BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 02.01.2025	Pronounced on : .01.2025

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

CRL.O.P.(MD).No.16190 of 2022
and
CRL.M.P.(MD).Nos.10726 and 10727 of 2022

A.Ravikumar ... Petitioner / Accused No.2

Vs.

1.The State of Tamil Nadu
represented by the Inspector of Police,
District Crime Branch,
Karur. ... 1st Respondent / Complainant

2.P.Pothiraj (Died)

3.Manimegalai

4.Gowri ... 2nd to 4th Respondents / Defacto Complainants

(*R3 and R4 impleaded as per order of this Court dated 22.04.2024 in Crl.MP(MD).No.3405 of 2024 in Crl.OP(MD).No.16190 of 2022*)

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to the impugned Charge Sheet in C.C.No.337 of 2016 on the file of the learned Judicial Magistrate No.I, Karur and quash the same.

For Petitioner	:	Mr.K.Samidurai, Advocate.
For R1	:	Mr.S.Ravi, Additional Public Prosecutor
For R3 and R4	:	No appearance

ORDER : The Court made the following order :-

This petition has been filed by A2 to quash the proceedings pending in C.C.No.337 of 2016 on the file of the learned Judicial Magistrate No.I, Karur.

2. The 2nd respondent (since expired the 3rd and 4th respondents have been added as the legal heirs of the deceased 2nd respondent) gave a complaint to the 1st respondent stating that the accused persons induced the 2nd respondent to part with a total sum of Rs.25 lakhs in instalments on 18.10.2014, 13.11.2014 and 23.11.2014 and promised that they will arrange for purchase of gold bar and golden jewellery. It was further alleged that this transaction had taken place at PLA RAM Residency Lodge. Later, they went back on their promise and neither purchased gold nor repaid back the amount. Based on this complaint, an FIR came to be registered by the 1st respondent in Crime No.4 of 2015.

3. The 1st respondent on completion of investigation filed a police report before the learned Judicial Magistrate No.I, Karur for offence under Sections 120(b), 406, 420 and 506(i) of IPC against 3 accused persons and the petitioner has been arrayed as A2. The Court below took cognizance of the police report and issued process to the accused persons. Aggrieved by the same, A2 has filed this quash petition.

4. The learned counsel for the petitioner submitted that there is a family dispute between one Ramakrishnan and the family of A1 and A3. An earlier complaint was also given in this regard against the said Ramakrishnan and one Chinnasamy which ended in conviction. Keeping this in mind, false cases were foisted against A1 and A3 and since the petitioner happens to be the close friend of the son of A1, he was also roped in those cases. A very similar complaint was given earlier before the Aruppukottai Town Police Station and one other close relative Selvarani also gave a similar complaint which was registered as an FIR in Crime No. 33 of 2014 and a closure report was filed after the completion of investigation. Thus, it was contended that the case itself is attended with *mala fides* and it is a clear abuse of process of law which requires the

interference of this Court.

5. *Per contra,* the learned Additional Public Prosecutor submitted that the trial has already commenced in this case and PW1 has been examined on the side of prosecution. He further submitted that there is sufficient material in this case to substantiate the allegations made by the 2nd respondent. He further submitted that the 2nd respondent had not given any earlier complaint against the petitioner or other accused persons and the so-called family dispute and earlier complaints, had nothing to do with the 2nd respondent. Therefore, it was contended that there are no merits in this quash petition and that the same is liable to be dismissed by this Court.

6. This Court has carefully considered the submissions made on either side and the materials available on record.

7. The main ground that was contended on the side of the petitioner is that the criminal prosecution is attended with *mala fides* and that during the alleged occurrence of handing over money, the petitioner was not even present in the place. In short, it was contended that the petitioner has been

roped in only on the ground that he happens to be the close friend of the son of A1.

8. This Court while exercising its jurisdiction under Section 482 of the Code of Criminal Procedure cannot conduct a mini trial and normally the plea of *alibi* is a matter to be established in the course of trial. Hence, the defence taken by the petitioner to the effect that the petitioner was not even present at the time when the amount was given by the defacto complaint, cannot be gone into in a quash petition.

9. The only other ground to be considered is as to whether the criminal prosecution is attended with *mala fides*.

10. It is true that there is an ongoing dispute between the family of A1 and A3 and the family of one G.Ramakrishnan. Various complaints have been given and enquiry has been conducted. Insofar as the 2nd respondent / defacto complaint is concerned, in none of those proceedings, the defacto complaint was a party and on the face of the records, there is nothing to establish the relationship of the defacto complaint with the other persons

against whom there is an ongoing dispute on the side of A1 and A3.

11. While dealing with the petition under Section 482 of the Code of Criminal Procedure, this Court must only see if the materials available creates a strong suspicion and that the available materials are enough to frame charges and to proceed further with the trial.

12. In the instant case, LW1 to LW8 speak about the entire transaction that took place at PLA RAM Residency. Apart from that, the car number that was identified in which the 2nd respondent was taken by the accused persons to the lodge, was found to be a fake registration number which was spoken to by LW11. The prosecution has also relied upon nearly 8 documents to establish the transaction between the parties and the various receipts that were given acknowledging the receipt of the sum of Rs.25 lakhs from the defacto complaint.

13. It is true that the offence under Sections 420 and 406 of IPC cannot travel together. The law on this issue was decided by the Apex Court in the recent judgment in ***Delhi Race Club (1940) Ltd and others -vs- State***

of Uttar Pradesh and another, reported in ***2024 SCC Online SC 2248*** and the relevant portions are extracted hereunder:

*"**26.** Further, in both the aforesaid sections, mens rea i.e. intention to defraud or the dishonest intention must be present, and in the case of cheating it must be there from the very beginning or inception.*

***27.** In our view, the plain reading of the complaint fails to spell out any of the aforesaid ingredients noted above. We may only say, with a view to clear a serious misconception of law in the mind of the police as well as the courts below, that if it is a case of the complainant that offence of criminal breach of trust as defined under Section 405 of IPC, punishable under Section 406 of IPC, is committed by the accused, then in the same breath it cannot be said that the accused has also committed the offence of cheating as defined and explained in Section 415 of the IPC, punishable under Section 420 of the IPC.*

28.** Every act of breach of trust may not result in a penal offence of criminal breach of trust unless there is evidence of manipulating act of fraudulent misappropriation. An act of breach of trust involves a civil wrong in respect of which the person may* *seek his remedy for damages in civil courts but, any breach of trust with a mens rea, gives rise to a criminal prosecution as well. It has been held in Hari Prasad Chamaria v. Bishun Kumar Surekha, reported in* ***(1973) 2 SCC 823 *as under:*

> *"4. We have heard Mr. Maheshwari on behalf of the appellant and are of the opinion that no case has been made out against the respondents under Section 420 Penal Code, 1860. For the purpose of the present appeal, we would assume that the various allegations of fact which have been made in the complaint by the appellant are correct. Even after making that allowance, we find that the complaint does not disclose the commission of any offence on the part of the respondents under Section 420 Penal Code, 1860. There is nothing in the complaint to show that the respondents had dishonest or fraudulent intention at the time the appellant parted with Rs.35.000/- There is also nothing to indicate that the respondents induced the appellant to pay them Rs. 35,000/- by deceiving him. It is further not the case of the appellant that a representation was made, the respondents knew the same to be false. The fact that the respondents subsequently did not abide by their commitment that they would show the appellant to be the*

proprietor of Drang Transport Corporation and would also render accounts to him in the month of December might create civil liability on the respondents for the offence of cheating."

***29**. To put it in other words, the case of cheating and dishonest intention starts with the very inception of the transaction. But in the case of criminal breach of trust, a person who comes into possession of the movable property and receives it legally, but illegally retains it or converts it to his own use against the terms of the contract, then the question is, in a case like this, whether the retention is with dishonest intention or not, whether the retention involves criminal breach of trust or only a civil liability would depend upon the facts of each case.*

***30.** The distinction between mere breach of contract and the offence of criminal breach of trust and cheating is a fine one. In case of cheating, the intention of the accused at the time of inducement should be looked into which may be judged by a subsequent conduct, but for this, the subsequent conduct is not the sole test. Mere breach of contract cannot give rise to a criminal prosecution for cheating unless fraudulent or dishonest intention is shown right from the beginning of the transaction i.e. the time when the offence is said to have been committed. Therefore, it is* *this intention, which is the gist of the offence. Whereas, for the criminal breach of trust, the property must have been entrusted to the accused or he must have dominion over it. The property in respect of which the offence of breach of trust has been committed must be either the property of some person other than the accused or the beneficial interest in or ownership' of it must be of some other person. The accused must hold that property on trust of such other person. Although the offence, i.e. the offence of breach of trust and cheating involve dishonest intention, yet they are mutually exclusive and different in basic concept. There is a distinction between criminal breach of trust and cheating. For cheating, criminal intention is necessary at the time of making a false or misleading representation i.e., since inception. In criminal breach of trust, mere proof of entrustment is sufficient. Thus, in case of criminal breach of trust, the offender is lawfully entrusted with the property, and he dishonestly misappropriated the same. Whereas, in case of cheating, the offender fraudulently or dishonestly induces a person by deceiving him to deliver any property. In such a situation, both the offences cannot co-exist simultaneously."*

14. That by itself is not a ground to quash the case since ultimately, the materials *prima facie* establish the offence of cheating. Therefore, if the prosecution proves that there was an intention to cheat from the inception, the accused persons may suffer conviction under Sections 420 of IPC. As a word of caution, this Court has to clarify that these are *prima facie* findings and the same will not have any bearing on the Trial Court which has to decide the case on its own merits and in accordance with law.

15. The grounds raised by the learned counsel for the petitioner that the case is attended with *mala fides*, cannot be sustained based on the materials available before this Court. All the other issues are factual in nature and the same has to be raised only before the Trial Court which will be considered in accordance with law.

16. This Court also takes into consideration the fact that the Trial has already commenced and PW1 has been examined on the side of prosecution. Hence, this Court is not inclined to interfere with the proceedings at this stage.

17. The learned counsel for the petitioner sought for dispensing with the appearance of the petitioner before the Court below. Considering the same, this Court is inclined to dispense with the appearance of the petitioner and the petitioner shall be represented through a counsel who shall cross examine the witnesses on the same day they are examined in chief by the prosecution. The petitioner shall be present before the Court as and when required, at the time of questioning under Section 313(1)(b) of the Code of Criminal Procedure and at the time of final judgment.

18. In the result, this criminal original petition is dismissed and there shall be a direction to the learned Judicial Magistrate No.I, Karur to complete the proceedings in C.C.No.337 of 2016 within a period of 4 months from the date of receipt of a copy of this order. Consequently, the connected miscellaneous petitions are closed.

(N A V J)
.01.2025

Index : Yes/No
Speaking Order : Yes/No
NCC : Yes/No
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TO

1.The Judicial Magistrate No.I,
Karur.

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

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

N.ANAND VENKATESH,J.

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Pre-delivery order made in
CRL.O.P.(MD).No.16190 of 2022

Dated: .01.2025