**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE P.D.RAJAN**

**TUESDAY, THE 17TH DAY OF NOVEMBER 2015/26TH KARTHIKA, 1937**

**Crl.Rev.Pet.No. 1322 of 2003 ( )**
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**AGAINST THE JUDGMENT IN CC 648/1999 of J.F.M.C.-II, THRISSUR**
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**REVISION PETITIONER(S):**
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**BIJU, S/o. GEORGE,**
**PURATHUR TYHOTTUNGAL HOUSE,**
**P.O.PERINGOTTAKARA, THRUSSUR.**

**BY ADVS.SRI.RAJIT**
**SRI.RANJIT BABU**

**RESPONDENT(S):**
**------------------------**

1. **STATE OF KERALA,**
   **REP. BY PUBLIC PROSECUTOR HIGH COURT OF KERALA,**
   **ERNAKULAM.**

2. **K.SETHUMADHAVAN, S/o KANJUNIVVEETTIL,**
   **RAJESWARI AMMA, VALAPPAD VILLAGE,**
   **THIRUVAZHANCHERY DESOM.**

**R1 BY PUBLIC PROSECUTOR SRI. N. SURESH**
**R2 BY ADV. SRI.T.A.RAJAGOPALAN,**

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 17-11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

**STK**

**P.D. RAJAN, J.**

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**Crl.R.P.1322 of 2003**

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**Dated this the 17th of November, 2015**

**ORDER**

The revision petitioner, who is the complainant in C.C.648/99 on the file of Judicial First Class Magistrate-II, Thrissur filed the complaint against the accused for having committed an offence under Section 420 of the IPC. The complainant's case is that, on 1.11.98 accused borrowed a sum of Rs.70,000/- from him and in discharge of that debt, he issued Ext.P1 cheque drawn on Nedungadi Bank, Valappad branch. When the cheque was presented for encashment, it was dishonoured for the reason of account closed. The complainant demanded the due amount by giving a notice in writing to the accused, which was received by the accused and no repayment thereafter. In the circumstance, a complaint was filed in the trial court, which was forwarded to Anthikad Police Station under Section 156(3) Cr.P.C., where they registered a Crime 42/99 and after completing investigation, laid charge before court.

2. To prove the offence, prosecution examined PW1 to PW3 and marked Exts. P1 to P7 as documentary evidence. The incriminating circumstances brought out in evidence were denied by the accused while questioning him. He examined DW1. The trial court acquitted the accused. Being aggrieved by that he approached this court with this revision petition.

3. The learned counsel appearing for the revision petitioner contended that a wrong appreciation was made by the trial court while acquitting the accused. Analysing the evidence, it is clear that Ext.P1 was issued with the knowledge that, he is not maintaining any account with the bank. There was a mistaken impression that, there must be immediate entrustment of the property. Therefore, cheating can be inferred from the beginning of the money transaction.

4. The learned Public Prosecutor strongly opposes the above argument and contented that *prima facie* no evidence is available to attract the offence of cheating.

5. The object of conferring revisional power under

section 397 and 401 of the Code of Criminal Procedure (hereinafter referred to as the Code) on the High Court is to afford a general superintendence in order to correct the grave failure of justice arising from defective orders. The defect may arise from the misconception of law, irregularity of procedure, misreading of evidence, or misconception about law or facts. This revisional power is discretionary one and there is no vested right of revision in the sense, mentioned in appeal. In an appeal, the appellant is given a statutory right to demand adjudication upon a question of law or question of fact or of both. But in a revisional jurisdiction, the petitioner has no such right, but it is for the court to interfere in exceptional cases.

6. The 'cheating' is defined under Section 415 of the Indian Penal Code. According to Section 415, whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived

to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to “cheat”. A dishonest concealment of facts is a deception within the meaning of this section.

7. For ascertaining the ingredients of the offence under Section 420 IPC, I have gone through the oral evidence of PW1. To establish the offence of cheating, complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. When there is failure to keep up the promise, such a culpable intention from the beginning is necessary. The oral evidence of PW1 shows that accused borrowed a sum of Rs.70,000/- and in discharge of that debt, he issued Ext.P1 cheque. When Ext.P1 cheque was presented for encashment, it was dishonoured for the reason of account closed. Ext.P4 is the dishonour memo. He demanded the money by issuing Ext.P2 notice. Ext.P3 is the copy of notice. He filed Ext.P5

complaint, which was forwarded to SHO, Anthikad under Section 156(3)Cr.P.C. PW1 categorically stated that at the time of issuing Ext.P1, there was sufficient fund in the account of the accused.

8. The Manager of Nedungadi Bank was examined as PW2. According to PW2, one Seetha Raman was maintaining the account. PW2 deposes Ext.P6 is the extract of the ledger of the account of the accused and Ext.P1 is issued in Ext.P6 account. He issued Ext.P4 memo. PW3 who is the employee of the Nedungadi bank produced Ext.P7. Account was closed on 28.07.96 on the reason that the revision petitioner has not maintained the minimum balance in the account. A perusal of evidence of PW1 to PW2, it is found that *prima facie* no materials are produced before trial court to prove the offence alleged under Section 420 IPC.

9. The accused disputed the transaction and contended that he received Rs.5,000/- from DW1 and returned the amount by paying monthly instalments of Rs.500/- each. No other financial transaction with the

complainant. He has no capacity to borrow such a huge amount. Even though DW1 was cross-examined in the trial court, the dishonest intention to attract offence under Section 420 IPC was not proved. The dishonest inducement by the accused was not proved and according to that inducement, the person deceived to deliver any property, altered or destroyed any part of valuable security is also not proved. In such a situation, the trial court acquitted the accused.

10. The fundamental rule in a criminal case is that one person is presumed to be innocent till he is proved as guilty. This rule actually means that a person accused of a crime is not bound to make a statement or offer any explanation about the circumstances which throws suspicion upon him. In an offence under cheating, prosecution has to prove the ingredients of the offence that the accused fraudulently induced any person so deceived to deliver any property to any person and intentionally failed or omit to do anything. It is the duty of the prosecution to prove the guilt beyond reasonable

doubt. There may be exception where the rules of presumption applies in certain cases. In such case, a statutory presumption with regard to the proved facts and circumstances may arise which will help in reaching a conclusion.

I find no illegality in the above findings and there is no merit in this revision petition and it is dismissed accordingly.

Sd/-
**P.D. RAJAN,**
**JUDGE**

STK

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**P.A. TO JUDGE**