



Crl.R.C(MD)No.453 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 20.12.2023

Pronounced on : 22.01.2024

CORAM :

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.R.C(MD)No.453 of 2023

and

Crl.M.P(MD)Nos.6695, 6697 & 8605 of 2023

1.Sudha

2.Poongavanam

.. Petitioners / Petitioners /
Accused Nos.2 &3

Vs.

State represented by,
The Inspector of Police,
District Crime Branch Police Station,
Madurai.
(Crime No.12/2011)

.. Respondent/Respondent/
Complainant

PRAYER: Criminal Revision filed under Section 397 r/w 401 of the Criminal Procedure Code, to call for the records to the impugned order dated 04.03.2023 passed in Crl.M.P.No.3471 of 2022 in C.C.No.909 of 2019 on the file of the learned Judicial Magistrate No.I, Madurai and set aside the same as illegal.

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For Petitioners : Mr.T.Veerakumar

For Respondents : Mr.R.Sivakumar
Government Advocate (Criminal side)
For R1

Mr.G.Kalyana Sundaram
For Proposed respondent

ORDER

The Accused Nos.2 and 3 in C.C.No.909 of 2019 filed this Criminal Revision case challenging the dismissal of discharge petition dated 04.03.20223, filed by them in Crl.M.P.No.3471 of 2022 in C.C.No.909 of 2019 on the file of the learned Judicial Magistrate No.I, Madurai.

2. The petitioners arrayed as accused Nos.2 and 3 in Crime No.12 of 2011 on the file of the District Crime Branch, Madurai, registered for the offence punishable under Sections 406, 420 and 506(i) IPC. According to the petitioners, earlier A1 was the President of the Sarvodaya Trust. The said Trust was registered on 27.02.1996 at the Sub-Registrar Office, Usilampatti. The managing president of the said trust is A1-Gurunathan. A2 is the wife of the said Gurunathan and A3 is the sister of the said



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Gurunathan. They filed the discharge petition before the Court below and made the following submissions:

2.1.1.The respondent/defacto complainant is running “Re-Life-Trust” a society aimed to provide relief to blind deaf and Dumb, mentally retarded persons, differently abled persons and poor widow. All the above persons became the member of the said trust.

2.1.2. The said trust was registered on 27.02.1996 and running the same through the active participation of the first petitioner, second petitioner, Mrs.Ambika, Rudharapoosari, and Mrs.P.V.Lakshmi and Gurunathan. They are arrayed as a accused in Crime No.12 of 2011 for the alleged offence under Section 120(b), 406, 420, 506(i) of IPC with the following allegations:

2.1.3.They are collected deposit from 152 members of the defacto complainant's members trust namely the blind deaf and Dumb, mentally retarded persons, differently abled persons and poor widow. Upon the false promise, to obtain loan for minimum interest for the development to the tune of Rs.8,86,050/- and failed to whether repay or arrange loan. Therefore, the petitioner and the other accused cheated the poor blind deaf and Dumb,



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mentally retarded persons, differently abled persons and poor widow. The investigating agency conducted the investigation and filed a final report before the learned Judicial Magistrate No.I, Madurai, and the same was taken on file in C.C.No.909 of 2019. Thereafter, they filed the discharge petition on the ground that earlier a case was registered Usilampatti Police station, the case was registered for the same occurrence and the same was ended into acquittal in C.C.No.130 of 2012. Therefore, the present C.C.No. 909 of 2019 is hit by the Article 20 of the Constitution of India and Section 300 of the Cr.P.C., The Investigating Agency in earlier case, itself collected all the materials and produced before the learned Judicial Magistrate No.I, Usilampatti and the same was taken on file in C.C.No.130 of 2012 and the learned Judicial Magistrate No-I, Usilampatti, after analysing the evidence, acquitted the accused, namely, the petitioners and other accused.

3. Per contra, the learned Additional Public Prosecutor as well as the defacto complainant submitted that in the earlier case, the case ended in acquittal after recording the compromise, that too, to the minimum number of depositors. Subsequently, complaint was given by the different depositors



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and execution of the scheme was different. In the earlier case, all witnesses turned hostile on account of their settlement. So, that said acquittal cannot be treated as the double *jeopardy* and not hit by the Article 20 of Constitution of India and Section 300 of Cr.P.C.

4. This Court have considered the rival submissions made by the learned counsel appearing on either side and perused the materials available on record and the impugned order.

5. As per the final report, all the petitioners and other accused conspired together to cheat the poor differently abled persons, widow, blind and deaf and dumb persons etc., collected huge amount with false promise to arrange loan for minimum interest for the self employments. Subsequently, all the accused neither repaid the amount nor arranged the loan. Therefore, the respondent police registered a case in Crime No.12 of 2011 and completed the investigation and filed the final report and the petitioners are arrayed as accused Nos.2 and 3. They are the wife and sister of the prime accused A1. The investigating agency collected number of

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relevant materials to prove the petitioners' involvement and active participation in the above crime. At this stage, the petitioners filed the discharge petition raising the ground of “*double Jeopardy.*”

6. Before going into the issues of double jeopardy, this Court cull out the principle laid down by the Hon'ble Suprme Court relating to the issue of “double jeopardy”, jurisdiction of the Court to consider the defence document and the jurisdiction of the Court to exercise the discharge petition.

7. To prove their case of *double jeopardy*, they produced the judgment of the earlier case in C.C.No.130 of 2012, on the file of the learned Judicial Magistrate No-I, Usilampatti. This Court is unable to make reliance on the same for the reason that as per the larger Bench decision of the Hon'ble Suprme Court in ***State of Orissa v. Debendra Nath Padhi, (2005) 1 SCC 568 at page 579.*** At the stage of the discharge petition, the Court has no jurisdction to consider the case of the accused to discharge them by relying the documents other then Section 207 of Cr.P.C. The relevant portion of the

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judgment is as follows:

23. As a result of the aforesaid discussion, in our view, clearly the law is that at the time of framing charge or taking cognizance the accused has no right to produce any material. Satish Mehra case [(1996) 9 SCC 766 : 1996 SCC (Cri) 1104] holding that the trial court has powers to consider even materials which the accused may produce at the stage of Section 227 of the Code has not been correctly decided.

8. These documents do not form part of Section 207 Cr.P.C., copies of the present C.C.No.909 of 2019. Therefore, these defence documents are not considered at this stage. Whether the same offence or not is a question of fact. The same has to be adjudicated during the course of trial. After marking the said document, with relevancy and admissibility. Therefore, this Court is not inclined to accept the argument of the learned counsel for the petitioner on the basis of the said judgment of the learned Judicial Magistrate No.1, in C.C.No.130 of 2012 and discharge the petitioners.



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9. But the learned counsel for the petitioner repeatedly urged this Court to consider the plea of the double jeopardy on the basis of the said judgment. By citing the reliance of the judgment of the said larger Bench decision of the Ho'ble Supreme Court in ***State of Orissa v. Debendra Nath Padhi, (2005) 1 SCC 568 at page 578***

21. It is evident from the above that this Court was considering the rare and exceptional cases where the High Court may consider unimpeachable evidence while exercising jurisdiction for quashing under Section 482 of the Code. In the present case, however, the question involved is not about the exercise of jurisdiction under Section 482 of the Code where along with the petition the accused may file unimpeachable evidence of sterling quality and on that basis seek quashing, but is about the right claimed by the accused to produce material at the stage of framing of charge.

10. Even though not agreed with the said submission, in the interest of both the parties, this Court has perused the judgement of the Court earlier C.C.No.130 of 2012. From the said judgment it is clear that the defacto

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complainant and 156 members of the said trust were not added as witnesses in the said case. Only few persons made a complaint before the local police station. The same was compromised between the petitioners and the complainant in the said case. In the said case, this Court finds no material to consider the case of the petitioner that both are similar in nature and for the same cause of action. The petitioner cheated the present defacto complainant and the poor members and they have independent cause of action and the same was legally redressed by the present investigating agency. Even in the said case, acquittal is not on merits and only on the hostility of the witnesses on account of the settlement. Therefore, their contention that there is a violation of Article 20 of the Constitution of India and Section 300 of Cr.P.C., has no legs to stand. Both the provisions are differently coined the words of “distinct offence”. In this case, as already held that these complainants have different cause of action and they were cheated under the different scheme and therefore, the above provision is not applicable. In this aspect, it is relevant to extract the following portion of the Supreme Court Judgment reported in ***Harjinder Singh v. State of Punjab, (1985) 1 SCC 422 at page 426***

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8. .. The second prosecution must be for the 'same offence'. If the offences are distinct, there is no question of the rule as to double jeopardy being applicable.

In Monica Bedi v. State of A.P., (2011) 1 SCC 284 : at page 295

29. It is thus clear that the same facts may give rise to different prosecutions and punishment and in such an event the protection afforded by Article 20(2) is not available. It is settled law that a person can be prosecuted and punished more than once even on substantially same facts provided the ingredients of both the offences are totally different and they did not form the same offence.

In Onkar Nath Mishra v. State (NCT of Delhi), (2008) 2 SCC 561 at page 565

11. It is trite that at the stage of framing of charge the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the court is not expected to go deep into the probative



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value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence.

State of Maharashtra v. Som Nath Thapa, (1996) 4 SCC 659 at page 671

32. The aforesaid shows that if on the basis of materials on record, a court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently, if the court were to think that the accused might have committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused has committed the offence. It is apparent that at the stage of framing of a charge, probative value of the materials on record cannot be gone into;



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*the materials brought on record by the prosecution
has to be accepted as true at that stage.*

11. Considering the above principles of the Hon'ble Supreme Court, in the earlier occasion, these petitioners did not make any payment to the aggrieved person of this present case namely, 156 members of the trust ie., differently abled poor persons ets., and hence, the present cause of action is different and accusation is different and hence there is no question of double jeopardy.

12. In the special circumstances of this case, the judgment relied by the learned counsel for the petitioner reported in **2023(1)CTC 230** and **2021 (1)MWN Crl. 228** are not applicable to the present case.

13. Therefore, this Court does not find any merit in the contention of the learned counsel for the petitioners. Accordingly, this Criminal Revision Petition is dismissed. Considering the pendency of the crime number from 2011, this Court directs the learned Judicial Magistrate No-I, Madurai to



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dispose the case within a period of six months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed.

22.01.2024

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

To

1. The Judicial Magistrate No.I,
Madurai.
2. The Inspector of Police,
District Crime Branch Police Station,
Madurai.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
4. The Section Officer, Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

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K.K.RAMAKRISHNAN, J.

PJL

**Pre-delivery order made in
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