

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

MONDAY, THE 23RD DAY OF FEBRUARY 2015/4TH PHALGUNA, 1936

CRL.A.No. 1127 of 2011 ()

**AGAINST THE ORDER/JUDGMENT IN CrI.L.P. 102/2011 OF HIGH COURT OF KERALA
DATED 04-02-2011**

**AGAINST THE JUDGMENT IN CRL.A. 387/2008 OF ADDITIONAL SESSIONS JUDGE-II
THIRUVANANTHAPURAM DATED 15-09-2010**

APPELLANTS/COMPLAINANTS:

- 1. CHANDRASEKHARAN NAIR,
INDIRA BHAVAN, VENPAKAL, NEYYATTINKARA (DIED).**
- 2. SREE DEVI, W/O.LATE CHANDRASEKHARAN NAIR
INDIRA BHAVAN, VENPAKAL, NEYYATTINKARA
THIRUVANANTHAPURAM.**

BY ADV. SRI.T.RAJASEKHARAN NAIR

RESPONDENTS/ACCUSED:

- 1. V.K.RAJKUMAR,
PADMAVILASOM, VENPAKAL, NEYYATTINKARA
THIRUVANANTHAPURAM-695 121.**
- 2. SREEKALA RAJKUMAR,
PADMAVILASOM, VENPAKAL P.O., NEYYATTINKARA-695 123.**
- 3. STATE OF KERALA REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.**

**R1 & R2 BY ADV. SRI.G.SUDHEER
R3 BY PUBLIC PROSECUTOR SMT. REMA R.**

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 23-02-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

shg/

K. ABRAHAM MATHEW, J.

Crl.A. No.1127 of 2011

Dated this the 23rd day of February, 2015

J U D G M E N T

The first respondent was the first accused in C.C.No.981/2003 on the file of the Judicial First Class Magistrate Court-I, Neyyattinkara. The allegation was that to repay the amount of Rs.1 lakh he had borrowed from the complainant he issued a cheque; the cheque was dishonoured for want of sufficient fund in the account, thereupon, the complainant issued a notice to the first respondent demanding payment of the amount. There was no payment. So the complainant instituted a complaint alleging commission of the offence under Section 138 N.I. Act. In the course of the trial it was disclosed that the account holder was the second respondent who is the wife of the first respondent. Thereupon, the complainant withdrew the complaint under Section 257 of Cr.P.C. Later, he filed the complaint from which this appeal arises. The accusation is that respondents cheated him and thus they

committed the offence under Section 420 I.P.C. Pending the complaint he died. His wife was allowed to prosecute the case. The learned Magistrate found respondents 1 & 2 guilty of the offence under Section 420 I.P.C. In the appeal the learned Sessions Judge found that the ingredients of Section 420 of I.P.C. are not attracted and accordingly he acquitted them of the offence. This order of acquittal is challenged by the wife of the complainant.

2. Heard the learned counsel for the appellant and the learned counsel for respondents 1 & 2.

3. The definite case of the complainant was that for an antecedent debt the first accused issued Ext.P1 cheque. Admittedly, the account holder was the second respondent. To attract Section 420 of I.P.C. there must be dishonest inducement on the part of the accused to deliver any property by the deceived 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. The complainant has no

case that when he received the cheque he delivered any property to the first respondent. The other part of the section is not applicable. Going by the complainant's case money had been delivered one week before the issuance of the cheque. So even if it is taken for granted that there was cheating and the first respondent had dishonest intention, it cannot be held that it resulted in the complainant's delivery of any property to the first respondent or anyone else. The learned Sessions Judge rightly found that Section 420 of I.P.C. is not attracted.

4. It may also be considered whether Section 417 of I.P.C. is attracted.

Section 415 defines cheating. To attract this Section either of the following is necessary:

- (1) Delivery of property.
- (2) Consent by the deceived person that the person who deceived him can retain any property.
- (3) Intentional inducement to the deceived person to do or omit to do anything which he would not have done or omitted if he had not

been so deceived.

None of the above three conditions has been satisfied. So Section 415 of I.P.C. also is not attracted.

5. That apart, the complainant's case that the first respondent took a written up cheque to his house and signed it in his presence is quite unnatural. It is unbelievable that a debtor would take a written up cheque to the creditor and sign it before him. This is a clever method of compelling the accused to prove that he did not execute the cheque, where the complainant cannot prove its execution.

6. In the complaint there is no averment that when the cheque was issued anyone other than the complainant was present. It is specifically stated that the cheque was given at the complainant's house. There is no whisper about the presence of anyone else. The evidence given by PW1 and PW4 that they witnessed issuance of cheque appears to be false.

7. There is no illegality or irregularity in the

impugned judgment. The appeal is devoid of merit.

In the result, this appeal is dismissed.

Sd/-

K. ABRAHAM MATHEW
JUDGE

//True copy//

P.A. TO JUDGE

shg/