



1 *Crl.O.P.(MD) No.13987 of 2020*

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 12.02.2024

CORAM:

THE HONOURABLE MR. JUSTICE K.K.RAMAKRISHNAN

Crl.O.P.(MD) No.13987 of 2020

and

Crl.M.P.(MD) Nos.6428 and 6429 of 2020

1. C.Ayyappan

2. Jayanthi

... Petitioners/Respondents 1 & 2

Vs.

B.Prabin

... Respondent/Complainant

PRAYER: Criminal Original Petition has been filed under Section 482 Cr.P.C. praying to pass an order calling for records in C.C.No.412 of 2020 on the file of the Judicial Magistrate, Eraniel, Kanyakumari District and quash the same.

For Petitioners : Mr.R.Russel Raj

For Respondent : Mr.S.C.Herold Singh

ORDER

This petition is filed to quash the proceedings in C.C.No.412 of 2020 on the file of the Judicial Magistrate, Eraniel, Kanyakumari District.



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2.The petitioners are the officer bearers of the Karungal Nakara Thozil munaivor Sangam. On 31.12.2014, the respondent was appointed as a peon in the above Sangam by joint Committee and he drew salary of Rs.6,000/- through Canara Bank cheque. On 06.04.2015, the respondent was assigned as a collection agent for collecting loan amount from the members of the sangam. On 23.07.2016, the petitioners received 9 cheque leaves, from the respondent to settle the huge amount collected by the respondent. Then, he committed misappropriation of amount of Rs.8 lakhs. To settle the said amount of Rs.8 lakhs, the respondent was asked by the petitioners to remit the amount. The respondent remitted the amount by borrowing money from his father's account. Then, the respondent made a complaint before the Jurisdictional police station to register the complaint with allegation that the petitioners received Rs.8 lakhs and did not repay the amount. Further, they received the cheque and presented the cheque through some other persons. Hence, they committed criminal offence under Sections 403, 420 r/w 34 of the IPC. The same was not taken on file. Hence, he filed a complaint under Section 200 Cr.P.C. before the learned judicial Magistrate, Eraniel, Kanyakumari District. The same was taken on file in C.C.No.412 of



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2020. Challenging the same, the petitioner filed the present petition to quash the proceedings initiated against them.

3.The learned counsel appearing for the petitioners submitted that the allegations did not make out any cognizable offence under Sections 403 and 420 r/w 34 of IPC. Even according to the petitioners, the amount was given as a debt. The respondent filed this complaint by giving a criminal colour to the civil dispute without taking the steps to recover the amount. He further submitted that the respondent borrowed money from the society and gave the cheques. On the basis of the cheques, they also filed a civil suit for recovery of amount from the respondent. In order to avoid the said civil liability, he filed this complaint with false averment as if the cheque was handed over to the members of the Sangam namely the petitioners. In the said circumstances, the proceedings in C.C.No.412 of 2020 is liable to be quashed.

4.The learned counsel appearing for the respondent submitted that the receipt of the cheques were admitted and the receipt of the amount was also admitted. Hence, they had not returned the same. Hence, the



offence was made out. Therefore, the defence of the accused cannot be considered at this stage.

5.This Court considered the rival submissions and also perused the record.

6.Even as rightly pointed out by the learned counsel for the petitioners, the following two allegations are made in the petition:

6.1.The petitioners are said to have been given an amount of Rs.8,00,000/-. The respondent transferred the money due to the Sangam, to the petitioners, who represented the Sangam. The cheque was given at the time of collecting the money from members. The learned counsel for the petitioners submitted that there was a civil dispute pending on the basis of the cheques. Hence, in order to avoid the payment and civil suit, they filed a complaint. This Court finds substance in the argument of the learned counsel for the petitioners. Even assuming that the amount was paid, the same has to be recovered through filing civil suit. The criminal case is not an instrument to recover the money which they have failed to repay. More particularly, the same was disputed by the petitioners.



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6.2.Further, the cheque was subject matter of the civil suit pending between the parties. On the basis of the cheque, civil suit was filed before the concerned Court. Hence, the matter is to be adjudicated in the said civil suit. Hence, in all aspects, this Court finds no merit in taking cognizance in C.C.No.414 of 2020 against the petitioners and the respondent filed this complaint by giving criminal profile to the civil dispute. Hence, this Court is inclined to allow the petition.

7.Accordingly, this Criminal Original Petition is allowed and the proceedings in C.C.No.412 of 2020 on the file of the Judicial Magistrate, Eraniel, Kanyakumari District, is hereby quashed. Consequently, the connected Criminal Miscellaneous Petitions are closed.

12.02.2024

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

The Learned Judicial Magistrate,
Eraniel, Kanyakumari District.

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K.K.RAMAKRISHNAN, J.

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