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CrI.OP.No.16465 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 04.04.2025

CORAM:

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

CrI.O.P.No.16465 of 2023

and

CrI.MP.No.10531 of 2023

S.Sarath Kumar

... Petitioner

Vs.

1. The Inspector of Police,
R-4 Soundarapandiyanar Angadi Police Station,
Chennai.

2. N.Sanjay Jain

... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records relating to the complaint and the FIR dated 08.06.2023 in Cr.No.112 of 2023 on the file of the first respondent and quash the same.

For Petitioner : Mr.G.Santhosh Kumar

For Respondents : Mr.R.VinothRaja
Government Advocate (CrI.Side)
for R1
: No Appearance for R2
(Notice Served)



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ORDER

This petition has been filed to quash the FIR registered in Cr.No.112 of 2023 on the file of the first respondent.

2. Though notice was served on the second respondent and her name is also printed in the cause-list, no one appeared before this Court either in person or through counsel.

3. The case of the defacto complainant is that the petitioner borrowed a sum of Rs.25,00,000/- on various dates and he had repaid a sum of Rs.8,25,000/- and there is balance to the tune of Rs.16,75,000/-. Hence, the complaint.

4. A perusal of an FIR revealed that admittedly the petitioner has borrowed a loan to the tune of Rs.25,00,000/- on various dates from the defacto complainant. Thereafter, he has paid the partial amount of Rs.8,25,000/- and failed to repay the balance amount to the tune of Rs.16,75,000/-. It is purely a loan transaction and no offence



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is made out under Sections 406 and 420 of IPC. In so far as the offence under Section 506(i) of IPC, FIR cannot be sustained and the FIR itself is nothing but clear abuse of process of law and the entire allegations cannot be sustained as against the petitioner and liable to be quashed.

5. The defacto complainant has alleged in the complaint that the petitioner has committed offences under Sections 406 and 420 of IPC. It would thus be necessary to examine the ingredients of the above offences and whether the allegations made in the complaint, read on their face, attract those offences under the Penal Code.

Section 405 of Penal Code reads thus:-

*405. Criminal breach of trust —
Whoever, being in any manner entrusted
with property, or with any dominion
over property, dishonestly
misappropriates or converts to his own
use that property, or dishonestly uses or
disposes of that property in violation of
any direction of law prescribing the*



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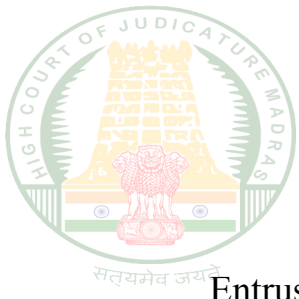
mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".

A careful reading of Section 405 of IPC shows that the ingredients of a criminal breach of trust are as follows:-

(i) A person should have been entrusted with property, or entrusted with dominion over property;

(ii) That person should dishonestly misappropriate or convert to their own use that property, or dishonestly use or dispose of that property or willfully suffer any other person to do so; and

(iii) That 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.



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Entrustment is an essential ingredient of the offence. A person who dishonestly misappropriates property entrusted to them contrary to the terms of an obligation imposed is liable for a criminal breach of trust and is punished under Section 406 of the Penal Code.

6. It is relevant to extract the provisions under Section 420 of the Penal Code, 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.



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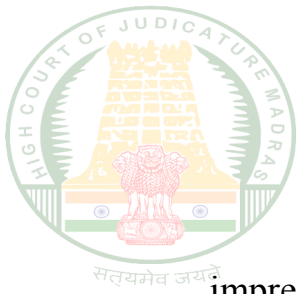
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The ingredients to constitute an offence under Section 420 of IPC are as follows :-

- (i) A person must commit the offence of cheating under Section 415 and
- (ii) 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.

Cheating is an essential ingredient for an act to constitute an offence under Section 420.

7. It is relevant to rely upon the judgment made by the Honourable Supreme Court of India in the case of *M/s. Indian Oil Corporation Vs. NEPC India Limited and others* reported in (2006) 6 SCC 736, wherein it has been held that the civil liability cannot be converted into criminal liability and it is necessary to take notice of a growing tendency in business circle to convert purely civil dispute into criminal case. This is obviously on account of prevalent



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impression that civil law remedies are time consuming and do not adequately protect the interest of lender/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable breakdown of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claim which do not involve any criminal offence by applying pressure through criminal prosecution should be deprecated and dishonoured.

8. In the case of ***G.Sagar Suri Vs. State of Uttar Pradesh*** reported in ***2000 (2) SCC 636***, the Honourable Supreme Court of India held as follows:-

“It is to be seen if a matter, which is essentially of civil nature, has been given a cloak of criminal offence, criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal Court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain



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principles on the basis of which High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this Section has to be exercised to prevent abuse of the process of any Court or otherwise to secure the ends of justice.”

9. It is relevant to rely upon the land mark Judgment of the Hon'ble Supreme Court of India in the case of ***State of Haryana and others Vs. Bhajanlal and others*** reported in ***1992 Supp (1) SCC 335***, in which, the Hon'ble Supreme Court of India has laid down the following categories of instances wherein inherent powers can be exercised in order to secure the ends of justice as follows:-

“(a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code



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except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(c) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(f) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the



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concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(g) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

The complaint filed by the respondent against the petitioners is nothing, but clear abuse of process of laws and is liable to be quashed.

10. Accordingly, the FIR registered in Crime No.112 of 2023 on the file of the first respondent police is hereby quashed and the Criminal Original Petition is allowed. Consequently, the connected miscellaneous petitions are closed.

04.042025

Vv



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To
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1. The Inspector of Police,
R-4 Soundarapandiyanar Angadi Police Station,
Chennai.
2. The Public Prosecutor,
Madras High Court,
Chennai.



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Vv

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