BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **11.12.2024**

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.(MD) No.18336 of 2022
and
Crl.M.P.(MD) Nos.12259 and 12261 of 2022

1. Mariappan

2. Vijayalakshmi

3. Karthick Raja ... Petitioners

Vs.

1.The Inspector of Police,
City Crime Branch, Madurai City.
Crime No. 52 of 2020.

2.D.Kavitha ... Respondents

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records in C.C No.444 of 2022 on the file of the Judicial Magistrate Court No.I, Madurai and quash the same.

For Petitioners : Mr.R.J.Karthick

For Respondents : Mr.A.Albert James
Government Advocate (Crl. Side)
for R1
Mr.C.Vakeeswaran for R2

O R D E R

This petition has been filed to quash the proceedings in C.C.No.444 of 2022 pending on the file of the learned Judicial Magistrate Court No.I, Madurai.

2.The second respondent gave a complaint to the first respondent stating that he is working as a Professor in an Engineering College at Madurai and her husband was working as Manager in a private bank. The accused persons were running a transport business in the name and style of "Annai Sri Mariappan Transport" at Thoothukudi. The petitioners and the defacto complainant are close relatives. The husband of the defacto complainant was intending to quit the job from the private bank and he wanted to start a business. On coming to know of the same, the accused persons approached the defacto complainant and convinced her that money can be invested in the transport business that was conducted by the accused persons and the accused persons also promised that they will give profit earned out of such investment. Believing the same, a total amount of Rs.42,79,836/- was paid till

12.12.2018. This amount was paid through bank transaction and it was also deposited in the bank account of A1 and Annai Sri Mariamman Transport. Contrary to the promise made only a sum of Rs.8,29,050/- was paid towards profit. Thereafter, the accused persons started evading the defacto complainant and whenever the defacto complainant asked for the amount, A1 was informing her that the amount has to be received from M/s.St.John Freight System Limited and once the amount is received, it will be paid. Ultimately, no amount was paid and the same resulted in giving the complaint. Since the police did not act upon the complaint, the second respondent filed an application under Section 156(3) of Cr.P.C. before the learned Judicial Magistrate No.I, Madurai. Based on the orders passed, the FIR came to be registered in Crime No.52 of 2020.

3.On completion of investigation, the police report was filed before the learned Judicial Magistrate No.I, Madurai as against three named accused persons for offences under Sections 120(b), 420 and 406 of IPC. The learned Judicial Magistrate took cognizance of the offence and issued process to the petitioners. Aggrieved by the same, the present quash petition has been filed before this Court.

4.Heard the learned counsel for the petitioners, the learned Government Advocate appearing on behalf of the first respondent and the learned counsel for the second respondent.

5.It is an admitted case that the husband of the defacto complainant was investing money in the transport business on the promise that he will be paid the profit arising out of the business. Accordingly, it is stated that a total amount of Rs.42,79,836/- was invested. However, the defacto complainant and her husband were able to receive only a sum of Rs.8,29,050/- and the balance amount of Rs. 34,50,786/- was never paid to the second respondent and thus it is alleged that it is a clear case of cheating and criminal breach of trust.

6.On going through the materials placed before this Court, it is quite evident that there was a business transaction between the parties. At some stage, the accused persons did not pay the profits arising out of the business. The defense taken by the accused persons is that a huge amount which was due and payable by M/s.St.John Freight System

Limited to the tune of nearly Rs.30.70 lakhs was not paid and consequently, the petitioners were not able to pay the profits nor were they in a position to repay back the amount that was invested by the second respondent and her husband.

7.The above transaction between the parties, by no stretch can result in an offence of cheating or criminal breach of trust. In the offence of cheating, the dishonest intention must be present right from the inception. Such dishonest intention cannot be gathered in the middle of the transaction. That apart, even if it is construed as a breach of agreement, that will also not constitute an offence of cheating. The law on this issue is now too well settled.

8.It is also seen that the offence of criminal breach of trust and the offence of cheating has been mentioned in the final report. These two offences cannot coexist and the law in this issue was discussed by the Apex Court in the recent judgment in ***Delhi Race Club (1940) Ltd and others v. State of Uttar Pradesh and another***, reported in ***2024 SCC Online SC 2248*** and 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.*

***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 under Section 405 of IPC, punishable under Section 406 of 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 in Section 415 of the IPC, punishable under Section 420 of the IPC.*

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 in Hari Prasad Chamaria v. Bishun Kumar Surekha, reported in* ***(1973) 2 SCC 823 *as under:*

> *"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 under Section 420 Penal 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 under Section 420 Penal 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."*

9.In the light of the above discussion, this Court holds that the business transaction which is purely civil in nature has been given a criminal colour and no offence has been made out against the petitioners. The second respondent and her husband will have to necessarily work out their remedy only before the competent forum seeking for the recovery of money and the same canot be achieved by initiating criminal proceedings. The continuation of the proceedings as against the petitioners will result in abuse of process of law which requires the interference of this Court.

10.In the result, the proceedings in C.C.No.444 of 2022 on the file of the learned Judicial Magistrate Court No.I, Madurai, is hereby quashed and this Criminal Original Petition stands allowed. Consequently, connected miscellaneous petitions are closed.

11.12.2024

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

PKN

To

1.The Inspector of Police,
City Crime Branch, Madurai City.

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

N.ANAND VENKATESH,J.

PKN

Crl.O.P.(MD)No.18336 of 2022

Dated: 11.12.2024