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Crl.O.P.No.9693 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.04.2025

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

CRL.O.P.No.9693 of 2025
and Crl.MP.Nos.6418 & 6419 of 2025

G.Karthikeyan

.... Petitioner

Vs

1.The State rep by
The Inspector of Police,
District Crime Branch,
Mayiladuthurai – 609 001.

2. Udhaya Kumar

.... Respondents

Prayer: Criminal Original Petition is filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023, to call for the records and quash the proceedings as against the petitioner in C.C.No.33 of 2025 pending on the file of the learned Judicial Magistrate No.II, Mayiladuthurai for offences under Sections 406 and 420 of IPC.

For Petitioners : Mr.K.Balu

For R1 : Mr.A.Gopinath
Government Advocate (Crl.Side)



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ORDER

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This Criminal Original Petition has been filed to quash the proceedings in C.C.No.33 of 2025 pending on the file of the learned Judicial Magistrate No.II, Mayiladuthurai.

2. The case of the prosecution is that the second respondent, against whom Sarfaesi proceedings were initiated by the South Indian Bank, Mayiladuthurai, for the outstanding loans payable by him, had approached A2, on the advice of his friend A1. The defacto complainant spoke over a phone call with the petitioner herein, who gave his legal advice. The second petitioner stated that the court fees had to be spent to the tune of Rs.14,69,000/- for the legal proceedings to the petitioners. Despite the payment of money, no effective steps were taken and a possession notice was issued on the second respondent by the bank. The second respondent had been cheated by the petitioner herein. Hence, the case.

3. The learned Counsel appearing for the petitioner would submit that the petitioner is innocent and he has not committed any offence as alleged by the prosecution. He further submitted that the



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petitioner is arrayed as an second accused and he is an Advocate. He was introduced to the defacto complainant through the first accused since the second respondent is facing issue under Sarfaesi proceedings from the Bank. Even as per the prosecution, when the petitioner had neither made any misrepresentation nor received any monetary consideration and he been falsely implicated as an accused in this case. Without any base, the first respondent police registered a case in Crime No.22 of 2023 for the offence under Sections 406 and 420 IPC as against the petitioner and the same has been taken cognizance in C.C.No.33 of 2025 on the file of the learned Judicial Magistrate No.II, Mayiladuthurai. Hence he prayed to quash the same.

4. The learned Government Advocate (Crl. Side) would submit that the trial has been commenced and the witnesses have been examined in this case.

5. Heard the learned Counsel appearing on either side and perused the materials placed on record.

6. On perusal of the records, it is revealed that the petitioner is



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arrayed as the second accused. The first and second accused have spoken through a conference call to the defacto complainant and assured him that they would settle the entire issue under the Sarfaesi proceedings initiated by the Bank. Believing the words of the petitioner, the second respondent transferred a sum of Rs.14,69,000/- through RTGS to the account of the first petitioner, from which the second accused did not receive any money directly from the defacto complainant. The petitioner also attended the conference Hall along with the first petitioner. A perusal of the statements of witnesses reveals that there is specific allegations as against the petitioner. The petitioner has committed a serious offence as against the second respondent for the offence under Sections 406 and 420 of IPC.

7. It is seen that on the complaint lodged by the second respondent, the first respondent registered a case in Crime No.22 of 2023 for the offence under Sections 406 and 420 IPC. After completion of investigation, the first respondent filed final report and the same has been taken cognizance in C.C.No.33 of 2025 by the Trial Court and it is pending. To quash the said criminal proceeding, the petitioner filed the present petition.

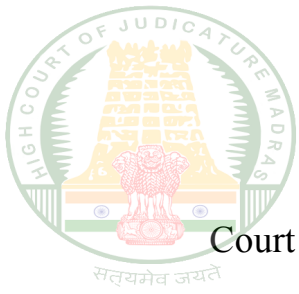


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8. The Hon'ble Supreme Court of India in the judgment reported in **2019 (4) SCC 351** in the case of ***Devendra Prasad Singh Vs. State of Bihar & Anr., (Crl.A.No.579 of 2019 dated 02.04.2019)*** while dealing with the petition to quash the entire criminal proceedings held that the High Courts have no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their statements and therefore, there was no *prima facie* case made out as against the accused. It could be done only by the trial Court while deciding the issues on the merits or/and by the Appellate Court while deciding the appeal arising out of the final order that the charge sheet has been laid on the basis of the inconsistency statement under 180 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

9. Further, the Hon'ble Supreme Court of India in the judgment reported in **2019 (10) SCC 686** in the case of ***Central Bureau of Investigation Vs. Arvind Khanna, (Crl.A.No.1572 of 2019 dated 17.10.2019)*** held that the High Courts cannot record the findings on the disputed facts. The defence of the accused is to be tested after appreciation of evidence by the trial Court during the trial. Therefore, this



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Court has no power to consider the disputed facts under 528 of the
Bharatiya Nagarik Suraksha Sanhita, 2023.

10. The Hon'ble Supreme Court of India in another judgment dated **02.12.2019** passed in **Crl.A.No.1817 of 2019** in the case of **M.Jayanthi Vs. K.R.Meenakshi & anr**, held that while considering the petition for quashment of complaint or charge sheet, the Court should not embark upon an enquiry into the validity of the evidence available. All that the Court should see is as to whether there are allegations in the complaint which form the basis for the ingredients that constitute certain offences complained of. Further, the Court can also see whether the preconditions requisite for taking cognizance have been complied with or not and whether the allegations contained in the complaint, even if accepted in entirety, would not constitute the offence alleged. Whether the accused will be able to prove the allegations in a manner known to law would arise only at a later stage i.e., during trial.

11. Further this Court cannot observe at this stage that the initiation of criminal proceeding itself is malicious or not. The same is required to be considered at the conclusion of the trial. Therefore, the



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ground raised by the petitioners to quash the charge sheet cannot be entertained to quash the entire proceedings.

12. In view of the above discussion, this Court is not inclined to quash the proceedings in C.C.No.33 of 2025 on the file of the learned Judicial Magistrate No.II, Mayiladuthurai. The petitioner is at liberty to raise all the grounds before the trial Court. Considering the age of the petitioner, the personal appearance of the petitioner is dispensed with and he shall be represented by a counsel after filing appropriate application. However, the petitioner shall be present before the Court at the time of furnishing of copies, framing charges, questioning under Section 351 of BNSS and at the time of passing judgment.

13. Accordingly, the Criminal Original Petition stands dismissed. Consequently, connected Miscellaneous Petitions are closed.

02.04.2025

drl

Index:Yes/No

Internet:Yes/No



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1. The Judicial Magistrate No.II,
Mayiladuthurai

2. The Inspector of Police,
District Crime Branch,
Mayiladuthurai – 609 001.

3. The Public Prosecutor,
High Court, Madras.



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G.K.ILANTHIRAIYAN,J.

drl

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