

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

MONDAY, THE 25TH DAY OF MAY 2015/4TH JYAISHTA, 19372

Crl.Rev.Pet.No. 614 of 2015 ()

AGAINST THE ORDER IN CMP 605/2013 of J.M.F.C.-I, ALUVA

REVISION PETITIONER(S)/PETITIONER/COMPLAINANT:-:

**JAYESH KUMAR K.K. AGED 34 YEARS
S/O.KUMARAN, KOOLIPPARA HOUSE, ASAMANNOOR P.O.
ASAMANNOOR VILLAGE, KUNNATHUNADU THALUK
ERNAKULAM DISTRICT.**

BY ADV. SRI.T.G.GOPINATHAN

RESPONDENT(S)/RESPONDENTS/STATE & COMPLAINANT:-:

- 1. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.**
- 2. PASTOR MADHULAL AUGUSTINE
ALUVA SECTION PRESBYTER, ASSEMBLY OF GOD, ESI ROAD
ALUVA - 683 101.**
- 3. PASTOR P.S. PHILIP
ASSISTANT GENERAL SUPERINTENDENT OF THE SOUTH INDIA
ASSEMBLIES OF GOD
(SIAG) OFFICE ASSEMBLIES OF GOD, PUNALUR - 691 305.**
- 4. PASTOR V.TABRAHAM
GENERAL SECRETARY
THE SOUTH INDIA ASSEMBLIES OF GOD (SIAG) MALABAR DISTRICT
COUNCIL OF SIAG
CALICUT - 673 001.**
- 5. PASTOR BABU GEORGE
SECRETARY, THE SOUTH INDIA ASSEMBLIES OF GOD (SIAG)
MALAYALAM DISTRICT COUNCIL, PUNALUR - 691 305.**

6. PASTOR P.S.RAJAMONY
GENERAL SUPERINTENDENT, SIAG 100, NAVARLAL NAGAR
MADURA - 625 016.
7. PASTOR G.PETER
GENERAL COMMITTEE MEMBER, SIAG A.P. BIBLE COLLEGE
MIYAPUR P.O., HYDERABAD - 500 050.
8. PASTOR MOHAN D.
PRESIDENT, AGI, 6 ANNA SALAI LITTLE MOUNT SAIDA PET
CHENNAI - 600 015.
9. PASTOR T. SOUNDER RAJ, GENERAL TREASURER, SIAG
ASSEMBLIES OF GOD, CHERIKADAI, PALLIYADI 629169
KANYAKUMARI DISTRICT, TAMIL NADU
10. PASTOR Y. JAYARAJ, A.G INDUSTRIAL SCHOOL, PAN
POLLY ROAD, K.P VALASAI, ELATHOOR 627 803
11. PASTOR BABU VARGHESE, NORTH REGIONAL DIRECTOR
FAITH ASSEMBLIES OF GOD, EDAPPILLY
BETHEL HOUSE, UNNICHIRA 682 021

R1 BY PUBLIC PROSECUTOR SMT. MADHU BEN

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 25-05-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

APPENDIX

PETITIONERS ANNEXURES:

A1: CERTIFIED COPY OF THE JUDGMENT DATED 22.1.2015 PASSED BY THE HON'BLE JUDICIAL FIRST CLASS MAGISTRATE COURT, ALUVA IN PROTEST COMPLAINT NO.605/2013

A2: TRUE COPY OF THE CMP NO.1346/2011 ON THE FILE OF THE HON'BLE JUDICIAL FIRST CLASS MAGISTRATE COURT, ALUVA

A3: TRUE COPY OF THE FIR IN CRIME NO.2768/2011 OF ALUVA EAST POLICE STATION

A4: TRUE COPY OF THE STATEMENT DATED 8.10.2011 SUBMITTED BEFORE THE INVESTIGATING OFFICER BY THE ADVOCATE FOR THE ACCUSED

A5: TRUE COPY OF THE OBJECTION FILED ON BEHALF OF THE ACCUSED BY ADVOCATE JOHN MATHEW IN THE WRIT PETITION

A6: TRUE COPY OF THE JUDGMENT DATED 11.1.2012 PASSED BY THIS HON'BLE COURT IN W P C NO.27243/2011

A7: TRUE COPY OF THE JUDGMENT DATED 12.10.2012 IN CONT. CASE NO.1486/2012

A8: TRUE COPY OF THE FINAL REPORT DATED 14.3.2013 IN CMP NO.1346/2011 ON THE FILE OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT, ALUVA

A9: TRUE COPY OF THE JUDGMENT DATED 13.6.2012 OF THE HON'BLE BOMBAY HIGH COURT IN Writ Petition (Civil)(L)NO.298/2012

A10: TRUE COPY OF THE ORDER DATED 12.9.2012 PASSED BY THE JOINT CHARITY COMMISSIONER, GREATER MUMBAI REGION IN M.A NO.38/2012

A11: TRUE COPY OF THE PROTEST COMPLAINT NO.605/2013 FILED BEFORE THE HON'BLE JUDICIAL FIRST CLASS MAGISTRATE COURT, ALUVA

A12: TRUE COPY OF THE INFORMATION RECEIVED UNDER THE RIGHT TO INFORMATION ACT ON 8.5.2014

RESPONDENTS ANNEXURES: NIL

/TRUE COPY/

PA TO JUDGE
sab

K.HARILAL, J.

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Crl.R.P.No. 614 of 2015

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Dated this the 25th day of May, 2015

ORDER

The petitioner is the de facto complainant in C.M.P.No.605/2013 on the files of the Judicial First Class Magistrate's Court-I, Aluva and the respondents 2 to 11 are the accused in the said C.M.P. The petitioner, initially, filed a private complaint under Sections 190 and 200 of the Cr.P.C and the complaint was referred to Police for investigation under 156(3) of the Cr.P.C. After investigation, the Investigating Officer filed a refer report stating that the complainant has not made out a case against the accused and no offences had been committed as alleged by the petitioner. Feeling aggrieved, the petitioner filed the above protest complaint. After considering the allegations in the complaint in view of the final report filed by the Police, the court below dismissed the complaint

under Section 203 of the Cr.P.C. The legality and propriety of the findings whereby the learned Magistrate dismissed the complaint is under challenge in this revision petition.

2. Heard the learned counsel for the petitioner. The learned counsel for the petitioner submits that the court below miserably failed to evaluate the final report in view of the allegations in the protest complaint, in its correct perspective. According to the learned counsel, the allegations in the complaint disclose all the offences alleged against the accused. It is also submitted that the documents examined by the Police during the course of investigation also would disclose the offence alleged against the accused. But the court below failed to consider the evidence on record in its correct perspective.

3. In view of the above submission, the short question that arises for consideration is, whether there is any illegality or impropriety in the findings whereby the court below dismissed the protest complaint filed by the

petitioner?

4. Going by the complaint, apparently, it is seen that all the allegations are made without disclosing facts which would constitute offence alleged against the accused. The complainant has no case that the accused has fabricated false evidence and used those evidence in a judicial proceedings. So, the allegations do not constitute the offence alleged under Section 191, 192, 196, 197, 199 and 200 IPC. Though it is alleged that the accused have committed offence punishable under Section 420 IPC, the identity of the person whom the accused cheated is not disclosed in the complaint. There is no allegation to the effect that the accused had a dishonest intention of cheating another person from the very beginning, which is sine qua non to disclose offence under Section 420. There is no allegation that with dishonest intention, the accused cheated and induced any person to deliver property or valuable security. Though, it is alleged that the accused

had forged public register, for which he did not adduce anything to substantiate. The particulars of that act constituting the offence of cheating is not stated in the complaint. It is also alleged that huge amounts were received for charity work from Singapore, Malaysia etc. But, the person from whom or sources from which amount received is not disclosed. It is also stated that the accused have several pan numbers; but any kind of particulars of those pan numbers are not stated. More importantly, no persons have any complaint that they had been cheated by the accused.

5. According to Section 2(n) of the Cr.P.C, “offence” means any act or omission made punishable by any law for the time being in force. According to Section 3 of the Evidence Act, fact means and includes (i) anything, state of thing or relation of things, capable of being perceived by the sense; (ii) any mental condition of which any person is conscious. But, ingredients constituting the offences are

the compendium of mental element borne out from the facts constituted by the act done by the accused.

6. In short, the complaint is cleverly as well as mischievously drafted in a way adopting the legal terms constituting ingredients of the offence instead of disclosing particulars of the act which would constitute the offence committed by the accused. Thus, the allegations are devoid of fact. There is no bona fides in the allegation. In the absence of facts constituting the offence, the court below is justified in dismissing the complaint in limine. There is not illegality or impropriety in the impugned judgment under challenge.

The revision petition is dismissed.

Sd/-
K.HARILAL,
JUDGE.

stu

//True copy//

P.A to Judge