



CRL OP(MD)No.13633 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 19.03.2024

CORAM

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

CRL OP(MD)No.13633 of 2021
and
Crl.M.P(MD)No.7110 of 2021

1.Dhanalakshmi

2.Ranjini

3.Keerthika

4.Ramprasad

5.Rajagopalraja

... Petitioners

Vs

1.The State

Rep. by the Inspector of Police,
Rajapalayam North Police Station,
Virudhunagar District.

2.Shakthi

... Respondents

Prayer: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to call for the records in C.C.No.67 of 2021 on the file of the Judicial Magistrate, Rajapalayam, Virudhunagar District and quash the same as against the petitioners.

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For Petitioners : Mr.R.Niresh Kumar
For R1 : Mr.M.Sakthi Kumar
Government Advocate(crl.side)
For R2 : Mr.A.Syed Abdul Kather

ORDER

Seeking to quash the private complaint filed by the respondent in C.C.No.67 of 2021, on the file of the learned Judicial Magistrate, Rajapalayam, under Section 200 Cr.P.C. against the present petitioner for the alleged offences punishable under Sections 294(b), 341, 323, 506(i) and 420 of IPC, the present petition is filed by the accused 1 to 5.

2.The case of the prosecution, in a nutshell, is as follows:-

The first accused Dhanalakshmi is the sister of the complainant/second respondent. The second respondent is doing real estate business. He was taking care of his sister Dhanalakshmi and her children. He used to spend for their educational expenses and medical expenses. Thus, he had incurred an expenditure of Rs13,45,000/-. The first accused Dhanalakshmi got a sum of Rs.2,05,000/- towards her husband's share and gave the said amount of Rs.2,05,000/- to the



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complainant. She also promised to repay the balance amount of Rs. 11,40,000/- by giving an undertaking in a stamp paper on 02.08.2016.

However, she did not repay the same and when the complainant requested her to repay the amount on 05.11.2016 at about 06.00 a.m. the first accused along with other accused abused him in filthy language and also threatened him with dire consequences. He therefore, lodged a complaint with the Special Sub Inspector of Police, Rajapalaym North Police Station, on 06.10.2017. The said complaint was registered as FIR in crime No.664 of 2017 against the accused for the offences punishable under Sections 341, 294(b), 417, 419, 420, 506(ii) and 109 of IPC. The Inspector of Police after conducting investigation filed a referred charge sheet treating the complaint as 'mistake of fact' before the Judicial Magistrate's Court, Rajapalayam, after issuing notice to the complainant. According to the Investigation Officer, since the first accused Dhanalakshmi did not give her daughter Ranjani in marriage to the complainant, her own brother, he had lodged a false complaint against the accused.

(ii) Subsequently, the complainant filed a private complaint under



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Section 200 Cr.P.C. before the learned Judicial Magistrate, Rajapalayam against the present petitioners/accused for the above mentioned offences.

The learned Judicial Magistrate examined the witnesses on the side of the complainant and took cognizance of the offences on 23.03.2021. He also issued summons to the present petitioners/accused. On receipt of the summons, the petitioners had filed the present petition seeking to quash the private complaint.

3. Mr.R.Niresh Kumar, learned counsel for the petitioners would contend that even as per the version of the complainant, he willingly spent various amounts for the welfare of her own sister and her children and the present petitioners did not promise to repay the amount spent by him. However, the complainant got a signature of the first accused in blank stamp paper and subsequently filled it up stating that a sum of Rs. 11,40,000/- would be repaid by the first petitioner/first accused within a period of three months. According to him, the first accused Dhanalakshmi had already paid a sum of Rs.2,05,000/- to his own brother, the complainant. It is also his submission that the petitioners never abused the complainant in filthy language and also threatened him



with dire consequences. He relied on the decision in *Vijay Kumar Ghais & Ors Vs The State of West Bengal & Ors* reported in *2022 LiveLaw (SC) 305* and contended that when the complaint does not disclose dishonest or fraudulent intention on the part of the petitioners, the private complaint filed by the respondent cannot be sustained.

4. Per contra, Mr.A.Syed Abdul Kather, learned counsel appearing for the second respondent would contend that though the first accused had executed a deed in a stamp paper promising to pay Rs.11,40,000/- in three months, she did not keep up her promise and on the contrary, abused him in filthy language and also threatened him with dire consequences. He therefore, would contend that there is no valid ground to quash the private complaint filed by the complainant as the same requires a trial.

5. It is relevant to extract Sections 415 and 420 IPC:-

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".

420. Cheating and dishonestly inducing delivery of property.-*Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.*

6. To establish the offence of cheating, the following ingredients are necessary:-

- (i) the representation made by the person was false.
- (ii) The accused had prior knowledge that the representation he made was false.



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(iii) The accused made false representation with dishonest intention in order to deceive the person to whom it was made.

(iv) The act where the accused induced the person to deliver the property or to perform or to abstain from any act which the person would have not done or had otherwise committed.

7. Now the question to be examined in the instant case is as to whether on the facts disclosed in the private complaint, any criminal offence under Section 420 IPC is made out. In the instant case, the complainant seems to have spent various amounts for the welfare of her own sister, the first accused, and her family members and it was his voluntary action. Even as per his complaint, he had never demanded his own sister to repay the same at a later point of time or after the sale of the family properties of her husband. However, the family properties of the first accused's husband was sold in the year 2016 and she received a sum of Rs.2,05,000/- towards her share. The said amount was handed over by the first accused to the complainant on 18.12.2011 even without any agreement in this regard between the parties.



8. Therefore, it shows the affection which the first accused had with her brother. The police had done the investigation on their part based on the complaint given by the present complainant and had come to the conclusion that since one of the daughters of the first accused was not given in marriage to the defacto complainant, he had lodged a false complaint against the petitioners herein. In any event the first accused did not have any intention of cheating, right from the beginning. In the decision of the Hon'ble Supreme Court in ***Uma Shankar Goplika Vs State of Bihar & Anr*** reported in (2005) 10 SCC 336, it has been held thus:-

6. Now the question to be examined by us is as to whether on the facts disclosed in the petition of the complaint any criminal offence whatsoever is made out much less offences under Section 420/120-B IPC. The only allegation in the complaint petitioner against the accused person is that they assured the complainant that when they receive the insurance claim amounting to Rs.4,20,000/-, they would pay a sum of Rs.2,60,000/- to the complainant out of that but the same has never been paid. It was pointed out that on behalf of the complainant that the accused fraudulently persuaded the complainant to agree so that the



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accused person may take steps for moving the consumer forum in relation to the claim of Rs.4,20,000/-. It is well settled that every breach of contract would not give rise to an offence of cheating and only in those cases of breach of contract would amount to cheating where there was any deception played at the very inception. If the intention to cheat has developed later on, the same cannot amount to cheating. In the present case, it has nowhere been stated that at the very inception that there was intention on behalf of the accused person to cheat which is a condition precedent for an offence under 420 IPC.

9. It is also pertinent to point out that the mere breach of contract would not give rise to an offence punishable for cheating. The present complainant did not file a civil suit for recovery of money from the first accused based on the alleged agreement executed by her on 02.08.2016. The complainant had not also stated that he was put in under imminent danger on the account of the threat made by the petitioners. It is settled law that empty threats without any intention of causing any bodily injury would not attract the offence punishable under Section 506(ii) IPC. Therefore, the accused cannot be charged for the offence punishable under Sections 341, 417, 419 420, 506(ii) and 109 IPC.



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10. When the complainant had helped his own sister's family for educating her daughters and also looked after her, there was no necessity for the sister and her family members to abuse the complainant in filthy language and the offence under Section 294(b) IPC is added in the present complaint only to give a criminal colour.

11. In the circumstances, the present complaint cannot stand for a moment's scrutiny. Accordingly, the proceedings in C.C.No.67 of 2021 pending on the file of the learned Judicial Magistrate, Rajapalayam, Virudhunagar District, is quashed and the Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

19.03.2024

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

1.The Inspector of Police,
Eral Police Station,
Thoothukudi District.

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



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R.HEMALATHA,J.

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