

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

THURSDAY, THE 17TH DAY OF SEPTEMBER 2015/26TH BHADRA, 1937

Crl.Rev.Pet.No. 488 of 2015 ()

CC 20/2011 of J.M.F.C.-I, PUNALUR

REVISION PETITIONER/COMPLAINANT:

DR. RAJAN PRASAD P.G., AGED 60 YEARS
S/O.GEEVARGHESE, PROPRIETOR, BHARATH NURSING HOME
KULATHUPUZHA MURI, KULATHUPUZHA VILLAGE
PATHANAPURAM TALUK.

BY ADVS.SRI.MANOJ RAMASWAMY
SMT.SANJANA R.NAIR

RESPONDENTS/ACCUSED:

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1. A.J. GEORGE @ KUNJUMON, AGED 54 YEARS
S/O.JAMES, ARA NO.45, AMBALA NAGAR
KAVADIYAR, THIRUVANANTHAPURAM, RESIDENCE AT VRINDAVAN
KALYANAMANDAPAM, PAYAD - 695 573.
 2. STATE OF KERALA
REPRESENTED BY ITS PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM -31.

R2 BY PUBLIC PROSECUTOR, SHRI.R.GITHESH

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 17-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B.SUDHEENDRA KUMAR, J.

Crl.R.P. No.488 of 2015

Dated this the 17th day of September 2015

ORDER

The revision petitioner is the complainant in C.C. No.20 of 2011 on the files of the Court of the Judicial Magistrate of First Class-I, Punalur, who in this revision petition challenges the order passed by the court below, discharging the accused under Section 245(1) Cr.P.C.

2. Heard the learned counsel for the revision petitioner.

3. The revision petitioner filed a complaint before the

court below alleging that the first respondent borrowed an amount of Rs.50,00,000/ from the revision petitioner for the purpose of renovating 'Vrindhavan Kalyanamandapam and Shopping Complex', of which he was a partner, and towards the discharge of the said liability, the first respondent herein, who is the accused before the court below, issued a receipt for the same. He also issued a post dated cheque for the said amount. However, when the said cheque was presented before the Bank for encashment, the same was dishonoured with the endorsement "other reasons". Then the revision petitioner issued a notice demanding payment of the cheque amount. Then the first respondent sent a reply stating that the bank account was closed by him way back in 1998. It is contended by the

revision petitioner that the first respondent herein had the dishonest intention to cheat revision petitioner right from the inception and but for the inducement, the revision petitioner would not have parted with the money.

4. After completing the legal formalities, process was issued to the first respondent herein. After his appearance, the evidence was recorded under Section 244(1) Cr.P.C. by the court below.

5. Before the court below, PW1 to PW3 were examined and Exts.P1 to P9 were marked for the revision petitioner. Ext.D1 was also marked through PW1.

6. The court below, after evaluating the documentary as well as oral evidence produced by the complainant, found that the revision petitioner had given statement that

he paid the amount to the first respondent due to the request made by PW2. PW2 also, in his cross-examination, stated that the revision petitioner would not have parted with the money, if PW2 had not requested him to do so. In the said circumstances, the court below found that there was no inducement on the part of the first respondent herein to part with the money by the revision petitioner. In order to attract the offence under Section 420 I.P.C., there should be intention to deceive at the inception of the transaction. However, in this case, the court below found that the money was not parted with on account of the deceit or inducement by the first respondent. But the money was parted with on the request made by PW2 to PW1. PW2 specifically stated that if he had not insisted

upon, the revision petitioner would not have parted with the money to the first respondent herein. The evidence of PW1 is also to that effect. In the said circumstances, the court below correctly found that there was no deceit or inducement at the inception of the transaction and in the said circumstances, no offence under Section 420 I.P.C. would be attracted.

7. The court below also noticed that a civil case is also pending before the court, in respect of the same matter. The court below found that the present criminal case was filed only to give a criminal angle to the transaction, even though the transaction in this case was purely civil in nature. Having gone through the relevant inputs, I do not find anything to hold that the order of the court below,

discharging the first respondent herein under Section 245
(1) Cr.P.C. suffers from any illegality, impropriety or
incorrectness, warranting interference by this Court.

In the result, this revision petition stands dismissed.

Sd//

**B.SUDHEENDRA KUMAR,
JUDGE.**

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/ True copy /

PA to Judge