



Crl.O.P.(MD) No.14157 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.03.2024

CORAM

**THE HON'BLE MRS.JUSTICE R.HEMALATHA**

**Crl.O.P.(MD) No.14157 of 2020**

and

**Crl.M.P.(MD) Nos.6548 & 6549 of 2020**

R.Saravanan

... Petitioner

Vs.

1.State represented by  
Inspector of Police,  
District Crime Branch,  
Kanyakumari District at Nagercoil.

2.Inbam Rajan

... Respondents

Prayer: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, 1973, to call for the records in C.C.No.461 of 2020 on the file of the Judicial Magistrate Court No.I, Nagercoil, Kanyakumari District and quash the same.

For Petitioner : Mr.A.Prasanna Rajadurai

For R1 : Mr.K.Sanjai Gandhi  
Government Advocate (Crl. Side)

For R2 : Mr.M.Ajmal Khan, Senior Counsel



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## **ORDER**

Seeking to quash the final report in C.C.No.461 of 2020 on the file of the Judicial Magistrate Court No.I, Nagercoil, Kanyakumari District, the present Criminal Original Petition is filed.

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

(i) The second respondent/*de facto* complainant is running a pharmacy in the name and style of M/s.Arasan Medical Agencies. The present petitioner/accused placed orders with the *de facto* complainant for supply of medicines on credit basis, on the promise that he would pay the amount to the *de facto* complainant within 15 days. The *de facto* complainant accordingly supplied medicines to the accused on credit basis. But, the accused failed to re-pay the amount as promised by him. According to the *de facto* complainant, as on the date of his complaint (16.11.2019), the accused was liable to pay a sum of Rs.15,67,338/- to him and that with a criminal intention to cheat him, the accused did not re-pay the same.

(ii) Based on the complaint given by the *de facto* complainant, the Special Sub-Inspector of Police, District Crime Branch Police Station, Kanyakumari



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District at Nagercoil registered F.I.R. in Crime 31/2019 against the accused for an offence punishable under Section 420 of IPC. The Sub-Inspector of Police after concluding investigation laid a final report in C.C.No. 461 of 2020 on the file of the Judicial Magistrate Court No.I, Nagercoil, Kanyakumari District against the accused for the offences punishable under Sections 406 and 420 of IPC.

3. Mr.A.Prasanna Rajadurai, learned counsel for the petitioner/accused would contend that the petitioner/accused had business transaction with the *de facto* complainant and he is liable to pay only a sum of Rs.8,00,000/-. It is his further submission that there are no ingredients to attract the offences punishable under Sections 406 & 420 of IPC and therefore, the final report in C.C.No.461 of 2020 is liable to be quashed.

4. Per contra, Mr.K.Sanjai Gandhi, learned Government Advocate (Crl. Side) appearing for the first respondent police would contend that the police after conducting proper investigation filed the final report and therefore, there is no good ground to quash the same. He therefore prayed for dismissal of the present Criminal Original Petition.



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5. Mr.Ajmal Khan, the learned senior counsel for the *de facto* complainant would contend that the present petitioner with an intention to cheat the *de facto* complainant did not re-pay the amount due to him.

6. A perusal of the F.I.R. and the final report shows that the *de facto* complainant was supplying medicines to the accused on credit basis as detailed below:

| Sl. No. | Date       | Invoice No.   | Amount       |
|---------|------------|---------------|--------------|
| 1       | 24.05.2019 | 1900073005765 | Rs.83162.00  |
| 2       | 24.05.2019 | 1900073005766 | Rs.61713.00  |
| 3       | 24.05.2019 | 1900073005768 | Rs.26463.00  |
| 4       | 25.05.2019 | 1900073005880 | Rs.162797.00 |
| 5       | 25.05.2019 | 1900073005884 | Rs.47951.00  |
| 6       | 25.05.2019 | 1900073005882 | Rs.32862.00  |
| 7       | 28.05.2019 | 1900073006151 | Rs.64826.00  |
| 8       | 28.05.2019 | 1900073006198 | Rs.106068.00 |
| 9       | 28.05.2019 | 1900073006201 | Rs.19377.00  |
| 10      | 28.05.2019 | 1900073006210 | Rs.54876.00  |
| 11      | 29.05.2019 | 1900073006271 | Rs.86376.00  |
| 12      | 29.05.2019 | 1900073006336 | Rs.181827.00 |
| 13      | 30.05.2019 | 1900073006367 | Rs.12091.00  |
| 15      | 30.05.2019 | 1900073006382 | Rs.179219.00 |
| 16      | 30.05.2019 | 1900073006411 | Rs.182502.00 |
| 17      | 31.05.2019 | 1900073006520 | Rs.56805.00  |
| 18      | 31.05.2019 | 1900073006521 | Rs.121118.00 |
| 19      | 31.05.2019 | 1900073006549 | Rs.21785.00  |



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|              |            |               |                       |
|--------------|------------|---------------|-----------------------|
| 20           | 01.06.2019 | 1900073006655 | Rs.54358.00           |
| 21           | 01.06.2019 | 1900073006679 | Rs.45625.00           |
| 22           | 07.06.2019 | 1900073007359 | Rs.275504.00          |
| 23           | 07.06.2019 | 1900073007362 | Rs.164674.00          |
| <b>Total</b> |            |               | <b>Rs.20,41,979/-</b> |

7. According to the *de facto* complainant, out of the above sum of Rs.20,41,979/-, the accused paid Rs.4,74,641/- on various dates and as on 16.11.2019, a sum of Rs.15,67,338/- is due and liable to be paid by the accused.

8. It is not known as to why the *de facto* complainant did not file a suit for recovery of money from the accused. On the other hand, he had lodged a complaint with the Special Sub-Inspector of Police, District Crime Branch, Kanyakumari District at Nagercoil for the offences punishable under Sections 420 and 406 of IPC.

9. Section 406 of IPC deals with 'punishment for criminal breach of trust'. 'Criminal breach of trust' has been defined in Section Section 405 of IPC. It is relevant to extract hereunder Section 405 of IPC:



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**405. Criminal breach of trust** — Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".

**Explanation 1** —A person, being an employer of an establishment whether exempted under section 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), or not who deducts the employee's contribution from the wages payable to the employee for credit to a Provident Fund or Family Pension Fund established by any law for the time being in force, shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said law, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.



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**Explanation 2** — A person, being an employer, who deducts the employees' contribution from the wages payable to the employee for credit to the Employees' State Insurance Fund held and administered by the Employees' State Insurance Corporation established under the Employees' State Insurance Act, 1948 (34 of 1948), shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said Act, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.

The essential ingredients of the offense of criminal breach of trust are,

- (1) The accused must be entrusted with the property or with dominion over it,
- (2) The person so entrusted must use that property, or;
- (3) The accused must dishonestly use or dispose of that property or wilfully suffer any other person to do so in violation,
  - (a) of any direction of law prescribing the mode in which such trust is to be discharged, or;
  - (b) of any legal contract made touching the discharge of such trust.



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WEB COPY 10. “Entrustment” of property under Section 405 of the Indian Penal Code, 1860 is pivotal to constitute an offence under this. The words used are, ‘in any manner entrusted with property’. So, it extends to entrustments of all kinds whether to clerks, servants, business partners or other persons, provided they are holding a position of ‘trust’. A person who dishonestly misappropriates property entrusted to them contrary to the terms of an obligation imposed is liable for a criminal breach of trust and is punishable under Section 406 of the Penal Code.

11. In the instant case, the prosecution states that the accused without repaying the amount due to the *de facto* complainant utilized the same for his medical expenses and therefore, Section 406 of IPC is attracted. This cannot be accepted and the *de facto* complainant should have approached civil court for recovery of money. Hence, Section 406 of IPC is not made out in the instant case.

12. Moreover, the Hon'ble Apex Court in ***Sudhir Shantilal Mehta Vs. CBI*** reported in **(2009) 8 SCC 1** held that the act of criminal breach of trust would, *inter alia* mean using or disposing of the property by a person



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who is entrusted with or has otherwise dominion thereover. Such an act must not only be done dishonestly but also in violation of any direction of law or any contract expressed or implied relating to carrying out the trust.

13. Section 415 of IPC which defines 'cheating' 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.

The essential ingredients of the offense of cheating are,

- (1) deception of any person;
- (2) (a) fraudulently or dishonestly inducing that person



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- (i) to deliver any property to any person; or
- (ii) to consent that any person shall retain any property; or

(b) intentionally inducing that person 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.

14. Section 420 of IPC reads thus:

**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.

15. The Hon'ble Apex Court in ***Prof.R.K.Vijayasarathy and Another Vs. Sudha Seetharam and Another***, reported in **(2019) 16 SCC 739** has held that the following ingredients are necessary to constitute the offence under Section 420 of IPC.



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- i. a person must commit the offence of cheating under Section 415; and
- ii. the person cheated must be dishonestly induced to;
  - a) deliver property to any person; or
  - b) make, alter or destroy valuable security or anything signed or sealed and capable of being converted into valuable security.

Thus, cheating is an essential ingredient for an act to constitute an offence under Section 420 IPC. 'Cheating' has been defined in Section 415 of IPC. Under the aforesaid section, it is inbuilt that there has to be a dishonest intention from the very beginning which is *sine qua non* to hold the accused guilty for commission of the said offence. A fraudulent or dishonest inducement is an essential ingredient of the offence. A person who dishonestly induces another person to deliver any property is liable for the offence of cheating. It is to be borne in mind that mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right from the beginning of the transaction.



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16. At the cost of repetition, it is pertinent to point out that in order to attract the ingredients of Section 420 IPC it is imperative on the part of the *de facto* complainant to *prima facie* establish that there was an intention on the part of the petitioner and/or others to cheat and/or to defraud the complainant right from the inception. Furthermore, it has to be *prima facie* established that due to such alleged act of cheating the *de facto* complainant had suffered a wrongful loss and the same had resulted in wrongful gain for the accused. In the absence of these elements, no proceeding is permissible in the eyes of law with regard to the commission of the offence punishable u/s 420 IPC.

17. In the instant case, there are no ingredients to attract the provisions of Section 406 and 420 of IPC as the *de facto* complainant had supplied medicines on credit basis during the course of business transaction. There is nothing on record to show that the petitioner had any intention of withholding the payment right from the beginning, as admittedly, he has been making payments on various dates. Therefore, the offences punishable under Sections 406 and 420 of IPC are not attracted to the present case. Moreover, the matter appears to be civil in nature.



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18. Accordingly, this Criminal Original Petition is allowed.

Consequently, connected Miscellaneous Petitions are closed.

11.03.2024

Index: Yes/ No

Neutral Citation: Yes / No

Speaking Order / Non-Speaking Order

JEN

To:

- 1.The Judicial Magistrate No.I,  
Nagercoil, Kanyakumari District.
- 2.The Inspector of Police,  
District Crime Branch,  
Nagercoil,  
Kanyakumari District.
- 3.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.



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**R.HEMALATHA, J.**

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