BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.04.2025

CORAM:

THE HONOURABLE MR.JUSTICE P.DHANABAL

CRL. O.P(MD) No.1294 of 2024

and

CRL.M.P.(MD) Nos.900 & 901 of 2024

1. N.Palraj @ Paul Raj

2. P.Mallika @ Malliga

3. P.Jerin @ Jernin Suptha Mangal Raj

4. P.Joshua @ Joshua Jaison Raj ... Petitioners

Vs

1.The State rep. by
The Inspector of Police,
District Crime Branch,
Dindigul District.
Crime No.34 of 2022.

2. Johnson Christopher ... Respondents

PRAYER: Criminal Original Petition filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 to call for the records pertaining to the impugned Charge Sheet proceedings in C.C.No.768 of 2023, on the file of the learned Judicial Magistrate Court No.II, Dindigul and quash the same as illegal.

For petitioners : Mr.R.Shankar Ganesh

For R1 : Mr.M.Vaikkam Karunanithi
Government Advocate (Crl.Side)

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ORDER

This petition is filed by the petitioner to quash the proceedings in Charge Sheet in C.C.No.768 of 2023, on the file of the Judicial Magistrate Court No.II, Dindigul.

2. The prosecution case is that the *defacto* complainant mortgaged his property to one Srinivasan. While so, in order to settle the mortgage money, he sold the property of 15 cents to one Mohan and received an advance of Rs.4,35,000/-. At the time of registration, the Registering Authority informed that below 21 cents cannot be registered. In the meantime, the *defacto* complainant spent the said amount and thereby, obtained loan from the first accused, namely, Palraj for a sum of Rs. 5,45,000/-. The accused 1 to 4 entered into a conspiracy and represented that they would redeem the property mortgaged with Srinivasan and asked Rs.11,00,000/- from the *defacto* complainant. Accordingly, on

20.09.2022, a sum of Rs.8,50,000/- and on 06.10.2022, a sum of Rs. 2,50,000/-, totally the *defacto* complainant paid a sum of Rs.11,00,000/- to the accused. After receipt of the amount, the accused 1 to 4, without redeeming the land, stated that the said amount was tallied for the interest and principal of the loan amount and thereby, they cheated the *defacto* complainant based on their conspiracy. Therefore, the *defacto* complainant, who is the second respondent, lodged a complaint before the first respondent. Based on the same, the case in Crime No.34 of 2022, for the offences 120(B) and 420 IPC has been registered and thereafter, the first respondent conducted investigation and filed Final Report. Now, all the accused challenged the said Final Report. Therefore, they filed this petition.

3. The learned counsel for the petitioners would submit that the respondent police registered the case against the petitioners, based on the complaint lodged by the second respondent regarding money dispute. Without conducting proper investigation, the first respondent filed Final Report for the offences under Section 120(B) and 420 IPC, which is without any material. The learned Judicial Magistrate No.II, Dindigul has also taken cognizance without *prima facie* material. In fact, the second

petitioner is the cousin sister of the second respondent. The second respondent was suffering from various financial crises and in order to get over those loan problems, he requested aid of the first petitioner, who is the brother-in-law of the second respondent. When the second respondent approached the first petitioner by saying that he mortgaged his property to one Srinivasan and he was unable to redeem the property and an attempt to sell the property to one Mohan was also failed by the restriction imposed by the Government that below 21 cents cannot be registered and believing the words of the second respondent, due to sympathy and their relationship, the first petitioner paid a sum of Rs.8,50,000/- on various occasions and the second respondent also assured to repay the amount by selling his property. In the meantime, the second respondent approached the third petitioner, who is a practising Advocate, to take steps to redeem the property from Srinivasan. The third respondent also agreed to negotiate the issue with Srinivasan and a part of the negotiation, the second respondent paid a sum of Rs.2,50,000/- to the said Srinivasan. Subsequently, negotiation was failed with Srinivasan, since there was dispute between the second respondent and Srinivasan regarding quantum of amount. The second respondent, in order to get amount from the Srinivasan and to redeem the mortgaged amount, he approached the third petitioner. When the third petitioner approached the said Srinivasan, he came to understand that the second respondent sold the property in favour of the said Srinivasan through documents dated 12.09.2014 registered before the Sub-Registrate, Otanchathram. After knowing the entire picture, the petitioners 1 to 3 were aware all the information and refused to support the second respondent's illegal activities. Hence, the second respondent lodged a false complaint. Based on the same, FIR has been registered. There are no ingredients to constitute the offence under Sections 120(B) and 420 IPC. Therefore, the pending proceedings are liable to be quashed.

4. The learned Government Advocate (Crl.Side) for the first respondent would submit that based on the complaint lodged by the second respondent, they registered the case in Crime No.34 of 2022, for the offences 120(b) and 420 IPC. Thereafter, the first respondent conducted elaborate investigation and filed Final Report. As per the Final Report, there are *prima facie* materials available to proceed with the case against the petitioners. Therefore, the Trial Court also, after satisfying that there are *prima facie* materials available to constitute the offence, has taken cognizance and the same is pending in C.C.No.768 of 2023.

Therefore, it is the matter for trial. At this stage, the petition is liable to be dismissed.

5. The learned counsel for the second respondent would submit that the second respondent mortgaged the property to one Srinivasan and thereafter, he was unable to redeem the property. Thereby, he approached one Mohan and obtained money for a sum of Rs.4,35,000/-. When they about to register the document, the Registering Authority represented that below 21 cents cannot be registered without dividing the lands into plots. In the meantime, he spent the said amount borrowed from the said Mohan. Therefore, he approached the first petitioner and borrowed money for a sum of Rs.5,45,000/- and thereafter, the petitioners 1 to 4 represented the second respondent that they would redeem the property, thereby, he has paid a sum of Rs.11,00,000/-. Thereafter, they have not redeemed the property and the first petitioner, after receipt of Rs.11,00,000/-, stated that it was adjusted for principal and interest for the amount borrowed by the second respondent. Therefore, they cheated the second respondent and thereby, he lodged the complaint before the first respondent. The first respondent also, after elaborate investigation, filed Final Report. As per the Final Report, there are *prima facie* materials available. Therefore, it is

the matter for trial and the petition is liable to be dismissed.

6. This Court heard both sides and perused the records.

7. On perusal of the records, it is seen that based on the complaint lodged by the second respondent, the first respondent registered a case in Crime No.34 of 2022, for the offences 120(B) and 420 IPC. Thereafter, the first respondent filed Final Report, after conclusion of the investigation and the Trial Court has also taken cognizance in C.C.No.768 of 2023 and the same is pending for trial. At this stage, the petitioner filed this petition.

8. According to the petitioners, there is a money dispute between the petitioners 1 and 2 and the second respondent. The second respondent borrowed money from the first petitioner for a sum of Rs.8,50,000/-. In the meanwhile, the second respondent approached the third petitioner to negotiate with one Srinivasan, to whom the second respondent mortgaged the property and thereafter, they came to know that the second respondent already sold the property to Srinivasan through sale deeds dated 12.09.2014 and thereafter, the third petitioner has not proceeded further. While so, the second respondent lodged a false complaint against the

petitioners.

9. According to the second respondent, these petitioners cheated to the tune of Rs.11,00,000/- and it is also admitted in the complaint that he borrowed money from the first petitioner and he also mortgaged the property to the one Srinivasan and thereby, it is purely money dispute between the parties in respect of the mortgage of the property and also there is a dispute in respect of the money transaction between the first petitioner and second respondent.

10. This Court also perused the entire materials. On careful perusal of the records, it reveals that the matter is purely based on the money transaction. Thereby, there is no ingredients to constitute the offence under Section 120(B) IPC. In order to attract provision under Section 120 (B) IPC, regarding the conspiracy, there is no material about the place where the accused entered into the conspiracy and no any *iota* of materials to constitute offences under Section 120(B) IPC.

11. As far as Section 420 IPC is concerned, even as per the prosecution, it is an admitted fact that the second respondent borrowed

money from the first petitioner. There is no ingredients that the second respondent dishonestly induced the petitioners to settle the money and there is no any ingredients that the petitioners deceived the second respondent fraudulently or dishonestly induced to deliver the money. Therefore, there are no ingredients to constitute the offence. Even as per the Final Report and FIR, there are no ingredients to constitute the offence under Sections 420 and 120B IPC. Per contra, available material shows that there is a money dispute between the parties. Therefore, the first respondent, without conducting proper investigation, filed Final Report for the money dispute and the Trial Court also, without verifying materials, has taken cognizance. Therefore, the pending proceedings are liable to be quashed.

12. In order to attract the offence under Section 420 IPC, the intention to cheat must be available from the inception, culpable intention at the very inception cannot be presumed on the failure to keep up a promise subsequently. There is a difference between cheating and breach of trust. Therefore, the petitioners need not face the ordeal of trial.

13. At this juncture, the petitioners relied on the following

judgements:

1.***Vijay Kumar Ghai and others vs. State of West Bengal and others*** reported in ***2022 (2) CTC 555***;

2.***Saranya vs. State rep by the Inspector of Police, DCB, Tiruppur*** reported in ***2024 (1) TLNJ 97 (Criminal)***;

3.***C.Subbiah and others vs. the Superintendent of Police and others*** reported in ***CDJ 2024 Ker HC 1252***.

14. On perusal of the abovesaid judgement, it is clear that to constitute the offence under Section 420 IPC, the ingredients must be

(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 culpable of being converted into valuable security. Thus, cheating is an essential ingredient for an act to constitute an offence under Section 420, IPC.

15. Further, the intention to cheat must be available from the

inception and culpable intention at the very inception cannot be presumed on the failure to keep up a promise, subsequently. Therefore, the said act is only breach of trust. There is a difference between the criminal breach of trust and the cheating. Therefore, in the case on hands also, even as per the FIR and Final Report, there is a money dispute and there is no ingredients to constitute the offence under Sections 120(B) and 420 IPC. Therefore, the pending proceedings before the Judicial Magistrate in C.C.No.768 of 2023 are liable to be quashed.

16. In the result, this Criminal Original Petition is allowed and pending proceedings in C.C.No.768 of 2023 on the file of the learned Judicial Magistrate Court No.II, Dindigul, is set aside. Consequently, connected miscellaneous petitions are closed.

29.04.2025

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
apd

To

1. The Judicial Magistrate Court No.II,
Dindigul.

2.The Inspector of Police,
District Crime Branch,
Dindigul District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

P.DHANABAL,J

apd

Crl.OP(MD) No.1294 of 2024

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