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Crl.OP.No.2742 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.04.2025

CORAM:

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

Crl.O.P.No.2742 of 2023
and
Crl.MP.Nos.1627 and 1629 of 2023

1. V.Ayalraj
2. Karthikeyan ... Petitioners

Vs.

1. State Represented by
The Inspector of Police,
K8 Arumbakkam Police Station,
Chennai.
2. Sendil Kumar ... Respondents.

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to quash the proceedings in C.C.No.12627 of 2022 on the file of the Metropolitan Magistrate Court -V, Egmore, Chennai.

For Petitioners : Mr.P.Sesubalanraja
For Respondents : Ms.R.Vinothraja
Government Advocate (Crl.Side)
for R1
: No appearance for R2



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ORDER

This petition has been filed to quash the proceedings in C.C.No.12627 on the file of the learned Judicial Magistrate-V, Egmore, Chennai.

2. The case of the prosecution is that the petitioners had borrowed a sum of Rs.46,50,000/- from the second respondent in the year 2015. However, when the second respondent asked for repayment of the amount, the petitioners have trespassed into the house and threatened him with dire consequence.

3. On receipt of the said complaint, the first respondent has registered an FIR in Cr.NNo.1297 of 2017 for the offence under Sections 294b, 323, 448 and 506(ii) of IPC. After recording the statements from the second respondent, the offences have been altered into Sections 406 and 420 of IPC. Accordingly, the first respondent filed final report before the Metropolitan Magistrate Court-V, Egmore and the same has been taken cognizance by the trial court in C.C.No.12627 of 2022.



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4. The learned counsel appearing for the petitioners submits that on 13.10.2017, the second respondent has filed a complaint as if on 10.10.2017 at about 07.00 p.m two unknown persons have entered into his house and threatened him with dire consequence. Subsequently, the second respondent made statement that after borrowal of the amount, the petitioners did not repay the said loan amount and as such he lodged complaint as if they came to house and threatened him with dire consequence. On recording the said statement, the first respondent has altered the offence into Sections 406 and 420 of IPC. Infact **the** petitioners have lodged a complaint as against the second respondent on 11.10.2017. The said occurrence took place on 10.10.2017 alleging that the second respondent trespassed into the petitioners' house at about 11.00 p.m and also threatened the entire family members with dire consequence. He also scolded them with filthy language. Therefore, immediately, the petitioners called police emergency " 100". Even before arrival of police personnel, they flew away.

5. The learned counsel further submits that under compulsion and coercion the second respondent also received cheques from the



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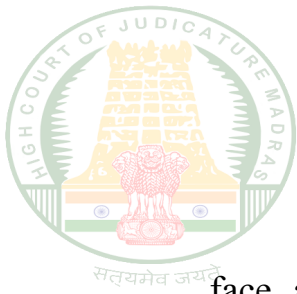
petitioners. Therefore, there is absolutely no ingredients to attract the offence under Sections 406 and 420 IPC. Even according to the second respondent, the petitioners borrowed certain amount and failed to repay the said amount. Therefore, it is only loan transaction.

6. The learned Government Advocate (Crl.Side) appearing for the first respondent police submitted that when the second respondent asked for repayment of the loan amount, the petitioners have trespassed into the house and threatened him with dire consequence.

7. Though notice was served on the second respondent and his name also printed in the cause-list, no one appeared before this Court either in person or through counsel.

8. Heard the learned counsel appearing for the petitioners and the learned Government Advocate (Crl.Side) appearing for the first respondent police and perused the materials available on record.

9. The defacto complainant has alleged in the complaint that the petitioners have committed offences under Sections 406 and 420 of IPC. It would thus be necessary to examine the ingredients of the above offences and whether the allegations made in the complaint, read on their



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face, attract those offences under the Indian Penal Code. Section 405 of

IPC reads thus:-

*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".*

A careful reading of Section 405 of IPC shows that the ingredients of criminal breach of trust are as follows:-

- (i) A person should have been entrusted with property, or entrusted with dominion over property;
- (ii) That person should dishonestly misappropriate or convert to their own use that property, or dishonestly use or dispose of that



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property or willfully suffer any other person to do so; and

(iii) That such misappropriation, conversion, use or disposal should be in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract which the person has made, touching the discharge of such trust.

Entrustment is an essential ingredient of the offence. 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 punished under Section 406 of IPC.

10. It is relevant to extract the provisions under Section 420 of IPC, which reads as follows :-

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



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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.

The ingredients to constitute an offence under Section 420 of IPC are as follows :-

(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.

Cheating is an essential ingredient for an act to constitute an offence under Section 420 IPC.

11. It is relevant to rely upon the judgment made by the Honourable Supreme Court of India in the case of ***M/s. Indian Oil Corporation Vs. NEPC India Limited and others*** reported in (2006) 6 ***SCC 736***, wherein, it has been held that the civil liability cannot be



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converted into criminal liability and it is necessary to take notice of a growing tendency in business circle to convert purely civil dispute into criminal case. This is obviously on account of prevalent impression that civil law remedies are time consuming and do not adequately protect the interest of lender/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable breakdown of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claim which do not involve any criminal offence by applying pressure through criminal prosecution should be deprecated and dishonoured.

12. In the case of ***G.Sagar Suri Vs. State of Uttar Pradesh*** reported in ***2000 (2) SCC 636***, the Honourable Supreme Court of India held as follows:-

“It is to be seen if a matter, which is essentially of civil nature, has been given a cloak of criminal offence, criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal Court has to exercise a great deal of caution. For the accused it is a serious matter. This



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Court has laid certain principles on the basis of which High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this Section has to be exercised to prevent abuse of the process of any Court or otherwise to secure the ends of justice.”

13. It is relevant to rely upon the land mark Judgment of the Hon'ble Supreme Court of India in the case of ***State of Haryana and others Vs. Bhajanlal and others*** reported in ***1992 Supp (1) SCC 335***, in which, the Hon'ble Supreme Court of India has laid down the following categories of instances wherein inherent powers can be exercised in order to secure the ends of justice, which are as follows:-

“(a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable



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offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(c) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(f) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted)



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to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(g) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

14. It has to see that, whether a matter which is essentially of a civil nature has been given a cloak of a criminal offence. Where the ingredients required to constitute a criminal offence are not made out from a bare reading of the complaint, the continuation of the criminal proceeding will constitute an abuse of the process of the Court. In the present case, the averments in the complaint, read on its face, do not disclose the ingredients necessary to constitute offences under the Penal Code. An attempt has been made by the respondent to cloak a civil dispute with a criminal nature despite the absence of the ingredients necessary to constitute a criminal offence. The complaint filed by the



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second respondent against the petitioners constitutes an abuse of process of Court and is liable to be quashed.

15. Accordingly, the proceedings in C.C.No.12627 of 2022 on the file of the learned Metropolitan Magistrate-V, Egmore, is hereby quashed and the Criminal Original Petition stands allowed. Consequently, connected Miscellaneous Petitions are also closed.

02.04.2025

Vv

To

1. The Metropolitan Magistrate Court -V,
Egmore, Chennai.
2. The Inspector of Police,
K8 Arumbakkam Police Station,
Chennai
3. The Public Prosecutor,
Madras High Court,
Chennai.



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Vv

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