

Crl.O.P.(MD)No.5682 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 09.02.2024

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THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.O.P.(MD).No.5682 of 2020
and
Crl.M.P.(MD).No.3121 of 2020

J.James Stanly Joy

... Petitioner/Accused -1

Vs.

1.The Inspector of Police,
Cumbum South Police Station,
Theni District.
(Crime No.56/2015)

... Respondent/Complainant

2. Mariappan

... Respondent/Defacto Complainant

PRAYER: Criminal Original Petition has been filed under Section 482 of Cr.P.C., to call for the records relating to the impugned charge sheet dated 21.10.2019 laid by the 1st respondent filed in C.C. No. 186 of 2019 on the file of Judicial Magistrate, Uthamapalayam, Theni District, and quash the same as illegal.

For Petitioner : Mr.K.Muthu Ganesa Pandian,
for M/S.B.Prasanna Vinoth

For Respondents : Mr.E.Antony Sahaya Prabahar,
Additional Public Prosecutor, for R1
: Mr.A.Mohan for R2



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ORDER

The petitioner is A1 in C.C. No. 186 of 2019 on the file of the learned Judicial Magistrate, Uthamapalayam, Theni District, filed this petition to quash the proceedings initiated against him and other persons for the offence under Sections 406, 420 and 506(i) of IPC, in C.C. No. 186 of 2019, dated 21.10.2019, on the file of learned Judicial Magistrate, Uthamapalayam, Theni District.

2. According to the prosecution, the petitioner is the owner of fleet of buses. The second respondent and the petitioner entered into an sale agreement dated 03.12.2013 whereby, the petitioner agreed to sell his 10 numbers of buses for the total sale consideration of Rs.1,65,00,000/- (One Crore and Sixty Five Lakhs only). The second respondent also agreed to give an advance amount of Rs.50,00,000/- (Fifty lakhs only) on 18.12.2013 and received the physical possession of 10 buses and further agreed to pay Rs.30,00,000/- (Thirty Lakhs only) on or before 31.01.2014 and Rs.85,00,000/- (Eighty Five Lakhs) on or before 03.03.2014. The second respondent came to know that out of 10 buses, four buses were not in the name of the petitioner and hence, there was some dispute between them and consequently, there was a failure to pay the agreed

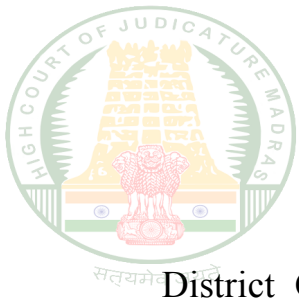


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amount. In the said complaint also there is another set of allegation against the second accused, namely, one Shanmuganathan. The said Shanmuganathan was the partner of the second respondent and he utilised the buses and failed to pay the collected amounts and misappropriated the same. Apart from that he colluded with the petitioner and both took custody of the buses and sold two buses. The same was questioned by the second respondent. At that time, the petitioner and the second accused criminally and the petitioner further is said to have failed to adhere to the terms of contract. Therefore, according to the second respondent, the petitioner committed offence under Section 406, 420 and 506(i) of IPC. In the said circumstances, he filed a complaint before the respondent Police and the first respondent Police registered a case in Crime No.56 of 2015 for the offence under Sections 406, 420 and 506(i) of IPC. After completion of investigation, the first respondent filed a final report and the same was taken on file in C.C.No.186 of 2019. To quash the same, the present petition has been filed.

3.The learned counsel appearing for the petitioner submitted that the agreement is admitted. As per the agreement, remedy is available with the second respondent to file a suit for enforcement of the agreement. The second respondent has already filed a suit in O.S.No.622 of 2014 on the file of the

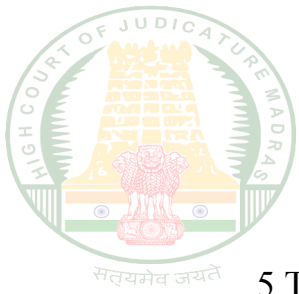


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District Civil Court, Madurai Town, praying to restrain the petitioner from transferring the permit of the bus mentioned in the agreement and subsequently, without continuing the same, he withdraw the same and filed this complaint by giving criminal color to the civil dispute. Further, in the agreement there is a forfeiture clause of advance amount in the case of non-payment of the amount as agreed. Hence, he seeks to quash the proceedings against him.

4.Per contra, the learned counsel appearing for the second respondent/defacto complainant submitted that the petitioner has a clear intention to cheat the second respondent from the inception and he had entered into agreement to transfer four buses, which were not registered in his name and he illegally took custody of the buses with aid of the second accused and he neither repaid the advance amount said to have been received by him nor transferred the permit. Hence, sufficient material was collected by the investigating agency to prosecute the petitioner under Sections 420, 406 and 506(i) of IPC. Hence, he seeks to dismiss this petition.



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5.The learned Additional Public Prosecutor reiterated the submissions of the learned counsel appearing for the second respondent/defacto complainant and seeks dismissal of this quash petition.

6.This Court considered the rival submissions made by the learned counsel appearing on either side and also perused the materials available on record.

7. Both the second respondent and the petitioner admitted the execution of the sale agreement dated 03.12.2013. From the materials collected by the investigating agency, there is a specific allegation that the second respondent's partner, namely, the second accused/ Shanmuganathan was utilising the buses and failed to pay the income of the buses. Therefore, it is unbelievable to accept the allegation of the second respondent that the petitioner entered into agreement to sell four buses without title. Even otherwise, it is the duty of the second respondent to verify the ownership of the buses before entering into agreement on the principle of Caveat emptor. In the agreement, there is a forfeiture clause to forfeit the advance amount in the event of failure to comply with the terms of the agreement on the part of the second respondent. Admittedly, there was no payment as per the agreement. In the said circumstances, this Court finds no



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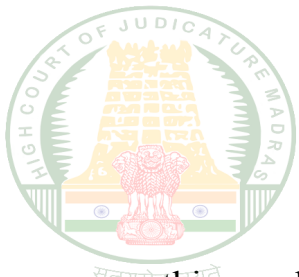
criminality in the said transaction constitute the offences under Sections 406, 420 and 506(i) of IPC. The law laid down by the Hon'ble Supreme Court in the following cases is as follows:

1.In the case of ***Sarabjit Kaur vs. State of Punjab and another*** reported in ***2023 5 SCC 360***

2.In the case of ***Indian Oil Corporation vs. NEPC India Ltd and others*** reported in ***2006 6 SCC 736***

3.In the case of ***Vijay Kumar Ghai and others vs. State of West Bengal and others*** reported in ***2022 7 SCC 124*** have held that mere breach of contract cannot give rise to criminal prosecution and mere failure to keep the promise subsequently, will not constitute cheating. Further, every act of breach of trust, may not result in a penal offence of criminal breach of trust unless there is evidence of cheating and fraudulent misappropriation.

8.In this case, the second respondent had filed the suit in O.S.No.622 of 2014 to restrain the petitioner from transferring the permit of the bus mentioned in their suit scheduled agreement and without prosecuting the same he filed the complaint by giving colour to the civil dispute. Therefore, this Court finds no material to continue the prosecution against the petitioner and inclined to allow



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this quash petition.

9.The case against the second accused, namely, Shanmuganathan the partner of the second respondent under Section 406 of IPC is not subject matter of this quash petition and the allegation against the said accused would have separate yardstick and this finding against the petitioner would no way hinder the continuation of prosecution against the second accused.

10.Accordingly, this criminal original petition is allowed by quashing the impugned charge sheet dated 21.10.2019, in C.C.No.186 of 2019, on the file of the learned Judicial Magistrate, Uthamapalayam, as against the petitioner alone. Consequently, the connected criminal miscellaneous petition is also closed.

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NCC : Yes/No
Index : Yes/No
Internet: Yes/No

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Note: Issue order copy on 20.06.2025



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To

1. The Learned Judicial Magistrate,
Uthamapalayam, Theni District.
2. The Inspector of Police,
Cumbum South Police Station,
Theni District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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K.K.RAMAKRISHNAN, J.

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