

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

MONDAY, THE 7TH DAY OF SEPTEMBER 2015/16TH BHADRA, 1937

Crl.Rev.Pet.No. 3108 of 2006

AGAINST THE JUDGMENT IN CRL.A. 52/2000 of THE SESSIONS COURT, THALASSERY
DATED 29.5.2006

AGAINST THE JUDGMENT IN CC 901/1996 of JUDICIAL FIRST CLASS MAGISTRATE
COURT, KUTHUPARAMBA DATED 19.2.2000

REVISION PETITIONER/APPELLANT/ACCUSED (A1):

V.K. MOHANAN, AGED 48 YEARS,
S/O. KOCHUKUTTAN, SALES REPRESENTATIVE, KUTHUR,
TRICHUR DISTRICT.

BY ADV. SRI.P.P.RAMACHANDRAN

RESPONDENTS/RESPONDENTS/COMPLAINANT:

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1. T.K.BALAN, S/O. ANDY, AGED 58 YEARS,
PANATHARAMBATH VEEDU, CHITTARIPARAMBA AMSOM DESOM,
KUTHUPARAMBA (VIA), THALASSERY TALUK, KANNUR DISTRICT.
 2. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

R1 BY ADV. SRI.R.SURENDRAN
PUBLIC PROSECUTOR SMT. BINDU GOPINATH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
20.8.2015, THE COURT ON 07-09-2015 PASSED THE FOLLOWING:

RAJA VIJAYARAGHAVAN.V. J

Crl.R.P.3108/2006

Dated 7th September, 2015

ORDER

1. The petitioner who is the 1st accused in C.C.901 of 1996 on the files of the Judicial Magistrate of First Class, Kuthuparamba, challenges the concurrent verdict passed against him u/s 420 of the IPC.

2. Originally the petitioner along with five others were proceeded against at the instance of the 1st respondent for having committed the offence punishable u/s 420 and 406 IPC, and sec.4 of the Dowry Prohibition Act r/w S.120(B) of the IPC. Accused Nos.2 to 6 were acquitted of all charges and the petitioner alone was found guilty u/s 420 IPC and he was sentenced to undergo rigorous imprisonment for one year and to pay fine of Rs.5,000/- in default to undergo rigorous imprisonment for three

months. Though the above findings were challenged in appeal, the learned Appellate Court confirmed the findings of the trial Court after modifying the sentence. The above concurrent findings are under challenge in this Criminal Revision Petition filed u/s 397 r/w 401 of the Code of Criminal Procedure.

3. The case of the prosecution tersely stated are as follows:

PW1, the complainant is the uncle of one Usha, with whom, a proposal for marriage with the petitioner was mooted. Accused Nos.2 and 3 are the uncles, accused No.4 is the sister, accused No.5 is the mother and accused No.6 is a friend of the petitioner. The petitioner belongs to Thrissur District and the complainant and his family are settled at Kannur. It is the case of the prosecution that through a mutual acquaintance, the petitioner came to hear about PW2,

Usha and after making necessary inquiries, he approached her family members. The petitioner talked to his prospective bride and both of them decided to go forward with the marriage. Later, a letter was sent by the petitioner to the father of Usha on 28.6.1996 requesting him to contact his family members. On 4.7.1996, the father and other near relatives of Usha went to Thrissur and made inquiries about the whereabouts of the petitioner and thereafter went to the house of the petitioner and met his relatives. After that the petitioner is said to have contacted the complainant over phone and based on that, on 15.7.1996, the relatives of Usha went to Thrissur and they agreed for conducting a function at Kuthuparamba on 19.8.1996 for fixing the marriage date. On 7.8.1996, the petitioner sent a letter to the complainant reminding them of the arrangements to be made. On 19.8.1996 at 2.00 pm, about 36 persons, including the petitioner, went to the

house of Usha and in the presence of relatives from both sides, the engagement ceremony was conducted. It was also decided that the marriage be conducted on 24.11.1996 at Thrissur. Both the petitioner as well as Usha exchanged rings at that time. According to the complainant on the day when the engagement ceremony was conducted, the petitioner and other accused demanded a sum of Rs.1,00,000/- and 50 sovereigns of gold as dowry. The complainant and the family members of Usha informed them of their inability to pay any money by way of dowry. Later, the petitioner called the complainant and demanded a sum of Rs.40,000/- for the purchase of landed property. The petitioner promised that the amount would be returned. Accordingly, on 16.8.1996 in the presence of the 6th accused, a sum of Rs.40,000/- was handed over to the petitioner. Later, on 24.8.1996 the petitioner issued a letter to Usha expressing his inability to give her 'pudava' during the

Onam festival. On 3.9.1996 another letter was sent to the complainant asking him to come to Thrissur with money for the purpose of arranging a hall. On 12.9.1996, the petitioner sent another letter, informing the complainant to arrange a hall and it was also informed that the petitioner is an atheist and the marriage should not be solemnized in a temple. Later, Usha is said to have received a letter on 16.9.1996 from a person by name Vijayakumar, in which it was stated that the petitioner was a person with immoral connections and he is already married. The petitioner was described as a drunkard and a ganja addict. The complainant and his family members were requested to withdraw from the marriage. Later, on 21.11.1996, another letter was sent by a person by name Radha, in which also imputations were made against the petitioner. On 23.9.1996, the father of Usha received another letter sent by a person by name Balachandran,

informing him that the marriage as planned should not be conducted and if it is conducted, same would be obstructed. It is also mentioned in the said letter that the petitioner is a person who had failed to pay maintenance to a child born out of illicit relationship with another lady. On 24.9.1996, the petitioner sent a letter to the complainant asking him to forward the copies of the letter received by the father and the relatives of Usha imputing bad antecedents of the petitioner. On 1.10.1996, the petitioner informed the complainant that he was mentally depressed. Thereafter, on 3.10.1996 another letter was received by the father of Usha written by one Balachandran in which it was mentioned that the brother of the complainant was instrumental in spoiling the marriage proposal. Thereafter, on 1.10.1996, the petitioner is alleged to have sent a letter to the complainant asking as to why he was taking undue interest in the matter. The petitioner further informed

him that his relatives were not interested in the marriage and that the complainant need not bother to come to Thrissur to arrange the hall. The complainant was asked to get a nod beforehand from the petitioner before making any further endeavor. On 14.10.1996, the petitioner is said to have issued another letter in which it is mentioned that the letter was written in the presence of all the other accused. In the said letter, the petitioner had stated that Usha was much elder to the petitioner and that she was taller.

4. At that time, the complainant realized that the petitioner was not interested in getting the marriage solemnized. According to the complainant, petitioner and his family belong to a wealthy family and they wanted to withdraw from the marriage. Later, the complainant and other relatives of Usha went to Thrissur to persuade the petitioner to solemnize the marriage but

they realized that the petitioner was not interested. It was in the said circumstances that the complaint was filed alleging commission of offence punishable u/s 420, 406 and S.4 of the Dowry Prohibition Act r/w 120 of the IPC.

5. The prosecution examined as many as four witnesses to prove its case. Exts. P1 to P10 were marked. On the side of the defence, the petitioner entered the box and gave evidence as DW1.

6. The learned Magistrate after detailed evaluation of the evidence, came to the conclusion that there is no evidence to prove that the petitioner had received any money from PW1 as alleged in the complaint and held that the offence u/s 406 was not attracted in the facts and circumstances of the case. The trial magistrate also concluded that the offence u/s 120(B) of the IPC was

also not made out. The letters produced at the instance of complainant were considered in earnest and it was held that the said letters would not give any indication that the petitioner had ever demanded any sum as stated in the complaint. Holding so the learned magistrate held that the offence punishable under section 4 of the Dowry Prohibition Act is also not made out. Nevertheless the learned magistrate held that by the very act of withdrawing from the marriage, it was clear that the accused had intention to cheat the complainant and his family. Holding so the petitioner was convicted under S.420 by the learned Magistrate.

7. On appeal the conviction and sentence was confirmed by the appellate court. Though the learned magistrate has held that there the complainant had failed to prove the handing over of Rs.40,000/- to the petitioner, the appellate Court, under the mistaken

impression that no such finding was made, modified the sentence imposed and directed the petitioner to pay a compensation of Rs.40,000/- to PW1 and in default to undergo simple imprisonment for six months. The above findings are under challenge in this revision petition.

8. I have heard the learned counsel appearing for the petitioner as well as the learned Public Prosecutor. The learned counsel appearing for the petitioner at the outset submitted that both the courts below have grievously erred in concluding that the offence under S.420 was attracted as against the petitioner. According to the learned counsel the basic ingredients of the offence was not attracted in the facts and circumstances of the instant case. The learned counsel appearing for the petitioner attacked the judgment rendered by the learned sessions Judge and contended that though the learned magistrate had expressly held that the evidence

let in by the complainant was unsatisfactory to hold that a sum of Rs.40,000/- was handed over to the petitioner, the learned sessions judge overlooked this particular aspect and have granted compensation of Rs. 40,000/- to be payable to PW1. It was contented that a close analysis of the evidence would reveal that the prosecution had no case either in the complaint or in evidence that the petitioners had any intention to deceive at the inception. According to the learned counsel, even if it was taken as proved that the petitioner had withdrawn from the marriage owing to subsequent developments as evidenced by the letters produced and proved by the complainant himself, it would not amount to an offence u/s 420 of the IPC. It was pointed out that there was categorical admissions in the evidence of PW1 and PW2 that the complaint was lodged only for the purpose of realizing compensation and if the petitioner were to pay the amount the

complaint would be withdrawn. To buttress their case, it was pointed out by the learned counsel that Usha had married and had a child when she had come for giving evidence which would reveal that the parties had gone through with their life and at any rate no offence u/s 420 was attracted in the facts of the instant case.

9. Before this Court the only question is whether the offence u/s 420 is attracted or not in the facts and circumstances. The next question is whether the learned sessions judge was justified in granting compensation u/s 357 of the Code to the complainant.

10. From the allegation in the complaint, the prosecution attempts to bring home the offence of cheating by examining PWs 1 to 4 and by proving the letters admittedly sent by the petitioner to PW 1 and the father of Usha. In order to bring home the guilt the

prosecution has to prove that the promise and representation given by the petitioner were intentionally false and fraudulent.

11. S.415, I. P. C. which defines the offence of cheating runs as follows:

"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 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'."

12. In the definition of cheating there are set forth two separate classes of acts, which the person deceived may be induced to do. In the first place he may be induced fraudulently or dishonestly to deliver any property to any person or to consent that any person shall retain any property. The second class of acts set forth in the

section is the doing or omitting to do anything, which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases, the inducing must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but not necessarily fraudulent or dishonest. The distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement, which may be judged by his subsequent conduct, but for which the subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution under S.420 IPC, unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed.

13. The Apex Court in **Mahadeo Prasad V. State of**

W.B. [AIR 1954 SC 724], has held as follows:

"when the charge is that the accused has committed a breach of a false promise to do something at a future date, as a result of which the complainant had been induced to part with his money or property, the question whether the accused is guilty of the criminal offence of cheating or is only liable in a civil Court for damages for breach of contract depends upon the state of mind of the accused at the time when the promise was made. If it is established that the intention of the accused was dishonest at the very time when he made the promise and entered into a transaction with the complainant, and that he made a false promise knowing it to be false with the purpose of inducing the complainant to part with his property or money, then the liability is criminal and the accused is guilty of the offence of cheating. On the other hand, if all that is established is that a representation made by the accused has subsequently not been kept criminal liability cannot be foisted on the accused, and the only right which the complainant acquires is to a decree for damages for breach of contract in a civil suit, because in such a case the possibility remains that the accused may have intended, at the time when he made the promise, to carry it out, and his subsequent failure to do so may be the result of circumstances about which he had no knowledge at the time when he made the promise, and not of any dishonest intention entertained by him at the very outset when the promise was made."

14. In view of the above, and applying the above principles to the facts of the instant case, it is to be

ascertained whether there is any evidence to suggest that at the time when he made the promises, the accused really did not intend to marry her or to keep up his promise or carry out his representation. In that event the petitioner would have committed the offence of cheating. On the other hand, if at the time when he made those promises, he really intended to marry PW2 Usha, and, subsequently, changed his mind or gave up his original intention and refused and failed to marry PW2, his action would have amounted only to a breach of contract.

15. I have anxiously considered the evidence tendered by the prosecution and the letters said to have been issued by the petitioner. I do not find any assertion either from PW 1 or PW2 to reveal that at the relevant time, i.e. at initial stage itself, the accused had no intention whatsoever, of keeping his promise to marry

PW2. There may, of course, be circumstances, when a person having the best of intentions is unable to marry the woman owing to various unavoidable circumstances. The letters written by the petitioner also reveals that the petitioner was sincerely desirous of marrying PW2 initially but owing to certain other factors, the parties swept away from each other. I am unable to decipher any indications which would reveal that the petitioner had made any false promise or representation to PW1 or PW2 with the knowledge that the promise or representation was false in any manner. It does not appear that the petitioner has practiced any deception upon the complainant nor has he made any attempt to make any false conception in the mind of the complainant or PW2. From a subsequent failure of the petitioner to marry PW2, it cannot be concluded that deception preceded the actual transaction. Such a dishonest intention cannot be inferred from the mere

fact that the petitioner could not subsequently fulfill the promise made by him.

16. In **Lala Wazir Singh and another Vs. Suraj Prakash Agarwal and another (1958) 28 AWR 197**), it was held as follows :

"8. There are numerous occasions when engagements have been made and later on for some reason or other they were broken but they will not all amount to cases of cheating. The most important ingredient of S. 420 IPC would be as to what was the intention of the applicants, (at the time of settlement ?) of marriage. If at that time there was no bona fide intention at all of performing the marriage then a case under section 420 would be made out but if at that time they had the honest intention of having the marriage with the sister of the opposite party but later on for some reason or other the relation is broken off and the money is not returned it would be a matter of purely civil nature."

17. I also take note of the principles laid down in an unreported judgment dated 15.10.2012 in Crl.M.C. No 2262 of 2011 of this Court, handed over by the learned counsel appearing for the petitioner, rendered by a

single Judge in an identical fact situation. It was held as follows:

"3.....The facts and circumstances presented in the case would clearly demonstrate that a marriage of the petitioner with the de facto complainant's son was arranged by both the families and that was followed by a betrothal ceremony. For whatever reason such an arranged marriage fixed had not materialised, no offence of cheating for that reason could be proceeded against the petitioner or her parents and those who were otherwise involved in arranging such marriage. Subsequent to the fixation of the marriage, petitioner had collected some gifts or cash from the son of de facto complainant, that too cannot be a ground to hold that she had dishonestly induced her would be bride groom with whom a marriage was arranged to part with any property. Even if the allegations raised in the complaint and also the materials gathered by the police, as reflected in its report after investigation of the crime, are accepted to be true and correct, it cannot be stated that the petitioner or her parents have committed any offence of cheating. To constitute the offence of cheating it must be shown that there was inducement by one person to another to deliver any property or omitted to do something which he otherwise would not have done or omitted to do so.

4. The facts presented in the case would indicate that after an arranged marriage was fixed between the de facto complainant's son and the petitioner, the latter, for one reason or other married another person. If the allegations raised by the complainant are true, probably, conduct of

petitioner in eloping with her lover and the breach of arranged marriage already fixed, might have caused not only monetary loss but damage to the reputation of the de facto complainant and his son. But, that by itself cannot be a basis to prosecute the petitioner for the offence of cheating.”

18. There is another very pertinent aspect of the matter. When PW1 was cross examined he was asked about the expenses incurred by him towards conduct of the engagement ceremony. He stated that he did not individually incur any expense. He unequivocally stated that he had filed the complainant to realize compensation for the loss sustained and if the accused was prepared to pay the said amount he was amenable to withdraw the complaint. When PW2 was cross examined, she stated that her uncle PW1 had incurred expenses to the tune of Rs.25,000/ and she was told that if did not give evidence as a witness, they would lose the said amount. Neither PW 1 or PW 2 has deposed in evidence that the petitioner had a guilty intention at any point of time at the inception. In view

of the categorical nature of the evidence tendered by PW1 and PW2, it cannot be held that the petitioner had practiced any deception upon the complainant. There is total paucity of materials to conclude that the petitioner had intent to deceive PW 1 or PW 2 at the time when they had fixed the marriage.

19. Both the Courts below have not appreciated these aspects of the matter and have concluded that the offence under S.420 was attracted by inference from his subsequent conduct. The appellate court has failed to note the considered findings of the trial Magistrate in so far as the handing of a sum of Rs.40,000/ is concerned and have erroneously directed the petitioner to pay compensation of Rs.40,000/- to PW1. The said finding of the appellate court is irregular and illegal. When conviction has been entered into misinterpreting the legal provisions and without taking note of the vital ingredients of the offence and/or where the conclusion

arrived at is based on inadmissible and irrelevant material this court will be justified in interfering in Revision.

20. In view of above, I am of the considered view that the concurrent findings of the Courts below holding the petitioner guilty u/s 420 of the IPC cannot be sustained under law. The same is set aside.

The revision petition is allowed. The petitioner is set at liberty.

Sd/-

**RAJA VIJAYARAGHAVAN. V.
Judge**

MrCs

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P.S.To Judge