

**(2014) 10 MAD CK 0316****Madras High Court****Case No:** Crl.O.P. No. 20776 of 2014 and M.P. No. 1 of 2014

K. Jayakumar

APPELLANT

Vs

The State

RESPONDENT

**Date of Decision:** Oct. 27, 2014**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 161, 452
- Penal Code, 1860 (IPC) - Section 24, 25, 415, 420, 506

**Citation:** (2014) 4 MLJ(Cri) 713**Hon'ble Judges:** S. Nagamuthu, J**Bench:** Single Bench**Judgement**

@JUDGMENTTAG-ORDER

S. Nagamuthu, J.

The petitioner is one of the accused in Crime No. 132 of 2014 on the file of the first respondent alleging that the petitioner along with another accused committed offences punishable under Sections 420 and 506 of I.P.C. On the ground that the registration of the said case and continuance of the investigating amounts to clear abuse of process of law, the petitioner has come up with this petition seeking to quash the F.I.R. and the connected proceedings.

2. I have heard Mr. R.Gandhi, learned senior counsel appearing for the petitioner, Mr. M.Maharaja, learned Additional Public Prosecutor appearing for the first respondent and Mr. S.Ananthanarayanan, learned counsel appearing for the second respondent. I have also perused the records carefully.

3. The first respondent Mr. Gunasekaran, Inspector of Police, Tirupattur Town Police Station, is also present along with the records. I have the benefit of going through the entire case diary also.

4. A perusal of that records and the F.I.R. would go to show that the petitioner was doing paddy and rice business in Tirupattur in the name and style "J.K.Traders". The second respondent is also doing the same business in Tirupanipettai, Tiruvidaimaruthur Taluk, Thanjavur District.

5. According to the prosecution case, between 03.02.2014 and 08.03.2014, the petitioner had purchased total quantity of 2086 bags of paddy from the second respondent under nine bills. The cost of the paddy so purchased was Rs. 19,48,834/-. It is further alleged that in partial discharge of the said liability, the petitioner paid a sum of Rs. 1,50,000/- on 19.02.2014, Rs. 50,000/- on 19.03.2014 and Rs. 25,000/- on 22.04.2014. Thus, according to the complainant, the petitioner had paid a total sum of Rs. 2,25,000/- towards partial discharge of the said liability. The balance was Rs. 17,23,834/-.

6. According to the further case of the prosecution, when the second respondent demanded payment of dues, the petitioner declined to pay the same and instead he had threatened him along with his manager namely the second accused. On these allegations, the F.I.R. was registered by the first respondent on 01.05.2014, for offences punishable under Sections 420 and 506 of I.P.C.

7. The learned senior counsel Mr. R.Gandhi, appearing for the petitioner, would submit that assuming that the allegations contained in the F.I.R. and other events which came to light during subsequent investigation are true, the same would only make out a pure and simple civil dispute and these allegations do not make out any offence more particularly offences punishable under Sections 420 or 506 of I.P.C. Therefore, according to the learned senior counsel, the registration of the F.I.R. and continuance of the investigation amounts to clear abuse of process of law and therefore the entire proceedings commencing from F.I.R. should be quashed.

8. The learned counsel appearing for the second respondent would however vehemently oppose this petition. According to him, the F.I.R. cannot be treated as an encyclopedia. According to him, it may be true that the allegations in the F.I.R. may not make out the offences which have been mentioned in the F.I.R., but the matter requires a thorough investigation because during the course of investigation alone, it can be certainly found as to what are all the offences which have been committed by the petitioner and the other accused.

9. The learned counsel would further submit that the petitioner had given false promise to the agriculturists who are the producers of paddy to pay the amount. The learned counsel further submitted that the said promise is false and thus an offence of cheating as defined under Section 415 of I.P.C. is clearly made out.

10. The learned counsel would rely on a judgment of the Supreme Court in Ashabai Machindra Adhagale Vs State of Maharashtra reported in (2009) 3 SCC 789 in order to substantiate his contention that at this stage, the Court should not interfere with the investigation as the offence committed by the petitioner can be ascertained only

after the conclusion of the investigation. In other words, the learned counsel's contention is that it is premature for this Court to look into the case diary and to quash the F.I.R.

11. I have considered the above submissions.

12. A perusal of the case diary would go to show that it contains statements of the de facto complainant and few others purportedly recorded under Section 161 of the Cr.P.C. The case diary further shows that the said statements are computer print outs. When the Inspector of Police, Tirupattur Town Police Station, was called upon to explain as to how the statements of those witnesses came to be taken out from the computer by way of print outs, he submitted that he went to Thiruthani, examined the witnesses orally and retained their version in his memory, returned to the police station, fed the same into the computer and then took print outs of such statements.

13. The case diary further revels that except the statements and the F.I.R. no other material has been collected in order to improve the case of the prosecution. But the Investigating Officer has seized a Tata Sumo vehicle which had been allegedly used to carry the paddy from Tiruvidaimaruthur to Vellore. It is further found that he has also seized the rice bags from the mill owned by the petitioner. When he was asked to explain as to why rice bags were seized, he stated that the rice was obtained by converting the paddy purchased from the de facto complainant and therefore the same was seized. The rice was produced before the learned Judicial Magistrate No. 1, Tirupattur and the learned Magistrate has ordered for safe custody of the same. The vehicle has been returned to the petitioner.

14. I do not understand as to why the vehicle was seized since the seizure of the vehicle will not be in any manner either relevant or useful for the case. So is the rice bags also since absolutely there is no material to show that those rice bags were the converted end products of the very same paddy purchased. Even otherwise, seizure of the rice bags is not in any manner either relevant or useful for the case.

15. As rightly contended by the learned counsel appearing for the second respondent, the F.I.R. need not be treated as an encyclopedia to contain all the facts either in issue or relevant facts.

16. In the given case, I am inclined to quash the F.I.R. by not treating it as an encyclopedia, instead I am inclined to quash the entire proceedings on the ground that the registration of the case and the subsequent investigation amounts to clear abuse of process of law. To make out an offence under Section 420 I.P.C., the essential ingredients of Section 415 of I.P.C. are to be satisfied. Section 415 defines the term "Cheating". It encompasses three basic elements. The first one is deception played by the accused and not-stopping with that, the person so deceived should have been induced either fraudulently or dishonestly to act on such deception. Acting on such inducement, the person should have parted away his property or

should have done anything which he would not have done otherwise.

17. In the case on hand, the entire proceedings recorded in the case diary including the F.I.R., there is absolutely no material to make out a simple *prima facie* case that there was an element of deception played by the petitioner to purchase paddy from the *de facto* complainant. The records clearly show that it was nothing but a transaction based on mutual trust. Further, there is no element of *prima facie* case to hold that the petitioner acted dishonestly or fraudulently as defined under Sections 24 and 25 of the I.P.C. Instead, the events clearly make out a case of simple failure on the part of the accused to pay the cost of paddy purchased out of true and genuine business transaction. If failure to pay dues in any business transaction henceforth be treated as an offence falling within Section 415 of I.P.C., then every business transaction, where there is failure to pay the amount can be brought under the purview of the said provision. But that is not possible in law, because as I have already pointed out, to make out an offence of "cheating", the deception, inducement either dishonestly or fraudulently are essential. Since nothing of that sort is found in this case, I hold that the registration of this case is clearly an abuse of process of law. Apart from that, so far as Section 506 of I.P.C. is concerned, the allegation is so vague besides so trivial. Therefore, the entire case needs to be quashed.

18. Since the entire case is quashed, the rice bags seized from the rice mill of the petitioner shall be returned by the learned Judicial Magistrate No. 1, Tirupattur to the petitioner unconditionally under Section 452 of Cr.P.C. The vehicle already released to the petitioner on conditional basis shall be retained by the petitioner unconditionally as provided under Section 452 of Cr.P.C.

19. With the above directions, this criminal original petition is allowed and the case in Crime No. 132 of 2014 is quashed. Consequently, the connected miscellaneous petition is closed.