

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

WEDNESDAY, THE 28TH DAY OF OCTOBER 2015/6TH KARTHIKA, 1937

CRL.A.No. 360 of 2004 ()

AGAINST THE ORDER IN CrI.L.P. 126/2004 of HIGH COURT OF KERALA DATED
25-02-2004

AGAINST THE JUDGMENT IN CC 199/2000 of J.M.F.C., KUNNAMANGALAM
DATED 19-12-2003

APPELLANT/COMPLAINANT::

ABDURAHIMAN, S/O. KUNHAHAMMEDKUTTY,
AMBALAPARAMBIL HOUSE, KUNNAMANGALAM.

BY ADV. SRI.SUNNY MATHEW

RESPONDENTS/ACCUSED AND STATE::

1. PEEDIKAKKANDI HUSSAIN, S/O.USMANKOYA,
PEVUMKOTTUMMAL HOUSE, KUNNAMANGALAM.

2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.

R2-BY P.P.SRI.JIBU P. THOMAS

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 28-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. RAMAKRISHNAN, J.

.....
Crl.A.No.360 of 2004
.....

Dated this the 28th day of October, 2015

JUDGMENT

The complainant in C.C.No.199/2000 on the file of the Judicial First Class Magistrate Court, Kunnamangalam is the appellant herein.

2. The case was originated on the basis of a private complaint filed by the complainant alleging offence under section 420 of the Indian Penal Code. The case of the complainant in the complaint was that on the basis of the inducement made by the accused, who was conducting a business by name "Thripty Chemmeen Fry" in building No.8/392 of Mukkom Panchayat at Kanjiramozhi, the complainant had advanced an amount of Rs.10,000/- on the promise that the accused would make him a partner in the business and share the profits. But he did not honour the words. He did not make him a partner and he did not submit the accounts and no profit was paid. When the complainant insisted for settlement of accounts, the accused was evading the same by one way or other. He had done all these things with an intention to cheat

the complainant. Though a notice was issued, he sent reply denying liability. That also fortifies the intention of the accused to cheat the complainant. Hence the complaint.

3. After taking sworn statement, the complaint was taken on file as C.C.No.199/2000 against the accused under section 420 of the Indian Penal Code and summons was issued to the accused. On his appearance, the complainant was examined as PW1 and Exts.P1 to P3 were marked on his side and his cross examination was deferred. On the basis of evidence, court below had framed charge under section 420 of the Indian Penal Code against the accused and the same was read over and explained to him and he pleaded not guilty. Thereafter it was posted for evidence under section 246(4) of the Code of Criminal Procedure (hereinafter referred to as 'the Code') and the complainant was recalled and cross examined. After closure of the complainant's evidence, accused was questioned under section 313 of the Code and he denied all the incriminating circumstances brought against him. He had stated that the complainant has invested Rs.10,000/- and he was made partner by executing Ext.P1 agreement and he was attending the business. When he found that business is running in loss, he does not want to share the

loss and wanted the amount back. There was some dispute arose. Thereafter he filed a false complaint. No defence adduced on his side. After considering the evidence on record, the court below found that the complainant had failed to prove the ingredients of cheating against the accused and even if there is a dispute, it is a civil dispute and no criminal offence is made out and acquitted the accused under section 248(1) of the Code. Aggrieved by the same, the present appeal has been preferred by the appellant/complainant in the lower court with leave petition as Crl.L.P.No.126/2004 and leave was granted and appeal was admitted. Though notice was issued to the first respondent, he did not enter appearance.

4. Heard Sri. Sunny Mathew, counsel appearing for the appellant and Sri. Jibu P. Thomas, Public Prosecutor appearing for the second respondent.

5. Counsel for the appellant submitted that the court below had not properly appreciated the evidence, but only relied on certain clauses in Ext.P1 agreement and came to the conclusion that there is no evidence adduced from the side of the complainant to prove that even at the time of executing Ext.P1 agreement, he had the dishonest intention, which is not correct.

Further, this will fall under Explanation (g) to section 415 of the Indian Penal Code as agreed, he had not submitted the accounts and shared the profits. So, according to him, the court below was not justified in acquitting the accused and the evidence will go to show that the offence against the accused is established and the court below ought to have convicted the accused for the offence alleged.

6. Heard Public Prosecutor also.

7. The case of the complainant in the complaint was that accused induced the complainant to invest Rs.10,000/- in his business on the promise that he would make him as a partner and share the profits. Believing his words, the complainant had given Rs.10,000/- and he was not made as a partner and the accused had not submitted any accounts as well as promised. Though the complainant sent a notice, he had sent a reply with false allegations and, according to him, the conduct of the accused will go to show that he had an intention to cheat and make unlawful gain by taking Rs.10,000/- from the complainant. So the case of the complainant was that though he paid the amount, he was not made as a partner as promised. He had admitted that Ext.P1 agreement was executed between the

parties. A reading of Ext.P1 agreement will go to show that it was a partnership agreement entered into between PW1 and the accused in respect of the business and the terms of partnership were also mentioned therein. It is mentioned in the agreement that they will have to share the profit and loss in equal share and if any one of the parties want to go out of the business, one month's notice will have to be given. So the submission made by the counsel for the appellant that the accused has not fulfilled his promise of making the complainant as a partner in the business appears to be not correct in view of the recitals in Ext.P1 agreement entered into between the parties.

8. Further, explanation (g) of section 415 of the Indian Penal Code relied on by the counsel for the appellant reads as follows:

“(g) A intentionally deceives Z into a belief that A means to deliver to Z a certain quantity of indigo plant which he does not intend to deliver and thereby dishonestly induces Z to advance money upon the faith of such delivery. A cheats; but if A, at the time of obtaining the money, intends to deliver the indigo plant, and afterwards breaks his contract and does not deliver

it, he does not cheat, but is liable only to a civil action for breach of contract”.

9. Later part of the explanation will go to show that if there is any breach subsequently made, then it is only a civil action and not criminal action for cheating. The case of the complainant was that accused was not properly submitting the accounts and not sharing the profits. The case of the accused was that there was loss in the business and the complainant was not interested in sharing the loss and so there is dispute arose between them. There is nothing on record to show that even at the time when Ext.P1 agreement was entered into between the parties, there was any intention on the part of the accused to cheat the complainant. The fact that he was made as a partner by executing Ext.P1 agreement itself will go to show that there was no intention on his part to cheat the complainant at the time when he received the amount from the complainant. Mere non submission of accounts alone is not sufficient to come to the conclusion that there was an element of cheating or there was an intention on the part of the accused to cheat the complainant at the time when Ext.P1 agreement was executed. So, under the circumstances, the court below was

perfectly justified in coming to the conclusion that even on the basis of the evidence adduced, it cannot be said that there was an element of cheating established and even if the entire allegations are accepted going by the allegation in Ext.P2 notice and Ext.P3 reply notice, it was only a dispute regarding settlement of accounts which has to be sorted out by filing a civil suit and not by filing a criminal complaint for cheating and rightly acquitted the accused. No illegality has been committed by the court below in passing the impugned order acquitting the accused on the basis of the evidence available. So the appeal lacks merit and the same is liable to be dismissed.

In the result, the appeal fails and the same is hereby dismissed. The order of acquittal passed by the court below against the appellant is hereby confirmed.

Office is directed to communicate a copy of this judgment to the concerned court immediately.

Sd/-

K. RAMAKRISHNAN, JUDGE

/true copy/

P.S to Judge

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