BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	18.12.2024
Delivered on	20.12.2024

CORAM

THE HONOURABLE **MR.JUSTICE N.ANAND VENKATESH**

Crl.O.P(MD)Nos.6677 and 22768 of 2023
and
Crl.M.P(MD)Nos.5807 and 17800 of 2023

1.R.Paneerdoss
... Petitioner in Crl.O.P(MD)No.6677 of 2023

2.S.Stephenson
... Petitioner in Crl.O.P(MD)No.22768 of 2023

Vs

1. The Inspector of Police,
City Crime Branch, Trichirapalli City.
Crime No.7/2020.

2. P.R.Sathyamoorthy
... Respondents (for both cases)

COMMON PRAYER: Criminal Original petitions have been filed under Sections 482 of the Code of Criminal Procedure, to call for the records pertaining to CC No.1089/2022 on the file of the Learned Judicial Magistrate No.1, Trichy filed against the petitioners and quash the same.

For Petitioners : Mr.Sreedhar R,
(for both cases)

For R1 : Mr.A.Albert James
Government Advocate (Crl.Side)
(for both cases)

For R2 : Mr.K.Ragtheesh Kumar
For M/s.Isaac Chambers
(for both cases)

COMMON ORDER

These petitions have been filed by A3 and A4 against the proceedings pending in C.C.No.1089 of 2022, on the file of the learned Judicial Magistrate No.1, Trichy.

2.The second respondent gave a complaint to the first respondent to the effect that the second respondent was running a School coming under the control of a Trust and the second respondent was wanting to buy a property in Chennai. Accordingly, the second respondent contacted A1, who is said to be a Pastor in a Church. He informed the second respondent that there is a property available at Velachery measuring an extent of 28 grounds and the second respondent expressed his willingness to purchase the property. At that point of time, A1 informed the second respondent that the said property comes within the control of Church located opposite to the property and therefore permission must be taken from the Church. Thereafter, A1 handed over a letter dated 24.11.2018, wherein, the concerned Trust running the Church expressed their intention to lease the property. A1 took the second respondent to the office of the Trust and the second respondent met A2 to A4. After discussion, it was decided that the second respondent will purchase the property for a total sale consideration of Rs.21 Crores. The second respondent was also informed that already an agreement was entered into with one Shanthi Lal and a sum of Rs.2 Crores was received as advance and only if this amount is repaid, he will hand over the original documents. That apart, the persons, who are working in the Society are in possession and enjoyment of the property and they must be settled a sum of Rs.45 Lakhs in order to get possession of the property.

3.The second respondent, believing the statements made by the accused persons, paid a total sum of Rs.3.85 Crores from 03.11.2018 to 20.12.2018. Out of this amount, Rs.3.35 Crores was paid to A1 through bank transfer and Rs.35 Lakhs was paid by way of cash. Apart from that, a sum of Rs.15 Lakhs was also paid to A3.

4.The second respondent found that there was absolutely no response from the accused persons and no steps were taken to vacate the persons, who were in possession of the property. That apart, it came to light that no amount was paid to Shanthi Lal with whom the earlier agreement was entered into. A2 to A4 promised that they will return back the amount of Rs.15 Lakhs and asked the balance amount to be collected from A1. Based on this complaint, an FIR came to be registered in Crime No.7 of 2020.

5.The respondent police on completion of investigation, filed the police report before the learned Judicial Magistrate No.I, Trichy for the offence under Sections 406, 420 and 120 B of IPC as against A1 to A4. The Court below took cognizance of the police report and issued process. Aggrieved by the same, the present quash petition has been filed by A3 and A4.

6.Heard the learned Counsel appearing on either side.

7.The main ground that was urged by the learned Counsel for the petitioners is that the transaction between the parties is civil in nature and that the second respondent has attempted to give it a criminal color. The learned Counsel further submitted that A1 had filed an affidavit when he moved the bail petition before this Court and he had accepted the fact that he received a total sum of Rs.3.65 Crores and he also promised to repay back the amount. The learned Counsel further submitted that it is the admitted case of the second respondent that only a sum of Rs.15 Lakhs was paid to A3 and A3 had repaid back this amount. It was further submitted that the offence of cheating has not been made out and the offence of cheating and criminal breach of trust cannot co-exist. To substantiate this submission, the learned Counsel relied upon the judgment of the Apex Court in ***Delhi Race Club (1940) Ltd and others Vs. State of Uttar Pradesh and another*** reported in ***2024 SCC online SC 2248***. The learned Counsel also relied upon the judgment of the Apex Court in ***Ram Sharan Chaturvedi Vs. State of Madhya Pradesh*** reported in ***(2022) 16 SCC 166*** and ***A.M.Mohan Vs. State represented by SHO and another*** reported in ***2024 SCC Online SC 339***.

8.The learned Government Advocate (Crl.Side) and the learned Counsel for the second respondent submitted that the accused persons had conspired together and received a huge amount from the second respondent with the intention of cheating him and therefore, there are *prima facie* materials to proceed further with the case against the accused persons. It was further submitted that the involvement of A3 and A4 has been spoken by the defacto complainant and the offence of criminal conspiracy will be established in the course of trial. It was submitted that there are no merits in this case and hence they sought for dismissal of these quash petitions.

9.This Court has carefully considered the submissions made on either side and the materials available on record.

10.In the instant case, the second respondent was proposing to purchase a property in Chennai. For that purpose, he got in touch with A1. A1 identified the property and this property comes within the control of a Trust. This Trust also runs a Church, where A3 is the Secretary and A4 is the Treasurer. Insofar as the payment of money is concerned, a sum of Rs. 15 Lakhs was paid to A3 and this amount has also been repaid back. A1 by way of filing an affidavit before this Court admitted the fact that he had received the balance amount from the defacto complainant and promised to repay back the amount. However, he repaid back only a part of the amount and the balance amount was not paid. The specific allegation made in the complaint is that on 24.11.2018, the Trust expressed their willingness to give the property on a long lease. Surprisingly in this case, the majority of the amount was only paid to A1 and A1 in the affidavit that was filed before this Court in the bail petition has specifically stated that he along with the second respondent had started a partnership firm called SSS Promoters and he negotiated with the Church for the purpose of purchasing the property. The deal did not go through and therefore, the complaint came to be given.

11.In order to constitute the offence of cheating, there must be dishonest intention right from the inception. In the case in hand, what was paid to A3 is a sum of Rs.15 Lakhs, which was also repaid back. Nothing was paid to A4. The entire balance amount was only paid to A1, who claims that he was running a business along with the defacto complainant.

12.On the over all materials placed before this Court, this Court finds that it is a pure and simple property transaction between the parties. According to the second respondent, money was received with a promise to sell the property and subsequently, it was not sold. If that is the case, the transaction is civil in nature and it has been given a criminal color.

13.There is no material to substantiate the fact that the petitioners had intentionally induced the second respondent and cheated him and made him deliver a property. The property in the present case is the money that was paid by the second respondent and the money was entirely paid to A1 except for a sum of Rs.15 Lakhs, which was paid to A3.

14.The petitioners are attempted to be roped in in this case with the aid of Section 120 B of IPC. The principal ingredient to constitute an offence of criminal conspiracy is an agreement to commit an offence. Such agreement can be proved through direct or circumstantial evidence. Hence some material must be available before the Court to show that the accused persons through their acts or conduct conspired with each other to commit the offence. In the case in hand, the second respondent was having independent dealing with A1 and these petitioners came to the scene subsequently. Therefore, there is no material to substantiate the charge of criminal conspiracy. In the absence of the same, these petitioners cannot be roped in for the offence under Sections 420 and 406 IPC.

15.There is yet another ground which has to be considered by this Court. The offence under Sections 406 and 420 IPC cannot co-exist.

Useful reference can be made to the judgment of the Apex Court in the case of ***Delhi Race Club (1940) Ltd and others Vs. State of Uttar Pradesh and another*** referred supra. The relevant portions are extracted hereunder:

> *"26. Further, in both the aforesaid sections, mens rea i.e. intention to defraud or the dishonest intention must be present, and in the case of cheating it must be there from the very beginning or inception.*
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> *27. In our view, the plain reading of the complaint fails to spell out any of the aforesaid ingredients noted above. We may only say, with a view to clear a serious misconception of law in the mind of the police as well as the courts below, that if it is a case of the complainant that offence of criminal breach of trust as defined underSection 405of IPC, punishable underSection 406of IPC, is committed by the accused, then in the same breath it cannot be said that the accused has also committed the offence of cheating as defined and explained inSection 415of the IPC, punishable underSection 420of the IPC.*
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> *28. Every act of breach of trust may not result in a penal offence of criminal breach of trust unless there is evidence of manipulating act of fraudulent misappropriation. An act of breach of trust involves a civil wrong in respect of which the person may seek his remedy for damages in civil courts but, any breach of trust with a mens rea, gives rise to a criminal prosecution as well. It has been held inHari Prasad Chamaria v. Bishun Kumar Surekha & Ors., reported in (1973) 2 SCC 823 as under:*
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> *"4. We have heard Mr. Maheshwari on behalf of the appellant and are of the opinion that no case has been made out against the respondents underSection 420Penal Code, 1860. For the purpose of the present appeal, we would assume that the various allegations of fact which have been made in the complaint by the appellant are correct. Even after making that allowance, we find that the complaint does not disclose the commission of any offence on the part of the respondents underSection 420Penal Code, 1860. There is nothing in the complaint to show that the respondents had dishonest or fraudulent intention at the time the appellant parted with Rs. 35.000/- There is also nothing to indicate that the respondents induced the appellant to pay them Rs. 35,000/- by deceiving him. It is further not the case of the appellant that a representation was made, the respondents knew the same to be false. The fact that the respondents subsequently did not abide by their*

commitment that they would show the appellant to be the proprietor of Drang Transport Corporation and would also render accounts to him in the month of December might create civil liability on the respondents for the offence of cheating.”

29. To put it in other words, the case of cheating and dishonest intention starts with the very inception of the transaction. But in the case of criminal breach of trust, a person who comes into possession of the movable property and receives it legally, but illegally retains it or converts it to his own use against the terms of the contract, then the question is, in a case like this, whether the retention is with dishonest intention or not, whether the retention involves criminal breach of trust or only a civil liability would depend upon the facts of each case.

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."

16.In the light of the above discussion, the continuation of the criminal proceedings as against the petitioners will result in abuse of process of law which requires the interference of this Court in exercise of its jurisdiction under Section 482 Cr.P.C.

17.In the result, the proceedings in C.C.No.1089 of 2022 on the file of the learned Judicial Magistrate No.I, Trichy, is hereby quashed insofar as the petitioners are concerned. Accordingly, these criminal original petitions are allowed. Consequently, the connected miscellaneous petitions are closed.

20.12.2024

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

To
1.The Judicial Magistrate No.1, Trichy.

2. The Inspector of Police,
City Crime Branch, Trichirapalli City.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

N.ANAND VENKATESH, J.

LR

Pre-delivery order made in

Crl.O.P(MD)Nos.6677 and 22768 of 2023

20.12.2024