



CrI.O.P(MD)No.18410 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: **24.10.2024**

CORAM

**THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

CRL.OP(MD). No.18410 of 2023

and

CRL.MP(MD). No.14535 of 2023

I. Nithyananda Raja

... Petitioner / Sole Accused

**Vs.**

1. The State of Tamil Nadu,  
Rep by the Inspector of Police,  
Srivilliputhur Town Police Station,  
Virudhunagar District.  
(Crime No. 223 of 2018)

2. I.Ponnaiah

... Respondent No.2 /  
De-facto Complainant

**PRAYER:** Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to the impugned First Information Report in Crime No.223 of 2018 under Sections 406, 465, 468, 471 and 420 of IPC dated 15.05.2018 on the file of the respondent no.1 and quash the same.

For Petitioner : M/s. Dinesh.K



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For R1 : M/s.M.Aasha  
Government Advocate (Crl. Side)

For R2 : Mr. R.G.Shankar Ganesh

### **ORDER**

This Criminal Original Petition is filed with the prayer to call for the records pertaining to the impugned First Information Report in Crime No.223 of 2018 which is registered for the alleged offence under Sections 406, 465, 468, 471 and 420 of IPC dated 15.05.2018 on the file of the respondent no.1 and quash the same.

2. The case of the de-facto complainant in the First Information Report is that the petitioner/accused had the custody of his mother and was taking undue advantage of that situation. The mother was pressurized to settle one property. Apart from this, he has transferred all of his mother's pension benefits into his own account. Furthermore, the amount belonging to the petitioner's brother was also wrongly transferred, despite the mother not having the right to transfer that property. It is seen that even though there is no stay till date, the FIR is kept pending.

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3. Mr. K. Dinesh, the learned counsel for the petitioner would submit that there is absolutely nothing in this case for it to be investigated. It is an abuse of process of law. The petitioner and the de-facto complainant being brothers, when the mother has voluntarily executed a gift deed in the year 2015 was very much alive till 2018, the petitioner did not raise his little finger until the lifetime of the mother. After the mother has passed away, all kinds of false allegations are made. The mother never gave any complaint that she has been pressurized. Since the petitioner only had been taking care of his mother, the mother had settled the property. In view thereof, he seeks quashment of the case.

4. The learned counsel would also rely upon the Judgment of the Honourable Supreme Court of India in ***Kishan Singh (Dead) Through Lrs. -vs- Gurbal Singh and Others*** reported in (2010) 8 SCC 775 and the relevant portion of paragraph Nos.21 to 23 reads thus:-

*“21. Prompt and early reporting of the occurrence by the informant with all its vivid details gives an assurance regarding truth of its version. In case there is*



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*some delay in filing the FIR, the complainant must give explanation for the same. Undoubtedly, delay in lodging the FIR does not make the complainant's case improbable when such delay is properly explained. However, deliberate delay in lodging the complaint is always fatal. (Vide Sahib Singh v. State of Haryana [(1997) 7 SCC 231 : 1997 SCC (Cri) 1049 : AIR 1997 SC 3247] .)*

*22. In cases where there is a delay in lodging an FIR, the court has to look for a plausible explanation for such delay. In the absence of such an explanation, the delay may be fatal. The reason for quashing such proceedings may not be merely that the allegations were an afterthought or had given a coloured version of events. In such cases the court should carefully examine the facts before it for the reason that a frustrated litigant who failed to succeed before the civil court may initiate criminal proceedings just to harass the other side with mala fide intentions or the ulterior motive of wreaking vengeance on*



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*the other party. Chagrined and frustrated litigants should not be permitted to give vent to their frustrations by cheaply invoking the jurisdiction of the criminal court. The court proceedings ought not to be permitted to degenerate into a weapon of harassment and persecution. In such a case, where an FIR is lodged clearly with a view to spite the other party because of a private and personal grudge and to enmesh the other party in long and arduous criminal proceedings, the court may take a view that it amounts to an abuse of the process of law in the facts and circumstances of the case. (Vide Chandrapal Singh v. Maharaj Singh [(1982) 1 SCC 466 : 1982 SCC (Cri) 249 : AIR 1982 SC 1238] ; State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426 : AIR 1992 SC 604] ; G. Sagar Suri v. State of U.P. [(2000) 2 SCC 636 : 2000 SCC (Cri) 513 : AIR 2000 SC 754] ; and Gorige Pentaiah v. State of A.P. [(2008) 12 SCC 531 : (2009) 1 SCC (Cri) 446] ).*



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*23. The case before us relates to a question of the genuineness of the agreement to sell dated 4-1-1988. The said agreement was between Kishori Lal and the respondents and according to the terms of the said agreement, the sale deed was to be executed by 10-6-1989. As the sale deed was not executed within the said time, suit for specific performance was filed by the other party in 1989 which was decreed in 1996.”*

5. The learned counsel for the petitioner would further rely upon the judgment of the Hon'ble Supreme Court of India in ***Hasmukhlal D. Vora and Another -vs- State of Tamil Nadu*** reported in ***(2022) 15 SCC 164*** to contend that such huge delay coupled, in the present circumstances, would be fatal to the case and the relevant portion of paragraph Nos.14, 22, 24, 26 and 27 reads thus:-

*“14. This Court in R.P. Kapur v. State of Punjab [R.P. Kapur v. State of Punjab, 1960 SCC OnLine SC 21 : (1960) 3 SCR 388 : AIR 1960 SC 866] , as mentioned*



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*above, has clarified that the court can exercise its powers to quash a criminal complaint, provided that the evidence adduced is clearly inconsistent with the accusations made, or no legal evidence has been presented.*

*22. There has been a gap of more than four years between the initial investigation and the filing of the complaint, and even after lapse of substantial amount of time, no evidence has been provided to sustain the claims in the complaint. As held by this Court in Bijoy Singh v. State of Bihar [Bijoy Singh v. State of Bihar, (2002) 9 SCC 147 : 2003 SCC (Cri) 1093] , inordinate delay, if not reasonably explained, can be fatal to the case of the prosecution. The relevant extract from the judgment is extracted below : (SCC p. 153, para 7)*

*“7. ... Delay wherever found is required to be explained by the prosecution. If the delay is reasonably explained, no adverse inference can be drawn but failure to explain the delay would require*



*the Court to minutely examine the prosecution version for ensuring itself as to whether any innocent person has been implicated in the crime or not. Insisting upon the accused to seek an explanation of the delay is not the requirement of law. It is always for the prosecution to explain such a delay and if reasonable, plausible and sufficient explanation is tendered, no adverse inference can be drawn against it.”*

*24. While inordinate delay in itself may not be ground for quashing of a criminal complaint, in such cases, unexplained inordinate delay of such length must be taken into consideration as a very crucial factor as grounds for quashing a criminal complaint.*

*26. At the cost of repetition, we again state that the purpose of filing a complaint and initiating criminal proceedings must exist solely to meet the ends of justice, and the law must not be used as a tool to harass the*



*accused. The law is meant to exist as a shield to protect the innocent, rather than it being used as a sword to threaten them.*

*27. It must be noted that the High Court while passing the impugned judgment [Hasmukhlal D. Vora v. State, 2021 SCC OnLine Mad 16534] has failed to take into consideration the facts and circumstances of the case. While it is true that the quashing of a criminal complaint must be done only in the rarest of rare cases, it is still the duty of the High Court to look into each and every case with great detail to prevent miscarriage of justice. The law is a sacrosanct entity that exists to serve the ends of justice, and the courts, as protectors of the law and servants of the law, must always ensure that frivolous cases do not pervert the sacrosanct nature of the law.”*

6. The learned counsel for the petitioner would also further rely upon the judgment of this Court in ***Dhanraj N.Kochar and Another -vs-***



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**State and Another** reported in **2023-1-L.W.(Crl.) 392** to contend that when the complaints are not sustainable, in view of the inordinate delay but also essentially civil in nature and the relevant portion of paragraph Nos. 11, 15, 17, 19, 20 and 21 reads thus:-

*“11. From the materials placed by the prosecution to prove the charge against the petitioners for offences under Sections 406, 420 and 506(i) of I.P.C, this Court finds that these materials are contrary to the documentary evidence such as sale deeds duly registered. The defacto complainant alleging that, there was an unregistered oral sale agreement with the landlord Ravichandran in the year 1987 in respect of 3 acres of land and in the course of developing the land as residential plots, she borrowed Rs.2,25,000/~ from Dhanraj Kocher and as a collateral security for the said loan and to avoid acquisition of property under Tamil Nadu Urban and Land Ceiling Act, she directed her vendor Ravichandran to register 0.48 cents each in the name of Dhanraj Kocher, Inderchand Jain and Suresh*



*Kumar. However, the entire sale consideration was paid by the defacto complainant and the accused persons are only name lenders and they have no right to sell the property. However, taking advantage of the fact that the property stood in their name, Suresh Kumar S/o.Dhanraj Kochar, sold these three properties to Mr.Dur.E.Shawar, on 07.06.1995.*

*15. The judgment of the Hon-ble Supreme Court in Central Bureau of Investigation, SPE, SIU (x), New Delhi ~vs~ Duncans Agro Industries Ltd., Calcutta reported in (1996) 5 SCC 591, wherein, it is stated as below:~*

*“27. In the instant case, a serious dispute has been raised by the learned counsel appearing for the respective parties as to whether on the face of the allegations, an offence of criminal breach of trust is constituted or not. In our view, the expression ? entrusted with property? or ?with any dominion over property? has been used in a wide sense in Section 405 IPC. Such expression includes all cases in which goods are entrusted, that is, voluntarily handed over for a specific purpose and dishonestly disposed of in violation of law or in violation of*



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*contract. The expression 'entrusted' appearing in Section 405 IPC is not necessarily a term of law. It has wide and different implications in different contexts. It is, however, necessary that the ownership or beneficial interest in the ownership of the property entrusted in respect of which offence is alleged to have been committed must be in some person other than the accused and the latter must hold it on account of some person or in some way for his benefit. The expression 'trust' in Section 405 IPC is a comprehensive expression and has been used to denote various kinds of relationships like the relationship of trustee and beneficiary, bailor and bailee, master and servant, pledger and pledgee. When some goods are hypothecated by a person to another person, the ownership of the goods still remains with the person who has hypothecated such goods. The property in respect of which criminal breach of trust can be committed must necessarily be the property of some person other than the accused or the beneficial interest in or ownership of it must be in the other person and the offender must hold such property in trust for such other person or for his benefit. In a case of pledge, the pledged article belongs to some other person but the same is kept in trust by the pledgee. In the instant case, a floating charge was made on the goods by way of security to cover up credit facility. In our view, in such case for disposing of the goods covering the security against credit facility the offence of criminal breach of trust is not committed. In the facts and circumstances of the case, it, however, appears to us that the respondents moved the High Court only in 1991 although the first FIR was filed in 1987 and the second was filed in 1989. The CBI, therefore, got sufficient time to complete the investigation for the*



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*purpose of framing the charge.”*

*17. In the complaint, there is no whisper about her repayment of loan amount, which she admittedly borrowed from the accused persons. Therefore, to attract offence under Section 420 of I.P.C, the intention to deceive has to be made out. In case in hand, there is no material evidence to show that the accused had any intention to deceive. In the judgment, Alpica Finance Ltd ~vs~ P.Sadasivan reported in (2001) 3 SCC 513, has stated as below:~*

*“When there is dispute between the parties arising out of a transaction involving passing of valuable properties between them, the aggrieved person may have a right to sue for damages or compensation and at the same time, law permits the victim to proceed against the wrongdoer for having committed an offence of criminal breach of trust or cheating. Here the main offence alleged by the appellant is that the respondents committed the offence under Section 420 IPC and the case of the appellant is that the respondents have cheated him and thereby dishonestly induced him to deliver property. To deceive is to induce a man to believe that a thing is true which is false and which the person practising the deceit knows or believes to be false. It must also be shown that there existed a fraudulent and dishonest intention at the time of*



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*commission of the offence. There is no allegation that the respondents made any wilful misrepresentation. Even according to the appellant, the parties entered into a valid lease agreement and the grievance of the appellant is that the respondents failed to discharge their contractual obligations. In the complaint, there is no allegation that there was fraud or dishonest inducement on the part of the respondents and thereby the respondents parted with the property. It is trite law and common sense that an honest man entering into a contract is deemed to represent that he has the present intention of carrying it out but if, having accepted the pecuniary advantage involved in the transaction, he fails to pay his debt, he does not necessarily evade the debt by deception.”*

*19. The complaint has been given without proper supportive evidence. To believe that the accused persons are only name lenders and not the real owners. Merely based on the statements of the vendor, the defacto complainant and her agent, the respondent police has completed the investigation and filed final report.*

*20. This Court is of the view that the complaints are not sustainable, not only due to inordinate delay but*





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*and persecution. In such a case, where an FIR is lodged clearly with a view to spite the other party because of a private and personal grudge and to enmesh the other party in long and arduous criminal proceedings, the court may take a view that it amounts to an abuse of the process of law in the facts and circumstances of the case.”*

7. Per Contra, the learned Government Advocate (Criminal Side) would submit that the case has been registered and the matter is under investigation. If the petitioner cooperates with the investigation, it can be completed, and a conclusion can be reached one way or the other.

8. The learned counsel appearing on behalf of the second respondent/de-facto complainant submits that the petitioner is not at all his brother, and is falsely claiming to be an adopted son, and has wrongfully taken possession of the properties. He would submit that when his mother has been cheated, the offences are made out.

9. I have considered the rival submissions made on either side and perused the material records of the case.



10. Though there is a delay in lodging the complaint and the petitioner's mother had not lodged any complaint till her lifetime, the fact that the case has been pending from the year 2018 cannot, by itself, be a ground to quash the First Information Report. The grounds raised by the petitioner are factual in nature. The factual defences of the petitioner howsoever strong, on that ground, the FIR cannot be quashed. The petitioner can produce the gift deed and the other supporting documents before the investigating officer. It can be further noted that as far as the transfer of amount of the de-facto complainant's brother Ponraj and the transfer of property are concerned, the same is made only as per the orders of the High Court. A copy of the order of the High Court is also produced before this Court. The same can also be produced before the investigating authority.

11. When there is no stay whatsoever, when the FIR is lodged in the year 2018, especially when the dispute is between the brothers and when documents are produced by either side, the investigating authority can take into account all the submissions made by both sides and come to a conclusion one way or the other.



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12. In view thereof, leaving it open to the petitioner to raise all the defences raised before this Court and before the investigating authority and the investigating authority is directed to objectively consider the same and conclude the investigation and file the final report as the case may be as per law within a period of six weeks from the date of receipt of a copy of this order.

13. In the result, this Criminal Original Petition stands disposed of. Consequently, the connected miscellaneous petitions is closed.

**24.10.2024**

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

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1. The Inspector of Police,  
Srivilliputhur Town Police Station,  
Virudhunagar District.
2. The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.



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**D.BHARATHA CHAKRAVARTHY,J.**

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Order made in  
**CRL OP(MD). No.18410 of 2023**

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