



Crl.O.P.(MD).No.18635 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **22.01.2025**

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THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.(MD).No.18635 of 2022

and

Crl.M.P.(MD). Nos.12569 and 12570 of 2022

1.Kadhar Mydeen

2.Shahul Hameed

... Petitioners / Accused 1 & 2

Vs.

1.The State represented by, its,
The Inspector of Police,
Kadayanallur Police Station,
Tirunelveli District.
(Crime No.212 of 2017)

... 1st Respondent / Complainant

2.Peermohaideen

... 2nd Respondent /
Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to the impugned charge sheet in C.C.No.51 of 2019 pending on the file of the learned Judicial Magistrate Court, Tenkasi and quash the same as illegal and unsustainable.



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For Petitioners : Mr.V.Angusamy
For R1 : Mr.B.Thanga Aravindh,
Government Advocate
(Criminal Side)
For R2 : Mr.N.Mohideen

ORDER

This petition has been filed to quash the impugned charge sheet in C.C.No.51 of 2019 pending on the file of the learned Judicial Magistrate Court, Tenkasi

2. The second respondent gave a complaint to the first respondent alleging that he was working along with the first petitioner in Dubai for about 12 years in the same company. The first petitioner told the defacto complainant that they can start a business in the native place and accordingly both of them had quit their job in Dubai. They decided to start a travel agency business at Dubai and the defacto complainant was informed that he can also invest in the business and become a partner and that the profit and other income will be given to the defacto complainant. Believing the same, the defacto complainant had invested a sum of Rs. 10,25,000/- on 15.08.2013 in the travel agency business. For this purpose, the accused persons and the defaco complainant entered into an

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agreement which was duly attested by a notary public. The grievance of the defacto complainant is that the accused persons did not properly account the profit and loss of the business and at one point of time, the defacto complainant wanted to leave the business and hence, demanded for the amount that was invested in the business. The amount was not returned back and the accused persons started evading the defacto complainant. It is under these circumstances, the complaint came to be given. Based on the complaint, an FIR came to be registered in Crime No. 212 of 2017 for offence under Sections 406 and 420 of IPC. On completion of investigation, the police report was filed before the Court below and the Court below took cognizance for the offence under Sections 406 and 420 of IPC and issued process to the petitioners. Aggrieved by the same, the present quash petition has been filed before this Court.

3. Heard the learned counsel on either side and perused the materials available on record.



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4. The sum and substance of the allegation is that the defacto complainant had invested in the business that was started by the accused persons and later, there was no proper accounting and the profits were not paid to the defacto complainant and when the defacto complainant wanted to leave the business, the amount was also not repaid back in spite of the assurance given by the accused persons.

5. In the considered view of this Court, even if the allegations made by the defacto complainant and the materials collected by the respondent police are taken as it is, no offence is made out against the petitioners. A transaction which is purely civil in nature has been given a criminal colour in this case. Apart from that, the charge under Sections 406 and 420 of IPC cannot go together. For proper appreciation, the judgment of the Apex Court in ***Delhi Race Club (1940) Ltd and others - vs- State of Uttar Pradesh and another***, reported in ***2024 SCC Online SC 2248*** can be relied upon. The Apex Court has categorically held that the offence of cheating and criminal breach of trust cannot be parallely prosecuted in a case.



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6. For all the above reasons, this Court finds that the continuation of the criminal proceedings as against the petitioners will result in abuse of process of law which requires the interference of this Court in exercise of its jurisdiction under Section 482 of CrPC.

7. In the result, the proceedings in C.C.No.51 of 2019 pending on the file of the learned Judicial Magistrate Court, Tenkasi is hereby quashed and this criminal original petition stands allowed. Consequently, the connected miscellaneous petitions are closed.

22.01.2025

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

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To

1.The Judicial Magistrate Court,
Tenkasi.

2.The Inspector of Police,
Kadayanallur Police Station,
Tirunelveli District.

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

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N.ANAND VENKATESH,J.

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Order made in
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