Malarvizhi, Indhuja and Deepak and various endorsements in General Power of Attorney as if they were made and signed by the legal heirs of late Karunanithi.

(viii) The dispute between the parties is purely civil in nature and therefore, no criminal colour can be given to the present dispute between the parties.



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(ix) In fact, the suit in O.S.No.27 of 2016 on the file of the District Munsif, Ilayangudi filed by Thiru.Ameensha against Tmt.Malarvizhi and others to not alienate the property in respect of which an agreement of sale was executed was dismissed by the District Munsif on 12.11.2021.

He therefore prayed for dismissing the Crl.O.P.(MD)No.5111 of 2021 and allowing the Crl.O.P.(MD)No.12495 of 2023.

8. Per contra, Mr.S.Parthasarathy, learned counsel for Mr.R.Venkata Varathan, learned counsel for Thiru.Ameensha contended that

(i) Karunanithi (since deceased) was desirous of selling his property in S.No.196/2 of Thiruvallur Village, Ilayangudi Taluk and executed a registered Sale Agreement on 27.09.2012. The sale consideration was fixed at Rs.62,50,000/- and on the date of Sale Agreement, a sum of Rs.30,00,000/- was paid by Thiru.Ameensha towards advance.



(ii) Though four months' time was fixed for executing the sale deed, both the parties did not give importance to the time fixed in the contract and in fact late Karunanithi was receiving part payments on different dates. On 15.02.2013, Karunanithi received a sum of Rs. 10,00,000/- from Thiru.Ameensha and thereafter, various payments were made by Thiru.Ameensha. Karunanithi passed away on 21.11.2014.

(iii) By that time, a sum of Rs.51,50,000/- was paid by Thiru.Ameensha and the balance sale consideration was Rs.11,00,000/-. In such circumstances, it was felt by the legal heirs of late Karunanithi that the original Sale Agreement executed between Karunanithi and Thiru.Ameensha should be given a quietus. Therefore, they cancelled the Sale Agreement on 06.01.2016 and a registered General Power of Attorney dated 06.01.2016 was also executed. Thiru.Ameensha, paid the balance sale consideration and Tmt.Malarvizhi and others acknowledged the receipt of payment of Rs.62,50,000/- by signing a receipt dated 06.01.2016.



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(iv) However, with a culpable mind, they cancelled the registered General Power of Attorney executed in favour of Thiru.Ameensha vide a cancellation deed dated 10.02.2016. The Power of Attorney holder was not given any notice in this regard. This was questioned by Thiru.Ameensha and after much persuasion and through mediation they agreed to execute a sale deed. However, they demanded a further sum of Rs.15,00,000/- from Thiru.Ameensha. In order to purchase peace, he agreed to pay the said amount.

(v) Though the sale deed was executed and presented before the Sub Registrar, Ilayangudi on 16.09.2016 for registration, the Sub Registrar refused to register the same by quoting the decision of this Court in Elephant G.Rajendran vs. Chief Secretary, Government of Tamil Nadu and others dated 03.07.2015.

(vi) It is pertinent to point out that the property comprised in S.No.196/2 of Thiruvallur Village, Ilayangudi Taluk is a punja land and not an unapproved layout. Therefore, the refusal to register the document,



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on the part of the Sub Registrar is totally wrong for which, W.P.Nos. 12575 of 2017 and 12576 of 2017 are filed before this Court and the same are pending.

(vii) Tmt.Malarvizhi and others had conspired with each other to sell the property in favour of third parties. Therefore, Thiru.Ameensha was forced to file a suit in O.S.No.27 of 2016 before the District Munsif, Ilayangudi for a permanent injunction restraining Tmt.Malarvizhi, Indhuja and Deepak from alienating the property.

(viii) However, on 03.05.2017, Tmt.Malarvizhi and others executed a Sale Agreement with one Karmegam and got the same registered before the Sub Registrar Office, Paramakudi. In fact, on 22.09.2017, an order of injunction was granted in I.A.Nos.388/2016 and 469/2016 in O.S.No.27/2016. Since, Sale Agreement was executed during the subsistence of the order of injunction, the same is not valid.



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(ix) The suit in O.S.No.27 of 2016 on the file of the District Munsif, Ilayangudi filed by Thiru.Ameensha was dismissed on 12.11.2021 on a wrong appreciation of facts and law and therefore, an appeal suit has been filed in A.S.No.2 of 2022 before the Subordinate Judge, Manamadurai and the same is pending.

(x) Though in the complaint lodged by Tmt.Malarvizhi, it is stated that Thiru.Ameensha abused her in filthy language, slapped her on her cheeks and threatened her with dire consequences while she was coming back after attending Court proceedings on 28.06.2018, no material was placed by the police to substantiate the said contention. In the case diary dated 28.06.2018, it was only recorded by the Judicial officer that "*plaintiff side evidence is not ready, hence plaintiff side further evidence by 13.07.2018*". Since the Judicial Officer did not note the presence of Tmt.Malarvizhi and others on that date, it has to be presumed that they did not attend for the Court proceedings.



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(xi) Stamp papers were purchased by Tmt.Malarvizhi on 06.01.2016 for the purpose of executing three documents namely (i) Receipt for a sum of Rs.62,50,000/-, (ii) cancellation of Sale Agreement executed between Karunanithi and Thiru.Ameensha on 27.09.2012 and (iii) execution of General Power of Attorney. Tmt.Malarvizhi has not disputed the execution of General Power of Attorney and the cancellation of Sale Agreement on 06.01.2016. She has disputed only her signature on the receipt. In fact, all the stamp papers were purchased by her and the serial numbers in all these three documents range from 104 to 127 and therefore, Tmt.Malarvizhi and others cannot deny their signatures on the receipt dated 06.01.2016. Moreover, neither in the written statement filed by them in O.S.No.27 of 2016 nor in their plaint in O.S.No.22 of 2017, they have disputed their signatures on the receipt dated 06.01.2016. In fact, it was marked as an exhibit in O.S.No.27 of 2016 on the file of the District Munsif, Ilayangudi without any objection.

(xii) After receiving the entire sale consideration, Tmt.Malarvizhi and others demanded Thiru.Ameensha to pay more



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money. In order to purchase peace, he also agreed to pay Rs.15,00,000/- and despite this fact, all the three accused with a culpable mind executed a Sale Agreement in favour of Karmegam on 03.05.2017 and got it registered in the Sub Registrar Office, Paramakudi. They did not register the document at Ilayangudi Sub Registrar Office since a sale deed was already executed in favour of Thiru.Ameensha and presented for registration. Thus, Tmt.Malarvizhi and others with a dishonest and fraudulent intention had created a document in favour of third parties, thereby deceiving Thiru.Ameensha.

He therefore prayed for allowing the Crl.O.P.(MD)No.5111 of 2021 and dismissing the Crl.O.P.(MD)No.12495 of 2023.

9. Per contra, Mr.M.Sakthikumar, learned Government Advocate (Criminal Side) would contend that the Police after conducting proper investigation had laid the final reports and there are no valid grounds to quash the same.



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10. It is seen from the records that Tmt.Malarvizhi's husband Karunanithi (since deceased) had 1/3rd share in the land in S.No.196/2 of Thiruvallur Village, Ilayangudi Taluk and the 1/3rd share measures 2 acres 45 cents. He executed a Sale Agreement on 27.09.2012 with Thiru.Ameensha for a total sale consideration of Rs.62,50,000/-. On the date of Sale Agreement, a sum of Rs.30,00,000/- was received by Karunanithi (since deceased). Though the time was fixed as four months for completing the contract, the parties did not give importance to the time as the seller was receiving various amounts even after the expiry of four months. Buyer also did not file a suit for specific performance of contract. According to Thiru.Ameensha, he paid Karunanithi (since deceased) a sum of Rs.10,00,000/- on 15.02.2013. Karunanithi died on 21.11.2014 leaving behind Tmt.Malarvizhi (wife), Indhuja (daughter) and Deepak (son).

11. Subsequently in order to give quietus to the Sale Agreement dated 27.09.2012, the following three documents were executed on 06.01.2016, (i) receipt for a sum of Rs.62,50,000/- duly signed by



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Tmt.Malarvizhi and others, (ii) registered General Power of Attorney in favour of Thiru.Ameensha and (iii) cancellation of Sale Agreement dated 27.09.2012. According to Thiru.Ameensha, he paid the entire sale consideration of Rs.62,50,000/- and in evidence of the same, Tmt.Malarvizhi and others executed a receipt on 06.01.2016. However, Tmt.Malarvizhi and others have disputed their signatures on the receipt dated 06.01.2016. According to Tmt.Malarvizhi, Thiru.Ameensha had to pay a sum of Rs.15,00,000/- plus the escalation in the cost of the land. However, in the suit in OS.No.27 of 2016 on the file of the District Munsif, Ilayangudi filed by Thiru.Ameensha, Tmt.Malarvizhi examined herself as DW1 and in her evidence, she had deposed that Thiru.Ameensha had to pay only a sum of Rs.11,00,000/- to her.

12. It is also relevant to note that in her cross examination in O.S.No.27 of 2016, Tmt.Malarvizhi had admitted receipt of the following payments made by Thiru.Ameensha to her, her husband and other sharers.

(i) on 27.09.2012 - Rs.30,00,000/-

(ii) on 15.12.2013 - Rs.10,00,000/-



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- (iii) on 15.12.2013 - Rs.1,00,000/-
- (iv) on 26.05.2014 - Rs.1,00,000/-
- (v) on 16.03.2014 - Rs.1,00,000/-
- (vi) on 18.01.2014 - Rs.1,00,000/-
- (vii) on 17.02.2014 - Rs.1,00,000/-

Thus even according to her, she had received a sum of Rs.45,00,000/-. It is pertinent to point out that Deepak (A3 in C.C.No.104/2023) had received a sum of Rs.2,50,000/- from Thiru.Ameensha and has made an endorsement in the Power of Attorney. However, Tmt.Malarvizhi denied the signature of her son in the endorsement made by him. It is pertinent to point out that though Tmt.Malarvizhi's son Deepak was shown as one of the defendants in O.S.No.27 of 2016, he did not get into the box to deny his signature in the endorsement dated 07.09.2015. Therefore an adverse inference has to be drawn against Deepak and Rs.2,50,000/- should be added to the above amount. Therefore, the total amount received by Tmt.Malarvizhi and others is Rs.47,50,000/-. There is an endorsement on 15.10.2014 for receipt of a sum of Rs.2,50,000/- by one



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P.Srinivasan. Tmt.Malarvizhi states that she does not know as to who P.Srinivasan is and on the contrary, Thiru.Ameensha states that P.Srinivasan belongs to the family of the trio.

13. According to Thiru.Ameensha, even after the receipt of the entire sale consideration, Tmt.Malarvizhi and others did not come forward to execute the sale deed in his favour and thereafter, a panchayat was convened in this regard, in which Tmt.Malarvizhi and others demanded a further sum of Rs.15,00,000/-. In order to give quietus to the issue, Thiru.Ameensha agreed to pay Rs.15,00,000/- to Tmt.Malarvizhi and others and thereafter, sale deed was executed and presented before the Sub Registrar Office, Ilayangudi for registration on 16.09.2016. Prior to that, on 10.02.2016, Tmt.Malarvizhi and others had cancelled the Power of Attorney executed in favour of Thiru.Ameensha without giving him notice. The contention of Tmt.Malarvizhi and others in this regard is that Thiru.Ameensha was informed about this when he was present in the Sub Registrar Office, Ilayangudi for registration of the cancellation deed. In the cancellation of General Power of Attorney, the Power of Attorney



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holder Thiru.Ameensha did not sign as a witness and no evidence was adduced by Tmt.Malarvizhi and others to show that Thiru.Ameensha was in fact served with notice with regard to cancellation of General Power of Attorney.

14. In the sale deed presented before the Sub Registrar Office, Ilayangudi on 16.09.2016, it is stated that the entire sale consideration was paid by the buyer. However, the Sub Registrar refused to register the document on the ground that the property is an unapproved layout of plots. It is pertinent to point out that the property sold in favour of Thiru.Ameensha is a punja land and nowhere it is stated that it is an unapproved layout containing house sites. The mistake committed by the Sub Registrar has been taken advantage of by Tmt.Malarvizhi and others and they had clandestinely executed a Sale Agreement in respect of various properties including the present property in S.No.196/2 of Thiruvallur Village, Ilayangudi Taluk and presented the same before the Sub Registrar Office, Paramakudi with an intention to deceive Thiru.Ameensha. The sum and substance is that Tmt.Malarvizhi and her



children in order to deceive Thiru.Ameensha had done following acts.

(i) Unilateral cancellation of Power of Attorney dated 10.02.2016 without giving notice to the Power of Attorney holder.

(ii) Denying their signatures on the receipt dated 06.01.2016 which is only an after thought.

(iii) Demanding another fifteen lakhs from Thiru.Ameensha over and above the sale consideration fixed by the parties.

(iv) Executing a Sale Agreement with strangers in respect of the property for which Thiru.Ameensha had paid the entire sale consideration of Rs.62,50,000/- and that too during the subsistence of order of injunction granted in O.S.No.27 of 2016 on the file of the District Munsif, Ilayangudi.

(v) Presenting the Sale Agreement dated 03.05.2017 before Sub Registrar Office, Paramakudi, thereby avoiding Sub Registrar Office, Ilayangudi, where the sale deed executed in favour of Thiru.Ameensha was presented for registration.



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15. Section 415 IPC defines cheating and it is extracted hereunder.

"415. Cheating — Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

Explanation—A dishonest concealment of facts is a deception within the meaning of this section."

16. Mr.N.Anandha Padmanabhan, learned senior counsel would contend that there is no intention on the part of Tmt.Malarvizhi and others to deceive Thiru.Ameensha right from the beginning and Thiru.Ameensha did not also pay the entire sale consideration. According to him, the Demand Drafts given by him for Rs.15,00,000/- were also returned by the bank. It is his contention that Tmt.Malarvizhi and others did not sign on



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the receipt on 06.01.2016. As already observed, the receipt dated 06.01.2016 was filed in the suit in O.S.No.27 of 2016 on the file of the District Munsif, Ilayangudi and Tmt.Malarvizhi and others did not deny their signature either in their written statement or in their deposition in the said suit. The stamp papers for executing three documents including the receipt dated 06.01.2016 contain serial numbers 104 to 127 and they were purchased by Tmt.Malarvizhi. Though she accepts her signature on the cancellation of the Sale Agreement and execution of Registered Power of Attorney on the same date i.e., on 06.01.2016, she contends that she, her daughter and son did not sign the cash receipt on 06.01.2016. This contention of Tmt.Malarvizhi cannot be accepted and this also goes to show that all three had a culpable mind of cheating Thiru.Ameensha right from inception (of course subsequent to the death of Karunanithi) and in the matter of achieving the said mission Tmt.Malarvizhi and others joined together and created an agreement of sale in favour of third parties on 03.05.2017 and presented the same for registration before Sub Registrar Office, Paramakudi. This is a clear cut case of an offence under Section 420 IPC and therefore, Tmt.Malarvizhi and others cannot be said to be



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innocent persons.

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17. However, Tmt.Malarvizhi and others have been charged for the offences punishable under Sections 468 and 471 IPC. Section 468 IPC addresses the serious offence of forgery for the purpose of cheating. This provision specifically attracts individuals who engage in the deliberate act of forging documents, signatures or seals with the intention of deceiving others for personal gain or to cause harm. Under Section 463 IPC, forgery is defined as making any forged document or electronic records and Section 464 IPC supports this offence by explaining that a forged paper or digital record might be considered to have been created with an intent to conduct forgery as defined under Section 463 IPC. In the instant case, there is no forged document and therefore, the offence under Section 468 would not be attracted to the present case. When Section 468 IPC is not made out, automatically Section 471 IPC would go out.



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18. However, there is a *prima facie* case made out against Tmt.Malarvizhi and others for the offences punishable under Sections 406, 420 and 120B IPC and therefore, the final report in C.C.104 of 2023 on the file of the Judicial Magistrate II, Sivagangai against Tmt.Malarvizhi and others is liable to be quashed only with regard to the offences punishable under Sections 468 and 471 IPC.

19. As regards the Crl.O.P.(MD)No.5111 of 2021 is concerned, the specific case of Tmt.Malarvizhi and others is that when they were returning from the District Munsif Court, Ilayangudi after attending a hearing in O.S.No.22 of 2017 filed by her against Thiru.Ameensha, he abused her in filthy language, slapped her on her cheeks and also threatened all of them with dire consequences. It is also contended that on 16.09.2016, Thiru.Ameensha had handed over four Demand Drafts and the same were returned by the Bank. Though Mr.N.Anandha Padmanabhan, learned senior counsel relied on the diary extract of District Munsif Court, Ilayangudi, to show that Tmt.Malarvizhi and others



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attended the Court hearing on 28.02.2016, nowhere, it is mentioned that they were all present before the Court on 28.06.2018. The contention of Thiru.Ameensha is that he handed over the Demand Drafts to Tmt.Malarvizhi for a sum of Rs.15,00,000/- and the same were not accepted by the bank on the ground that there was a mistake in the names of the beneficiaries. Further according to Thiru.Ameensha, the Demand Drafts were presented after efflux of time by Tmt.Malarvizhi and others and therefore, the same were cancelled. The application under Right to Information Act filed by Tmt.Malarvizhi before the Assistant General manager / Public Information Officer, Canara Bank confirms the same.

20. Since Thiru.Ameensha was ready to pay Rs.15,00,000/- as promised by him to Tmt.Malarvizhi and others, this Court posted the matter for settlement on 25.03.2024. Tmt.Malarvizhi informed this Court that Thiru.Ameensha did not pay the entire sale consideration and that he is liable to pay Rs.40,00,000/-. According to her, on 14.07.2011, Thiru.Ameensha has signed an undertaking promising to pay a sum of Rs. 25,00,000/- to her husband Karunanithi and M.Balasubramaniam.



According to her, this amount was not paid by Thiru.Ameensha and therefore, he is liable to pay Rs.25,00,000/- plus Rs.15,00,000/- to her. She further contended that since Thiru.Ameensha promised to pay Rs. 25,00,000/-, the Sale Agreement dated 27.09.2012 itself was made for a lesser sale consideration of Rs.62,50,000/-. She has not indicated this anywhere either in her plaint in O.S.No.22 of 2017 or in the written statement filed by her in O.S.No.27 of 2016 on the file of District Munsif, Ilayangudi. When this Court posed her a specific question as to whether she is ready to refund the amounts received by her and her family members, she stated that she is ready to repay only a sum of Rs. 20,00,000/- after deducting Rs.25,00,000/- from Rs.45,00,000/- received by her. This once again shows her intention to deceive.

21. Mr.N.Anandha Padmanabhan, learned senior counsel drew the attention of this Court to the cross examination of Thiru.Ameensha in the suit in O.S.No.27 of 2016 filed by him before the District Munsif, Ilayangudi and contended that during the course of cross examination, Thiru.Ameensha admitted that he did not pay any amount to the other



shareholders namely Sahul Hameed. The fact remains that the Sale Agreement is only for 1/3rd share of Karunanithi and it is not in respect of 2/3rd share which belong to other shareholders. After executing the Sale Agreement and fixing the sale consideration, the legal heirs of Karunanithi (deceased) and others cannot now contend that the total sale consideration was fixed for a lesser amount. This is moreso because, the earlier Sale Agreement between Karunanithi (deceased) and Thiru.Ameensha was cancelled on 06.01.2016, on which date, a registered Power of Attorney was executed in favour of Thiru.Ameensha and Tmt.Malarvizhi and others had also acknowledged the receipt of entire consideration of Rs.62,50,000/-. This once again goes to show the dishonest intention on the part of Tmt.Malarvizhi and others. The specific offence against Thiru.Ameensha is under Section 420 IPC. In the instant case, Thiru.Ameensha, in order to perform his part of the contract, had in fact paid the entire sale consideration to Karunanithi (deceased), Tmt.Malarvizhi and others. He was also willing to pay Rs.15,00,000/- to Tmt.Malarvizhi and others though this amount was fixed only in the panchayat between the parties. Therefore, it cannot be stated that he had



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a dishonest intention right from the inception / beginning. Hence, the offence under Section 420 IPC would not be made against him.

22. As regards the other offences punishable under Sections 341, 294(b), 323, 511 and 506(ii) IPC against Thiru.Ameensha are concerned, the facts and circumstances of the case has to be considered as a whole and it will not take more than a minute to come to a conclusion that Tmt.Malarvizhi and others in order to achieve their mission of deceiving Thiru.Ameensha had foisted a false case against him.

23. Therefore, the final report in C.C.No.11/2020 on the file of the District Munsif cum Judicial Magistrate, Ilayangudi is quashed. As far as the final report in C.C.No.104/2023 on the file of the Judicial Magistrate No.II, Sivagangai is concerned, the offences punishable under Sections 468 and 471 IPC alone are quashed and the trial Court is directed to proceed further against Tmt.Malarvizhi (A1), Indhuja (A2) and Deepak (A3) in respect of the remaining offences.



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24. In the result,

(i) Crl.O.P.(MD)No.5111 of 2021 is allowed.

(ii) Crl.O.P.(MD)No.12495 of 2023 is partly allowed.

(iii) The final report in C.C.No.11/2020 on the file of the District Munsif cum Judicial Magistrate, Ilayangudi is quashed.

(iv) The final report in C.C.No.104/2023 on the file of the Judicial Magistrate No.II, Sivagangai against Tmt.Malarvizhi, Indhuja and Deepak are quashed only with respect to the offences under Sections 468 and 471 IPC.

(v) Tmt.Malarvizhi, Indhuja and Deepak shall face the trial in C.C.No.104/2023 for the offences punishable under Sections 406, 420 and 120B IPC.

(vi) Consequently, the connected Miscellaneous Petitions are closed.

27.03.2024

NCC: Yes/No

Index : Yes/No

Speaking/Non-Speaking order

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To

- 1.The District Munsif cum
Judicial Magistrate Court, Ilayangudi
- 2.The Judicial Magistrate Court No.II,
Sivagangai
- 3.The Inspector of Police,
Ilayangudi Police Station,
Ilayangudi,
Sivagangai District.
- 4.The Inspector of Police,
District Crime Branch,
Sivagangai District
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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R.HEMALATHA, J.

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27.03.2024