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*Crl.O.P.No.2483 of 2023*

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED: 05.02.2025

CORAM:

**THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN**

Crl.O.P.No.2483 of 2023  
& Crl.M.P.No.1395 of 2023

Divyesh Palicha  
S/O Late.Ajithkumar Palicha,  
No.1/30, Cisons Complex,  
D.No.150/132, 5<sup>th</sup> Floor, Pantheon Road,  
Egmore, Chennai 600008. ... Petitioner  
/versus/

1. State, Represented by:  
The Inspector of Police - F-2 Egmore Police Station,  
Egmore, Chennai - 600 008.  
(FIR No.498/2022)

2. Mohanlal Bajaj,  
Secretary/Vice President - Rajasthani Association,  
4<sup>th</sup> Floor, 128, N.S.C Bose Road, Sowcarpet,  
Chennai - 600 001. ... Respondents

**PRAYER:** Criminal Original Petition is filed under Section 482 of Cr.P.C.,  
pleaded to call for the records in FIR No.498/2022 on the file of the Inspector of  
Police, F-2, Egmore Police station and Quash the same.

|                |                                                        |
|----------------|--------------------------------------------------------|
| For Petitioner | : Mr.Sanjay Pinto                                      |
| For R1         | : Mr.A.Gokulakrishnan<br>Additional Public Prosecutor. |
| For R2         | : No appearance                                        |

**ORDER**



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This petition has been filed to call for the records in FIR No.498 of 2022 on the file of the Inspector of Police, F-2, Egmore Police station for the offences under Section 406 and 420 of I.P.C.

2. The second respondent has lodged a complaint before the first respondent, alleging that the second respondent owned a property measuring 1,960 sq. ft. on the 5th floor of Cisons Complex, situated at Door No. 1/30, Pantheon Road, Egmore, Chennai. The second respondent intended to sell the property, and the petitioner agreed to purchase it. Accordingly, they entered into an agreement for sale dated 02.04.2016, with the sale consideration for the property fixed at Rs.1,47,00,000/- on 30.08.2019, the second respondent executed the sale deed on receiving Rs.1,15,00,000/-. With regard to the balance sale consideration of Rs.32 lakhs, the petitioner issued a cheque. However, on presentation of the cheque, it was returned and dishonoured for the reason "payment stopped." Hence, the complaint.

3. The learned counsel for the petitioner submitted that it is purely a civil dispute between the petitioner and the second respondent. No one would execute a sale deed without receiving the entire sale consideration. As per the sale deed, the petitioner agreed to purchase the subject property for the sale



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consideration of Rs.1,15,00,000/- and the entire sale consideration was duly paid to the second respondent. After the execution of the sale deed and its registration, the second respondent filed a complaint against the petitioner, claiming that the total sale consideration was Rs.1,47,00,000/- and the remaining amount of Rs. 32 lakhs was to be paid by the petitioner. In fact, the cheque was obtained in the presence of police personnel. After the dishonour of the cheque, the second respondent proceeded with the complaint under Section 138 of the N.I. Act in S.T.C. Nos.1385 and 1387 of 2023 on the file of the Fast Track Court IV, Metropolitan Magistrate, G.T. Court, Chennai, in Crl. O.P. Nos.19926 & 20008 of 2023.

4. This Court, *vide* order dated 15.02.2024 quashed both the complaints. The relevant paragraph of the order is extracted below:-

*“5.It is clear from the above sale deed that the total sale consideration was fixed at Rs.1.15 crores and this amount was also paid to the respondent. The sale deed itself makes it clear that the entire sale consideration is received and the petitioner stand released from making any further payment towards the same. This registered document is an uncontrovertible and unimpeachable material of sterling quality. If the sale deed makes it clear that the entire sale consideration has been paid, it is not*



*known as to how the respondent is claiming for excess sale consideration through a separate understanding with the petitioner. The respondent claims that the petitioner promised to pay the extra sale consideration and believing the words of the petitioner, the cheques were deposited and ultimately, it was dishonoured. On the other hand, the petitioner states that even after the payment of the entire sale consideration, the petitioner was taken to the police station on a complaint filed against her and the cheques were forcibly taken away from the petitioner with a letter.*

*6. It is not necessary for this Court to go into this issue, since it is not germane for the issue that is involved in the present case. The liability is traced by the respondent through the sale transaction. This sale transaction is borne out by the sale deed dated 30.9.2019 which is a registered document and it shows that the entire sale consideration was paid. In view of the same, there is no existing liability for the petitioner to make any further payment towards the sale of the property. If the respondent had taken the risk of collecting a separate payment from the petitioner apart from what has been stated in the sale deed, that cannot be the basis for maintaining a complaint under Section 138 of the Negotiable Instruments Act, 1881. On going through the sale deed, it is clear that there was no existing debt/liability on the part of the petitioner and therefore, the very complaint that was given against the petitioner is unsustainable.”*



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5. I have heard Mr.Sanjay Pinto, Learned Counsel for the petitioner and Mr.A.Gokulakrishnan, Learned Additional Public Prosecutor for the 1<sup>st</sup> respondent. Though notice served on the 2<sup>nd</sup> respondent, no one appeared, either by Counsel or in person, before this Court.

6. The Learned Additional Public Prosecutor for the 1<sup>st</sup> respondent submitted that, in view of the interim order passed by this Court, the investigation would not be proceeded further and it is pending investigation.

7. Therefore, there is absolutely no allegations to constitute the offences punishable under Sections 406 and 420 of I.P.C. In order to attract offences under Sections 406 and 420 of I.P.C, they must be a criminal breach of trust. The entrustment of the property occurred only after full payment of the sale consideration and the same was duly recorded in the sale deed. Therefore, there is no question of deception at the inception or *mens rea* to remotely attract the alleged offence of cheating. Even assuming that there was balance sale consideration, the 2<sup>nd</sup> respondent ought to have filed civil suit to recover the balance sale consideration by let in evidence. Therefore, non-payment of balance sale consideration does not amount to a grave offence. Furthermore,



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every breach of contract does not give rise to an offence of cheating only in those cases breach of contract will amount to cheating, only in cases where there was deception at the very inception of the contract can a breach of contract amount to cheating. If the intention to cheat develops later on, the same cannot amount to cheating.

8. Accordingly, the F.I.R registered in Crime No.498 of 2022 on the file of the Inspector of Police, F-2 Egmore Police Station, Chennai, cannot be sustained and liable to be quashed. Hence, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

05.02.2025

Index : Yes/No  
Neutral citation : Yes/No  
Speaking/non-speaking order

To,  
1. The Inspector of Police - F-2 Egmore Police Station,  
Egmore, Chennai - 600 008.  
  
2. The Public Prosecutor, High Court, Madras.



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**G.K.ILANTHIRAIYAN, J.**

bsm

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