



Crl.O.P.No.8586 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2025

CORAM:

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

Crl.O.P.No.8586 of 2024

1.Viswanatha Rao

2.Thulasi Rao

3.Leelavathi Bai

4.Jayachandra Rao

5.Gayathri

6.Mumtha

7.Praveen @ Praveen Kumar

... Petitioners

Vs.

1.State,
Represented by the Sub – Inspector of Police,
CCB – II, Coimbatore City.

2.B.P.Navaskhan

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records in Crime No.10 of 2024 on the file of the 1st respondent police and quash the same.



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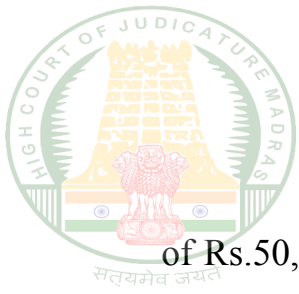
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For Petitioners : Mr.V.Vijayakumar
For R1 : Mr.K.M.D.Muhilan
Government Advocate (Crl.side)
For R2 : Mr.K.Balasubramaniam

ORDER

This petition has been filed to call for the records in Crime No.10 of 2024, on the file of the first respondent police and quash the same.

2.The crux of the complaint lodged by the second respondent is that the second respondent had entered into a lease agreement for a period of 99 years with the petitioners on payment of Rs.18,00,000/- to the petitioners to function a petrol bunk, in respect of a property to an extent of 22 cents, situated at New Door Nos.119, 120,121, Big Bazaar Street, Coimbatore. After the lease agreement, the second respondent had invested a huge sum for the development of the petrol bunk. The petitioners also assured the second respondent to execute a separate power of attorney in order to develop the petrol bunk. While being so, during the second week of October 2023, one Abbas had informed the second respondent that the first petitioner had offered him to lease the petrol bunk (hereinafter referred to as subject property). Further, an another person Balu of Tiruppur informed the second respondent that he had paid a sum



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of Rs.50,000/- to the first petitioner as advance lease amount and requested the

second respondent to vacate from the subject property. The second respondent repeatedly requested the petitioners to execute the power of attorney in order to develop the subject property, no power of attorney was executed in his favour. Therefore, the petitioners, suppressing the lease agreement entered with the second respondent, are attempting to lease out the subject property in favour of the third parties. Hence the complaint. On receipt of the said complaint, the first respondent registered the FIR in Crime No.10 of 2024 for the offences under sections 120B & 420 IPC as against the petitioners.

3.Admittedly, so far no new lease agreement has been executed in favour of any third parties in respect of the subject property by the petitioners. Till date, the second respondent is operating the petrol bunk in the subject property as per the Memorandum of Understanding, dated 21.01.2008, (hereinafter referred to as MoU). Perusal of the MoU further reveals that originally, the subject property was leased out in favour of Bharat Petroleum Corporation Limited (hereinafter referred to as BPCL) from the year 1967 and they are in possession and enjoyment of the subject property. While being so, the landlords filed a suit for eviction of BPCL in O.S.No.363 of 1997 and the



suit was decreed *ex-parte*, on the file of the II Additional Sub Court, Coimbatore. Under BPCL, the second respondent is a retailer of petroleum products. While being so, the petitioners and the second respondent had entered into a MoU dated 21.01.2008, in which the second respondent is categorised as an intended tenant for a period of 99 years on payment of Rs.18,00,000/- as lease amount.

4.Now, the allegation as against the petitioners is that they are trying to lease out the subject property in favour of the third parties, since the third parties informed the second respondent as if they were granted lease in respect of the subject property. In these circumstances, the question to be decided in this case is as to whether any offence is made out as against the petitioners or not to register the FIR against them for the offences punishable under sections 120B & 420 IPC. Admittedly, the second respondent is in possession and functioning the retail outlet of BPCL. So far, no lease agreement is executed by the petitioners in favour of any third parties. Of course, as per the MoU, the petitioners and the second respondent shall have to enter into a lease agreement. In order to attract the offence punishable under Section 420 IPC, deception at the inception of any act is required.



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5.It is relevant to extract Section 420 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 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.*

Thus, it is clear that in order to attract the offence under Section 420 IPC, the following ingredients must be present:

- (i) Cheating as defined under Section 415 IPC, that is, there should be a fraudulent or dishonest inducement of a person;
- (ii) An intention to deceive; and
- (iii) 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.



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6. Therefore, cheating forms an essential ingredient to constitute the offence under Section 420 IPC. Further, it is necessary that a fraudulent or dishonest act is done and the deceived person is made to deliver the property owing to fraud. On a perusal of the allegations levelled as against the petitioners, it is seen that there was no act of cheating i.e., the second respondent was in no way fraudulently induced or dishonestly deceived by the petitioners. In fact, the petitioners and the second respondent had entered into a MoU, dated 21.01.2008 and accordingly, the second respondent is in possession and enjoyment of the subject property by running a retail outlet of BPCL. Therefore, no offence is made out under Section 420 IPC as against the petitioners.

7. It is relevant to extract Section 406 IPC, which reads as follows:

406. Punishment for criminal breach

of trust — *Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.*

8. The offence of criminal breach of trust is defined under section 405 of IPC. Thus, it is clear that necessary ingredients must exist to attract the



offence under section 406 IPC. In this context, it is relevant to rely upon the judgment of the Hon'ble Supreme Court of India, passed in *Radheshyam & Ors Vs.State of Rajasthan & Anr in Crl.A.No.3020 of 2024*. The relevant portion of the judgment is extracted hereunder:

7.....

For an offence under Section 420 IPC, the following ingredients must be present.

(i) Cheating as defined under Section 415 IPC, that is, there should be a fraudulent or dishonest inducement of a person;

(ii) An intention to deceive; and

(iii) 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.

.....

11. For an offence punishable under section 406 IPC, the following ingredients must exist:

i.The accused was entrusted with property, or entrusted with dominion over property;



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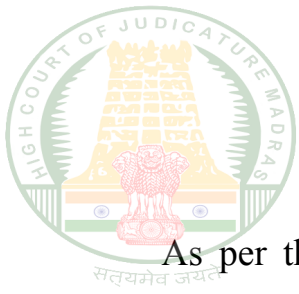
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ii.The accused had dishonestly misappropriated or converted to their own use that property, or dishonestly used or disposed of that property or wilfully suffer any other person to do so; and

iii.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.

9.Non execution of the lease agreement would not attract the offence of criminal breach of trust under Section 406 IPC. The said MoU was executed on 21.01.2008. Thereafter, a notice for refusal to perform the contract was exchanged between the petitioners and the second respondent even in the year 2014 itself. Therefore, according to the petitioners, the MoU, dated 21.01.2008, is barred by limitation and it is not in existence to execute any lease deed.

10.Further, in the present case on hand, the petitioners are not entrusted with any property by the second respondent. The second respondent had paid a sum of Rs.18,00,000/- and entered into the MoU, dated 21.01.2008.



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As per the MoU, the subject property is leased out in favour of the second respondent for a period of 99 years. Accordingly, the second respondent is in possession and enjoyment of the subject property. Therefore, there is absolutely no criminal breach of trust on the part of the petitioners. Hence, the ingredients of none of the offences as alleged in the FIR are made out against the petitioners and thus, no offence is said to have been committed by them. The act of the petitioners at best constitutes a civil wrong and does not call for any criminal action against them. A civil wrong cannot be given a criminal colour merely to coerce the petitioners from registering any lease agreement as per the MoU. Therefore, the FIR registered as against the petitioners is liable to be quashed.

11. Accordingly, the FIR in Crime No.10 of 2024, on the file of the first respondent police, is quashed and the criminal original petition stands allowed. Consequently, connected miscellaneous petitions, if any, are also closed.

13.02.2025

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Internet: Yes
Index: Yes/No
Speaking/Non speaking order



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G.K.ILANTHIRAIYAN. J.

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To

1.State,
Represented by the Sub – Inspector of Police,
CCB – II, Coimbatore City.

2.The Public Prosecutor,
High Court, Madras.

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