

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

FRIDAY, THE 20TH DAY OF FEBRUARY 2015/1ST PHALGUNA, 1936

Crl.MC.No. 5343 of 2014 ()

**-----
CC 408/2014 of JUDICIAL FIRST CLASS MAGISTRATE COURT-I, THRISSUR
CRIME NO. 774/2010 OF VIYYUR POLICE STATION, THRISSUR DISTRICT
=====**

PETITIONER/ACCUSED:

**AHAMMED KOYA, S/O. HAMSA
KALLARAKKAL HOUSE, TIROORANGADI
VENNILAKKAD, MALAPPURAM DISTRICT.**

**BY ADVS.SRI.BABU S. NAIR
SRI.K.RAKESH**

RESPONDENT/STATE:

**THE STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM
KOCHI-682031-THROUGH THE SUB INSPECTOR OF POLICE
VIYYUR POLICE STATION, THRISSUR DISTRICT.**

BY PUBLIC PROSECUTOR SMT. P. MAYA

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 20-02-2015, THE
COURT ON THE SAME DAY PASSED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS

**ANX.A. TRUE COPY OF THE CHARGE IN CRIME NO. 744/2010 OF THE VIYYUR
POLICE**

**ANX.B. TRUE COPY OF THE JUDGMENT IN C.C. NO. 1777/2010 DATED 30-1-
2014 OF THE JFCM-I, THRISSUR.**

RESPONDENT'S EXHIBITS

NIL

// TRUE COPY // P.A. TO JUDGE

SD

P. UBAID, J.

Crl.M.C.No.5343 of 2014

Dated this the 20th day of February, 2015

O R D E R

The petitioner herein is the original 2nd accused in C.C.No.1777/2010 of the Judicial First Class Magistrate Court-I, Thrissur. Crime in this case was registered on the complaint of one Harish alleging the offence of attempt to cheat. Thus, the offence incorporated by the police in the proceedings is under Section 420 IPC read with Section 511 IPC. The first accused faced trial before the learned Magistrate and obtained a judgment of acquittal on 30.01.2014 in C.C.No.1777/2010. The case against the petitioner was split up and refiled as C.C.No.408/2014. He now seeks orders quashing the prosecution as against him on the ground that the whole allegations are totally baseless, and that the very substratum of the prosecution case stands totally lost by the acquittal of the other accused by the trial court. On an examination of Annexure B judgment, I find that on trial the learned Magistrate found that what is at the most involved in the case is only some sort of preparation to commit offence, and there is absolutely nothing to constitute the

offence of attempt to cheat. In paragraph 9 of the Annexure B judgment, the learned Magistrate found thus:

"9. So from the materials on record the prosecution has not succeeded in proving that the accused had attempted to commit the offence of cheating as defined u/s 420 IPC. From the evidence of PW1 it can be seen that there is no restriction with regard to the purchase of mobile phone of MTS company. Therefore the mere fact that the accused purchased 15 head sets of the MTS company itself is not a circumstance to hold that he purchased the same for the purpose of cheating the MTS company. Section 420 deals with the offence of cheating and dishonest inducement for delivering the property. In order to prove this offence prosecution must establish that the accused had dishonestly induced any person deceived to deliver any property or to make alter to destroy the whole or in part of a valuable security, or anything which is signed or sealed and which is capable of being converted into a valuable security. Here, prosecution has not proved that the accused had cheated any person or dishonestly induced any person in order to attract offence punishable u/s. 420 IPC."

In paragraph 12 of he judgment, the learned Magistrate found thus:

"So, mere preparation with an intention to commit an offence is not the attempt to commit that offence. Here, in the instant case the prosecution has no case that the accused had inserted sim cards of other companies in the

mobile phones of MTS purchased by him. Therefore, an offence U/s.511 of 420 is not made out from the materials on record. So the points under consideration can only be answered in favour of the first accused. The points are answered accordingly.”

2. Thus, I find that the whole prosecution case is baseless regarding the allegation of attempt to cheat. What the learned Magistrate found is that there is at the most some preparation made by the accused with some dishonest intention. Preparation as such is not punishable under the law. I find that the very substratum of the prosecution case stands totally lost by the acquittal of other accused in C.C.No.1777/2010. I find that continuance of prosecution in such circumstance will be a sheer waste of time.

In the result, this petition is allowed. The prosecution as against the petitioner in C.C.No.408/2014 of the Judicial First Class Magistrate Court-I, Thrissur will stand quashed. Accordingly, he will stand released from prosecution, and the bail bond, if any, executed by him will stand discharged.

Sd/-

P. UBAID, JUDGE

sd