

(1994) 03 MAD CK 0069

In the Madras High Court

Case No : Criminal Original Petition No. 1816 of 1992

S. Muthu Kumar

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 08-03-1994

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 420

Citation : (1995) CriLJ 350 : (1994) 1 LW(Cri) 264

Hon'ble Judges : Pratap Singh, J

Bench : Single Bench

Advocate : S. Kanaga Sabai, for the Appellant; K. Raja, Govt. Advocate, for the Respondent

Judgement

1. The accused concerned in Cr. No. 404/91 of the respondent Police Station has filed this petition u/s 482 Cr.P.C. Praying to call for the records

in the above case and quash the same.

2. Short facts are :- One Devadoss gave the First Information Report before the respondent Police. The allegations in it are briefly as follows :-

The complainant is doing business under the name and style of Devadoss Family Aid Corporation at Tirunelveli. On 3-4-1991, the accused

purchased goods for a sum of Rs. 68,224/-. In spite of the fact that he had not arranged for payment of as much amount, he issued cheque on 3-

4-91, post dating it as 3-6-1991. Because of the false representation that the cheque will be honoured in due course, the complainant gave him

goods on credit basis on 3-4-91. Thus the accused has fraudulently and dishonestly induced the complainant to deliver goods to him on the pretext

of issuing the said cheque knowing fully well that cheque will not be honoured.

The accused has committed an offence punishable u/s 420 I.P.C.

This first Information Report given by the said Devadoss was registered in Cr. No. 404/91 of the respondent Police Station for offence u/s 420

I.P.C. To quash the same, this petition is filed.

3. Mr. Kanagasabhai, learned counsel appearing for the petitioner, would submit that purchases were made on credit basis and the post dated

cheque was issued and in the circumstances, no offence u/s 420 can be spelt out and the registration of the case for offence u/s 420 I.P.C. is not

correct and liable to be quashed.

4. Per contra. Mr. Raja, learned Government Advocate would submit that the complaint alleges dishonest inducement to deliver goods to him

under the pretext of issuing cheque knowing fully well that the cheque will not be honoured; the delivery of goods was on 3-4-91 and the issuance

of the cheque was on the same day; that there are materials to register of case for offence u/s 420 I.P.C. and that it cannot be quashed at the

threshold.

5. I have carefully considered the submissions made by learned counsels. Learned counsel for the petitioner would rely upon the decision in R. V.

Jennison, (1862) 31 LJMC 146. In that case, one J who had a wife living, told the prosecutrix that he was unmarried, and, pretending that he

intended to marry, induced her to give him Pounds 8 representing that he would furnish a house for living and would then marry her and after

obtaining money, he went away and did not return. It was contended that money had been obtained by three representations that he was

unmarried; that he would furnish a house, and that he would marry the prosecutrix; and that only first representation has reference to an existing

fact, while the others related to things to be done in future. It was held that inducement could not be maintained. With respect, I am unable to agree

with the view of the learned Judge. In this case, when on such inducement, the complainant was made to part with some property and when such

inducement was made dishonestly and fraudulently, simply because the promise was to do something in future. I am not prepared to hold that no

offence u/s 420 I.P.C. is made out. The requirement of the offence punishable u/s 420 I.P.C. are that such a representation which the accused

himself knew is false was made and if such representation was made with a

dishonest intention and on such representation, the complainant was induced to part with the property, certainly offence is made out.

6. In *Shyam Sundar and Another Vs. Lala Bhawan Kishore and Another*, cheating was alleged with regard to return of post dated cheque, being dishonoured. The dishonest intention was absent even at the initial stage of the transaction and when the cheque was issued. So it was held that the accused was not liable for cheating and it is case of Civil liability.

7. In *Nagarajan v. Jinnah Saheb*, 1986 Cri LJ 483 , this court had occasion to consider the offence of cheating. In that case, the complainant had not alleged any loan, on account of the dishonouring of the cheque. On the facts of that case, cheating was not proved.

8. In this case, in that complaint it is specifically stated as follows :-

Thus the accused has fraudulently and dishonestly induced the complainant to deliver goods to him on the pretext of issuing the said cheque

knowing fully well that the cheque will not be honoured.

On these allegations, the case has been rightly registered for offence u/s 420 I.P.C. and hence it cannot be quashed at the threshold.

9. Since none of the submissions made by learned counsel for the petitioner finds acceptance with me, the inevitable result is this petition fails and therefore shall stand dismissed.

10. Petition dismissed.