



Crl.O.P.No. 11096 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.04.2025

CORAM:

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

Crl.O.P.No.11096 of 2025

and

Crl.M.P.Nos.7335 & 7336 of 2025

Srikanth

..... Petitioner

Vs

1.State by
The Special Sub-Inspector of Police,
Selvapuram Police Station,
Coimbatore.
Crime No.26 of 2024

2.Govindhan

..... Respondents

PRAYER: Criminal Original Petition is filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, to call for the records in C.C.No.1355 of 2024 on the file of Judicial Magistrate - V, Coimbatore and quash the same.

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

ORDER

This Criminal Original Petition has been filed seeking to quash the proceedings in C.C.No.1355 of 2024 pending on the file of the Judicial Magistrate No.V, Coimbatore, thereby taken cognizance for the offences under



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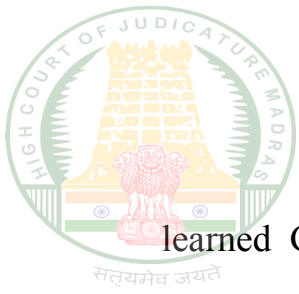
Sections 406 and 420 of IPC.

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2. The case of the prosecution is that the second respondent has been residing in the USA and his native place is Musiri, Tamil Nadu. In the year 2020, when he visited India, the petitioner herein, who is the cousin of the second respondent, approached the second respondent and stated that he intended to start a jewellery business under the name of 'Preethika Jewellers'. He requested the second respondent to invest a sum of Rs.45,00,000/- for the development of his business and assured him that he would be made a partner in the said business. Relying on this representation, the second respondent paid the said amount. However, the petitioner neither engaged the second respondent as a partner nor returned the money. Despite repeated requests, the petitioner did not repay the amount and is alleged to have cheated the second respondent. Hence, the complaint has been lodged.

3. The learned counsel appearing for the petitioner submitted that it is only a loan transaction between the petitioner and the second respondent. The petitioner borrowed a sum of Rs.45 Lakhs. In fact, thereafter, he repaid a sum of Rs.5 Lakhs. Therefore, it is only a loan transaction and no offence has made out.

4. Heard the learned counsel appearing for the petitioner and the



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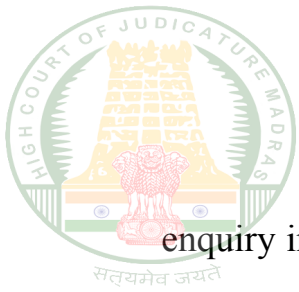
learned Government Advocate (Crl.Side) appearing for the first respondent.

Perused the materials available on record.

5. A perusal of the statement recorded under Section 161 of Cr.P.C reveals that the petitioner assured that he will open a jewellery shop and will engage the second respondent as a partner and on that assurance, he received a sum of Rs.45 Lakhs. Thereafter, the petitioner did not open any jewellery shop and also failed to engage the second respondent as a partner. Therefore, there are specific allegations as against the petitioner in order to attract the offence under Section 406 and 420 of IPC.

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

7. 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



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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.

8. Further, this Court cannot observe at this stage whether the initiation of criminal proceeding itself is malicious not. The same is required to be considered at the conclusion of the trial. Therefore, the ground raised by the petitioner to quash the final report/charge sheet cannot be entertained to quash the entire proceedings.

9. In view of the above discussion, this Court is not inclined to quash the proceedings in C.C.No.1355 of 2024 pending on the file of the Judicial Magistrate No.V, Coimbatore. The petitioner is at liberty to raise all the grounds before the trial Court. 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



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BNSS and at the time of passing judgment. The trial Court is directed to

complete the trial within a period of six months from the date of receipt of copy of this Order.

10. Accordingly, this Criminal Original Petition stands dismissed.

Consequently, connected miscellaneous petitions are also closed.

16.04.2025

Index : Yes/No
Neutral citation : Yes/No
Speaking/non-speaking order
Lpp

To

1.The Judicial Magistrate - V,
Coimbatore.

2.The Special Sub-Inspector of Police,
Selvapuram Police Station,
Coimbatore.

3.The Public Prosecutor,
Madras High Court,
Chennai.



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G.K.ILANTHIRAIYAN, J.

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