



CrI.O.P.No.8108 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.04.2025

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CrI.O.P.No.8108 of 2023

and

CrI.M.P.No.5156 of 2023

Pala. Aravinthan

... Petitioner

Vs

1. State represented by
Inspector of Police,
Podhanur Police Station,
Coimbatore.
(Crime No.706/2022)

2. Elamaram

... Respondents

Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records and Quash the complaint in Cr.No.706/2022 on the file of the Inspector of Police, Podhanur Police Station, Coimbatore District.

For Petitioner : Mr.D.SenthurKugan

For Respondents : Mr.A.Gopinath,
Government Advocate (CrI.Side) (for R1)

Mr.C.Deepak Kumar (for R2)



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ORDER

This Criminal Original Petition has been filed to quash the FIR in Crime No.706 of 2022 on the file of the first respondent, registered for the offences under Sections 403, 406 and 420 of IPC.

2. Heard the learned counsel for both sides and perused the materials available on record.

3. The case of the prosecution is that the second respondent/defacto complainant is engaged in the business of import of second-hand machinery and retailing the same under the name and style of Silicon Automation. During the month of March 2020, due to non-availability of storage space in his godown for the machinery, the defacto complainant kept his machinery to the value of Rs.50,00,000/- in the petitioner's mother's godown and maintained the same from time to time. In the month of September 2021, when he visited the petitioner's godown, important parts of the machinery kept by the defacto complainant went missing and when enquired, it has come to light that the petitioner had sold the parts of the machinery to one Shanmugasundaram and cheated the defacto complainant. Based on the complaint of the second respondent, case

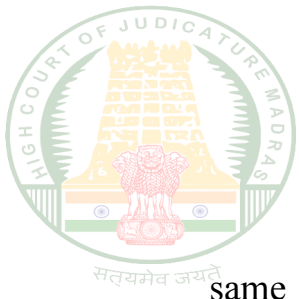


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in Crime No.706 of 2022 was registered as against the petitioner.
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4. It is seen that the petitioner's mother owned the subject property vide registered sale deed dated 04.06.2014 and had put up an asbestos sheet go-down. The petitioner also obtained a water connection and electricity service connection. The said property is also assessed for property tax. Subsequently, the petitioner used the said property to do business in used textile machineries. The petitioner had purchased various textile machineries from his clients and stocked them in the said property. The petitioner also stayed in the same property. While that being so, the second respondent told the petitioner that he had good clients to purchase the used textile machineries. Believing his words, the petitioner invested a huge amount to purchase textile machineries from various clients all over India. The machineries were also sold out through the second respondent to his customers. However, there was a due amount of Rs.35 lakhs from the second respondent. In order to escape from the said liability, the second respondent lodged a complaint with the above said allegations.

5. In fact, the second respondent already filed a complaint and the



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same was closed by the Inspector of Police, Sulur Police Station.

Immediately, the petitioner's mother and the petitioner filed a suit in O.S.No.15 of 2022 on the file of the District Munsif cum Judicial Magistrate, Madukkarai, Coimbatore District for injunction against the second respondent, and it is pending. After a period of 10 months, once again the second respondent lodged a complaint for the very same set of allegations and managed to register the First Information Report on the file of the first respondent in Crime No.709 of 2022. Therefore, the entire allegations are civil in nature, and it is purely a commercial transaction between the petitioner and the second respondent. Hence, no offence is made out as alleged by the second respondent for the offences punishable under Sections 403, 406, and 420 of IPC.

6. It is relevant to refer to the judgement 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:-



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“(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 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.”

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.

7. 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



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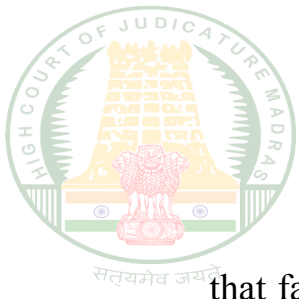
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which is capable of being converted into a valuable property; or

(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 judgement 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



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that failure to pay a contractual or consideration amount cannot give rise to criminal proceedings under 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



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trust.”

9. In view of the above, the impugned FIR cannot be sustained and is liable to be quashed. Accordingly, the FIR in Crime No.706 of 2022 on the file of the respondent is hereby quashed.

10. In the result, this Criminal Original Petition is allowed. Consequently, connected Miscellaneous petition is closed.

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Index:Yes/No
Neutral Citation/Yes/No
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To

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1. The Inspector of Police,
Podhanur Police Station,
Coimbatore.
2. The Public Prosecutor,
High Court of Madras.



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G.K.ILANTHIRAIYAN, J.

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