

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

SATURDAY, THE 21ST DAY OF NOVEMBER 2015/30TH KARTHIKA,  
1937

CRL.A.No. 2304 of 2006 ( )

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AGAINST THE JUDGMENT IN CC 338/2005 of J.M.F.C.,ERATTUPETTA.

APPELLANT(S)/COMPLAINANT:

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THOMAS, S/O. JOSEPH,  
VALIAMANGALATHU VEEDU, THALANADU KARA,  
VADAKKEKARA VILLAGE, POONJAR.

BY ADV. SRI.BABY THOMAS

RESPONDENT(S)/STATE & ACCUSED:

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

2. BOBY THOMAS, S/O. THOMAS,  
THAYYIL VEEDU, THEEKOI KARA,  
THEEKOI VILLAGE,  
KOTTAYAM DISTRICT.

R1 BY PUBLIC PROSECUTOR SMT. S. HYMA  
R2 BY ADV. SRI.JOHNSON MANAYANI

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON  
21-11-2015, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

P. BHAVADASAN, J.

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Crl.Appeal. No. 2304 of 2006  
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Dated this the 21<sup>st</sup> day of November, 2015.

JUDGMENT

Aggrieved by the acquittal of the accused for the offences punishable under Sections 420 and 426 of Indian Penal Code based on a private complaint filed by the complainant, the complainant has come up in appeal after obtaining leave of this Court.

2. The basis for the complaint is Ext.P1 agreement whereby the accused is alleged to have taken the vehicle belonging to the complainant on certain conditions. There were several conditions incorporated in the agreement, one of which was to return the vehicle after expiry of one year. After the expiry of the period so stipulated, the vehicle was not returned. That prompted the complainant to file a complaint which was referred for investigation under Section 156(3) of Cr.P.C. to the police. Police filed a refer report pointing out that the case is of a civil nature. Aggrieved by the said act, a

protest complaint was laid which was proceeded with. After following the necessary procedures, complaint was taken on file and it appears from the judgment of the court below that initially the accused had absconded and on 8.6.2005 he was arrested and produced before court and he was released on bail on 9.6.2006. Being a warrant trial, after the accused had entered appearance, procedure under Section 244 Cr.P.C. was followed. Finding that there is prima facie case against the accused, charge was framed under Sections 406 and 420 of Indian Penal Code. The charge so framed was read over to the accused to which he pleaded not guilty and claimed to be tried. Consequently the procedure under Section 246 of Cr.P.C. was taken. The evidence consists of the testimony of P.Ws. 1 and 2 and documents marked as Exts. P1 to P6. After the close of the complainant's evidence, the accused was questioned under Section 313 Cr.P.C. Apart from denying the circumstances put to him, it was also stated that the vehicle

involved was seized by the financier for default of payment and the complainant had informed the said matter to the accused. The accused claimed that he had paid money to the complainant to get the vehicle released. Later the complainant entrusted the vehicle with the accused. At that time, money was still due to the complainant. The accused would say that subsequently he had surrendered the vehicle to the complainant and nothing else remained to be done by him. Defence did not chose to adduce any evidence.

3. The trial court on an appreciation of the evidence came to the conclusion that even assuming all what the complainant says is true, it only constitute breach of contract and the pleadings and the evidence did not constitute the ingredients necessary to attract offence under Sections 406 and 420 of Indian Penal Code and therefore acquitted the accused.

4. Assailing the acquittal, learned counsel for the appellant contended that the court below was in error in acquitting the accused. It is very clear from the sequence of events, according to the learned counsel, that even at the time of taking the jeep as per Ext.P1 agreement, the accused had no intention to return the same. That is evident from his subsequent conduct. Learned counsel went on to point out that it is not possible to adduce direct evidence regarding the state of mind of the person and that should be gathered from the circumstances brought out in the evidence in the case. In such case, the conduct before, during and after the incident is significant. Viewed in that context, the conduct of the accused in not returning the jeep attract offences under Sections 406 and 420 of I.P.C.

5. Learned counsel appearing for the respondent points out that the court below has analysed the evidence in detail and has come to the conclusion that no ingredients of

Sections 420 and 406 of I.P.C. are made out and the only grievance is that the jeep is not returned after the expiry of the period mentioned in Ext.P1. As rightly found by the court below, the ingredients did not constitute cheating by the accused and at worst it may amount to breach of contract, for which the remedy lies elsewhere. Learned counsel pointed out that there is no ground made out to interfere with the acquittal order passed by the court below.

6. This Court has to remind itself that it is sitting in appeal against an order of acquittal and the accused is armed with sufficient grounds. Unless it is shown that the findings of the court below are totally perverse or are based on irrelevant materials, even assuming a different view is possible, it will not be appropriate for this Court to take a different view.

7. Bearing the above principles in mind, an attempt shall be made to see whether ingredients to attract Sections 406 and 420 of I.P.C. are available in this case. It is useful to

refer to those Sections to reach a conclusion.

Section 406 I.P.C. reads as follows:

“406. Punishment for criminal breach of trust.– Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.”

Section 420 I.P.C. reads as follows:

“420. Cheating and dishonestly inducing delivery of property.– Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

8. One may refer to Ext.P1 agreement as it is the basis of the complaint. That contains handing over of jeep to the accused by the complainant on several conditions. A reading of the complaint in this case only shows that the only

grievance of the complainant is that the jeep had not been returned after the expiry of the period. It is not the case of the complainant that none of the conditions stipulated in Ext.P1 had been complied with by the accused and that would indicate that right from the inception he had the dishonest intention to deprive the complainant of the property.

9. The court below has noticed that in cross-examination P.W.1 has stated that there is no complaint that the accused had any dishonest intention at the time when the vehicle was taken from him. Even though the accused came forward with a case that the vehicle had been returned and the claim made by the complainant is not correct, the court below had not entered a finding in that regard. In the case of offence under Sections 420 and 406 of I.P.C., the initial intention is of crucial importance. As far as Section 420 I.P.C. is concerned, there should be a dishonest inducement to make any person deliver any property to the other which means that

that state of mind should exist at the time of deprivation of the property by the accused. In the case on hand, the court below has referred to the statement made by the complainant himself that he did not feel that the accused had any such intention at the inception. As far as Section 406 Cr.P.C. is concerned, it deals with conversion of the property. There is no such averment in the complaint about conversion. As already stated, the only grievance is regarding the non-return of the vehicle after the expiry of the period covered by Ext.P1.

10. It may not be out of place here to notice that there is no demand for return of the vehicle immediately after the expiry of the period. Whatever that be, apart from the sole grievance that the vehicle was not returned, there is no other averment or pleading nor is there any evidence to show that the complainant was compelled to depart with the property on the dishonest inducement made by the accused.

11. As rightly noticed by the court below, the

conduct on the part of the accused may amount to a breach of contract, for which the remedy lies elsewhere.

12. It could not be said that the view taken by the court below is perverse or is contrary to the materials on record. It is a possible view. If that be so, interference in appeal is not warranted.

This appeal is without merits and it is liable to be dismissed. I do so.

P. BHAVADASAN,  
JUDGE

sb.