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Crl.RC No.2131 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.02.2026

CORAM

THE HONOURABLE Mr.JUSTICE SUNDER MOHAN

Crl.R.C.No.2131 of 2025

and

Crl.M.P.No.19799 of 2025

1.Prabakaran
2.Manjula
3.Sridharan
4.Muniappan
5.Chellapillai
6.Mani

... Petitioner

Vs.

State
Rep. by the Inspector of Police
Sooramangalam Police Station
Salem
Crime No.795/2007

... Respondent

PRAYER: Criminal Revision petition filed under Section 397 read with 401 of Cr.P.C. to call for the records in connection with the order dated 11.09.2025 in C.C.No.161/2008 on the file of the Judicial Magistrate Court No.II, Salem and set aside the same.

For Petitioner : Ms.V.Mythili

For Respondent : Mr.R.Vinothraja
Government Advocate (Crl. Side)



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ORDER

The revision challenges the order dated 11.09.2025 passed by the learned Judicial Magistrate No.II, Salem in CC.No.161 of 2008 by which the learned Magistrate had found that the petitioners cannot be prosecuted for the offences under Section 420 of IPC, 1860 r/w. 109 of IPC, 1860 instead they can only be prosecuted for the offences under Sections 406 and 409 of IPC, 1860 and consequently altered the charge to Sections 406 and 409 of IPC, 1860 after hearing the petitioners.

2. It is the case of the prosecution that, the petitioners are builders; that they had entered into a joint venture agreement with the de facto complainant, on 22.04.2004; that as per the joint venture agreement, the petitioners were required to construct an apartment, in the land belonging to the de facto complainant; that for the said purpose, the de facto complainant had executed a power of attorney in favour of the petitioners; that since the petitioners did not adhere to the terms of the joint venture agreement, the power of attorney was revoked on 06.10.2006 and thereafter, the first petitioner had executed a sale agreement in favour of the second petitioner and thus committed the



offence under Sections 420 r/w. 109 and 468 of IPC, 1860. The trial

Court accordingly framed charges under Section 420 r/w.109 and 468 of IPC, 1860. The charges were framed in the year 2008. The prosecution had closed its evidence in the year 2017. After conclusion of Section 313 Cr.P.C. questioning and completing other formalities, the case was reserved for judgment on 03.02.2025. Thereafter, the trial Court had reopened the case and after hearing the parties had passed the impugned order.

3. Mr.Sreenivas, learned senior counsel for the petitioners would submit that the petitioners have been facing the prosecution under the impression that they have been charged for the offence of cheating for the past 17 years; that the impugned order altering the charge after a period of 20 years from the date of the alleged occurrence, will cause serious prejudice to the petitioner; and that in any case the offence of criminal breach of trust would not be made out in the facts and circumstances of the case as the allegation at best discloses breach of promise and a commercial dispute between the builder and the landlord. He would further submit that the learned Magistrate had taken into consideration sale agreements which were executed by the petitioner even before the power of attorney was revoked to alter the charge to Sections 406 and



409 of IPC, 1860 and referred to the Exs.P.51 to P.54 which were the sale agreements executed in the year 2004.

4. Heard the learned Government Advocate appearing for the respondent who would submit that though the prosecution had filed the final report only for the offence under Section 420 r/w.109 and 468 of IPC, 1860, the trial Court is well within its power to alter the charge any time before the Judgment if the evidence discloses that the said offence is made out and that therefore, there is no infirmity in the impugned order and he further submits that the petitioners can always cross-examine the witnesses and it is not as if they are without any remedy.

5. Admittedly, the petitioners were prosecuted for the past 17 years for the offences under Sections 420, 409 and 468 of IPC, 1860. The allegations as stated above is that the petitioners have executed a sale agreement on 06.10.2006, when the power of attorney in favour of the first petitioner was not in force. It is seen that by virtue of the joint venture agreement which is stated to be still valid and which is still not been terminated, the petitioners are entitled to 77% share in the constructed area along with the proportionate undivided share in the land. There is also a civil suit pending between the parties. The only allegation



against the petitioners is that a sale agreement was entered after the power of attorney was revoked and the petitioners had applied for a loan which were not been disbursed to the petitioners. It is seen from the impugned order that the learned Magistrate has taken into consideration certain transactions made by the petitioners even before the power of attorney is revoked. However, the question as to whether inspite of the notice of revocation of the power of attorney, the petitioners had executed sale agreements, has to be adjudicated in a civil forum, more so, since it is the specific case of the petitioners that the power of attorney was executed on the file of the Sub Registrar's Office, Suramangalam and the revocation was made on the file of the Sub Registrar's Office, Salem (West) and that no notice was issued to them before the revocation.

6. Considering all the above said facts, this Court is of the view that, the impugned order holding that there is a *prima facie* case of the offences under Sections 406 and 409 of IPC, 1860 cannot be sustained. The allegations only discloses a dispute between the builder and the landlord and breach of terms of builders agreement. However, this Court has not expressed any opinion on the charge of Section 468 of IPC, 1860. The trial Court may consider the said charge on its own merits.



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7. With the above observation, this petition is disposed of.

Consequently, connected miscellaneous petition stands closed.

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Index: Yes/No

Speaking/Non-speaking order

Neutral citation: Yes/No.

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SUNDER MOHAN, J.

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To

1.The Judicial Magistrate Court No.II,
Salem

2.The Inspector of Police
Sooramangalam Police Station
Salem

3.The Public Prosecutor
Madras High Court, Chennai 600 104

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