



Crl.O.P.No. 7691 of 2025

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.04.2025

CORAM:

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

Crl.O.P.No.7691 of 2025 and
Crl.M.P.No.4969 of 2025

1.A.Preethi
2.Asok Kumar
3.Sunthar
4.G.Uma Maheswari
5.Indira

... Petitioners

Vs.

1.The State
Rep. by the Inspector of Police,
Valivalam Police Station,
Nagapattinam District.

2.Amuthan

..Respondents

PRAYER: Criminal Original Petition is filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, to allow this criminal original petition and call for records regarding the case in Crime No.89 of 2018 on the file of the first respondent and quash the same.

For Petitioners : Mr.N.Senthil



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For R1 : Mr.R.Vinothraja,
Government Advocate (crl.side)
For R2 : No appearance

ORDER

This Criminal Original Petition has been filed to quash the FIR in Crime No.89 of 2018 on the file of the first respondent, registered for the offences under Sections 120B, 406, 420, 294(b) and 506(2) of IPC.

2. The case of the prosecution is that the complainant was defrauded of Rs. 30 lakhs by the first petitioner, who was his Facebook friend using the name "Preethi". Believing that she was in love with him, he sent her his ATM card by courier. The card was subsequently misused in various districts including Tiruvarur, Nagapattinam, and Thiruvallur, where large sums of money were withdrawn. Communication between them was maintained through the complainant's mobile number. While being so, on 03.07.2018, at around 3:00 p.m., when the complainant approached the first petitioner at her address, he was allegedly threatened and verbally abused by the first petitioner along with five others. Based



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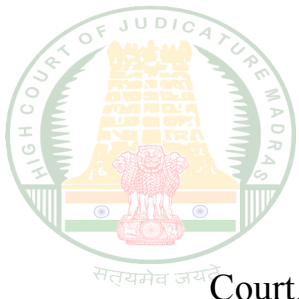
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on his complaint, an FIR was registered in Crime No. 89 of 2018 for the offences punishable under Sections 120B, 406, 420, 294(b), and 506(2) IPC.

3. The learned counsel for the petitioners submitted that the allegations in the FIR are vague and bald, and do not make out the essential ingredients required to attract the offences under Sections 406 and 420 of IPC. He further contended that the dispute, at best, is civil in nature and has been given a criminal colour. It was also pointed out that no progress has been made in the investigation since the registration of the FIR in 2018, and therefore, allowing the proceedings to continue would be an abuse of process of law. Hence, he prays to quash the FIR.

4. The learned Government Advocate (crl. side) appearing for the first respondent submitted that the investigation is almost completed and they are about to file a final report.

5. Heard both sides and perused the materials placed before this



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Court. Though notice was served on the second respondent, no one appeared either in person or through pleader.

6. On perusal of the FIR and materials on record, it is noted that the complaint pertains to the year 2018 and no substantial progress has been made in the investigation. The allegations made in the FIR are general, vague, and do not satisfy the essential legal requirements to constitute the offences under Sections 406 and 420 IPC.

7. It is relevant to refer to the judgment of the Hon'ble Supreme Court in the case of ***Usha Chakraborty and another v. State of West Bengal*** and another, reported in ***(2023) 15 SCC 135***. Accordingly, the ingredients of the offence of criminal breach of trust, punishable under Section 406 of IPC, are as follows:

“(i) Entrustment of the property or any dominion over property with accusation;

(ii) The person entrusted dishonestly misappropriating or converting to his own use that property; or dishonestly using or disposing that property in violation of any direction of law prescribing the mode in which such trust is



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to be discharged or of any legal contract, express or implied, which he has made touching the discharge of such trust or wilfully causing sufferance to any other person so to do.”

Admittedly, the allegations pertain to the misuse of an ATM card voluntarily sent by the complainant. There is no specific averment showing entrustment of property in the legal sense, or breach of any legal direction or contract that would constitute criminal breach of trust.

8. Further, the Hon'ble Supreme Court, in the case cited supra, has also enumerated the ingredients of the offence punishable under Section 420 of the IPC, which reads as follows:

“To constitute the said offence there must be deception i.e., the accused must have deceived someone; that by such deception the accuse must induced a person

(i) to deliver any property; or

(ii) to make, alter, destroy a whole or part of the valuable security or anything which is signed or sealed and which is capable of being converted into a valuable property; or



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(iii) that the accused must have done so dishonestly.

The offence punishable under Section 120-B IPC, to constitute criminal conspiracy, there must be agreement between two or more persons. The agreement should be to do or cause to be done some illegal act, or some act which is not illegal, by illegal means, provided that where the agreement is other than one to commit an offence, the prosecution must further prove; or

(iv) that some act besides the agreement was done by one or more of the parties in pursuance of it.”

8. On a close reading of the FIR and the materials, there is nothing to suggest that the accused made any false or fraudulent inducement at the time of the alleged acts. The facts, even if accepted as true, reveal at most a breach of trust in a personal relationship, for which a civil remedy lies. In this context, it is relevant to refer to the judgment of the Hon'ble Supreme Court in the case of ***Delhi Race Club (1940) Ltd. & Others v. State of Uttar Pradesh & Another***, reported in ***CDJ 2024 SC 702***, wherein it was held that in the absence of entrustment, no case under Section 406 IPC would lie, and that failure to pay a contractual or consideration amount cannot give rise to criminal proceedings under



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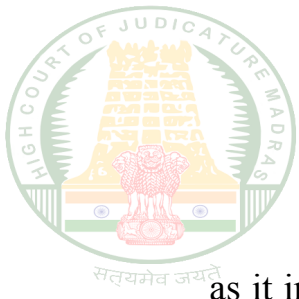
Section 420 IPC. The relevant portions are extracted hereunder:

“36. From the aforesaid, there is no manner of any doubt whatsoever that in case of sale of goods, the property passes to the purchaser from the seller when the goods are delivered. Once the property in the goods passes to the purchaser, it cannot be said that the purchaser was entrusted with the property of the seller. Without entrustment of property, there cannot be any criminal breach of trust. Thus, prosecution of cases on charge of criminal breach of trust, for failure to pay the consideration amount in case of sale of goods is flawed to the core. There can be civil remedy for the non-payment of the consideration amount, but no criminal case will be maintainable for it.

.....

38.If it is the case of the complainant that a particular amount is due and payable to him then he should have filed a civil suit for recovery of the amount against the appellants herein. But he could not have gone to the court of Additional Chief Judicial Magistrate by filing a complaint of cheating and criminal breach of trust.”

9. The above judgement is squarely applicable to the case on hand



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as it involves a dispute over a financial transaction that is civil in nature.

There is no entrustment of property as required under Section 406 of IPC, since the complainant voluntarily sent the ATM card to the petitioner. Additionally, the claim of cheating under Section 420 of IPC lacks evidence of deception or fraudulent inducement. The matter pertains to a personal issue and the appropriate remedy lies in civil proceedings rather than criminal action. That apart, the FIR is of the year 2018 and no substantial progress has been made in the investigation. Therefore, continuing the criminal proceedings would serve no purpose and would only prolong the dispute unnecessarily.

10. In light of the above, the FIR in Crime No. 89 of 2018 pending on the file of the first respondent police cannot be sustained and liable to be quashed. Accordingly, the FIR in Crime No.89 of 2018, is hereby quashed.

11. In the result, this Criminal Original Petition stands allowed. Consequently, connected miscellaneous petition is closed.



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

1. The Inspector of Police,
Valivalam Police Station,
Nagapattinam District.

2. The Public Prosecutor,
High Court, Madras.

G.K.ILANTHIRAIYAN, J.

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