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Crl.O.P.No.10908 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.04.2025

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.10908 of 2023

and

Crl.M.P.No.6869 of 2023

1. Shruthi Thilak

2. A.Kannusamy

... Petitioners

Vs

1. The State Rep. by
The Inspector of Police,
B-9, Fairlands Police Station,
Salem City.

2. Indra Priyadharshini

... Respondents

Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records relating to the proceedings in Crime No.89 of 2023 on the file of the Inspector of Police, B-9 Fairlands Police Station, Salem and quash the same.

For Petitioners : Mr.N.S.Sivakumar

For Respondents : Mr.R.Vinothraja,
Government Advocate (Crl.Side) for R1
Mr.L.Infant Dinesh (for R2)



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ORDER

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This Criminal Original Petition has been filed to quash the First Information Report in Crime No.89 of 2023 on the file of the first respondent Police.

2. The case of the prosecution is that on the complaint lodged by the second respondent, the first respondent registered the First Information Report in Crime No.89 of 2023 for the offences punishable under Sections 406, 420, and 506(1) of IPC, alleging that the second respondent is a Doctor and the husband of the first petitioner is a colleague of the second respondent. He is also the Executive Director of her Hospital under the name and style of Shri Hospitals. While that being so, during the month of September 2021, the first petitioner met her and demanded money by giving some jewels belonging to her mother-in-law, as if she had run away from the matrimonial house. On receipt of the jewels, the second respondent paid her money to the tune of Rs.5 lakhs. That apart, the second accused also had borrowed money on several occasions. The second respondent gave money in good faith, thinking that the money would be returned to her as promised. Later, she came to understand that the jewels produced by the first accused



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had been stolen from the first petitioner's mother-in-law. Therefore, on the instructions of the first accused's husband, the jewels were handed over to him since they belonged to the first petitioner's mother-in-law. Thereafter, the accused refused to return the money which was already borrowed by them. Therefore, when it was asked by the second respondent, the accused threatened her with dire consequences. Hence, the complaint.

3. The learned counsel for the petitioners would submit that the first petitioner and her husband had a misunderstanding due to an illegal intimacy with the second respondent herein. When it was questioned by the first petitioner, the second respondent foisted a false case, as if the petitioners borrowed money from the second respondent, that too by pledging the first petitioner's mother-in-law's jewels. Further, the first petitioner's husband, though he is a doctor, has a Movie production Company and produced films, due to which he had huge losses, and jewels of the first petitioner were also pledged and sold at the instance of her husband. That apart, they also parted with Rs.2 Crores of money by selling immovable properties for producing films.



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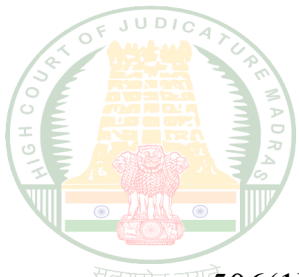
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4. While that being so, the husband of the first petitioner got addicted to alcohol and also had an illegal intimacy with the second respondent. Thereafter, there was continuous harassment by the husband of the first petitioner, and she was also driven out of the matrimonial house. Hence, the first petitioner filed a complaint under the Domestic Violence Act in DVC.No.95 of 2022 on the file of the XXIII Metropolitan Magistrate Court, Saidapet, Chennai. In order to escape from the clutches of the case pending against the husband of the first petitioner, her husband influenced the second respondent and filed the present complaint.

5. 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.

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

7. On perusal of the records, it is revealed that there is absolutely no allegations to attract the offences punishable under Sections 406, 420 and



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506(1) of IPC.

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8. 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 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.



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9. 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 accused must induce 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

(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.”



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10. 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 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



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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.”

11. Insofar as the offence under Section 506(i) of I.P.C is concerned, to attract the offence, threat and intention to cause an alarm are main ingredients. The third ingredient is that the intention must be to cause any person to do any act which he is not legally bound to do or to omit to do any act which that person is legally entitled to do, subsequent to the main ingredients. Whereas in the case on hand, even according to the case of the prosecution, the alleged threats issued by the petitioner were only empty threats and they had no effect on the complainant.

12. The above judgements are squarely applicable to the case on



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hand and as such, the First Information Report cannot be sustained and liable to be quashed. Accordingly, the impugned First Information Report in Crime No.89 of 2023 is hereby quashed.

13. In the result, this Criminal Original Petition is allowed.

Consequently, the connected Miscellaneous Petition is closed.

23.04.2025

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

1. The Inspector of Police,
B-9, Fairlands Police Station,
Salem City.
2. The Public Prosecutor,
High Court of Madras.

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G.K.ILANTHIRAIYAN, J.

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