

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE R. NARAYANA PISHARADI

THURSDAY, THE 24TH DAY OF OCTOBER 2019 / 2ND KARTHIKA, 1941

Cr1.MC.No.2345 OF 2015

CMP 984/2011 OF JUDICIAL MAGISTRATE OF FIRST CLASS -I, KANNUR

PETITIONERS/ACCUSED:

- 1 SINDHU S.PANICKER
W/O.SIVASANKARA PANICKER, SREENILAYAM,
P.O.KANDANKALI, KANNUR, NOW RESIDING AT ADIYODI
HOUSE, P.O.PAYYANNUR, KANNUR.
- 2 SIVASANKARA PANICKER
S/O.PANICKER, SREENILAYAM, P.O.KANDANKALI, KANNUR,
NOW RESIDING AT ADIYODI HOUSE, P.O.PAYYANNUR, KANNUR.

BY ADV. SRI.KALEESWARAM RAJ

RESPONDENT/COMPLAINANT:

- 1 A.BALAKRISHNAN
S/O.RAMAN, MANIKKA KAVU ROAD, P.O.THANA, KANNUR.
- 2 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM - 682 031.

R1 BY ADV. SRI.P.U.SHAILAJAN

SRI C S HRITHWIK -SR PP

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
24.10.2019, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

"CR"

R.NARAYANA PISHARADI, J

CrI.M.C.No.2345 of 2015

Dated this the 24th day of October, 2019

ORDER

This petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code') to quash the proceedings initiated against the petitioners on the basis of Annexure-1 complaint.

2. The first respondent (hereinafter referred to as 'the complainant') filed Annexure-1 complaint against the petitioners. On the basis of the allegations in the complaint, learned Magistrate has taken cognizance of the offence punishable under Section 420 read with 34 I.P.C. The petitioners are the first and the second accused in the case.

3. The material averments in Annexure-1 complaint are as follows: The complainant and the accused were family friends.

On 02.04.2007, both the accused approached the complainant and requested him to lend them Rs.1,85,000/-. They assured the complainant that they would repay the amount on 16.05.2007 and that they would issue a post-dated cheque to him so that he could encash it on that date. The complainant believed the accused and told them that he would give them the amount on 10.04.2007. The accused came to the house of the complainant on 10.04.2007 and the first accused received the amount of Rs.1,85,000/- from the complainant and gave him a cheque dated 16.05.2007, drawn on Canara Bank, for that amount. The entire transaction was witnessed by Sri.Sushit, a common friend of the complainant and the accused.

4. The complainant presented the cheque in the bank. It was dishonoured on the ground that funds were insufficient. The complainant issued a notice to the first accused on 22.05.2007 intimating her about the dishonour of the cheque and demanding payment of the cheque amount. The first accused sent a reply stating that she had no occasion to give any cheque to the complainant. On 20.06.2007, both accused approached the

complainant along with Sri.Sushit and they requested the complainant to grant them two years time to repay the amount with interest at the rate of 12% per annum. The matter was talked over in the presence of mediators and Sushit and finally the complainant agreed for the same.

5. Even after the period of two years, the accused did not pay the amount to the complainant. On 29.07.2010, the complainant issued notice to both accused demanding the amount. The first accused sent a reply containing false averments. The accused had dishonestly induced the complainant to believe that the cheque would be honoured on presentation and the complainant had given them the amount on believing them. The cheque was issued by the accused stating that it belonged to the first accused. The act of the accused is punishable under Section 420 read with 34 I.P.C.

6. During the enquiry under Section 202 of the Code, the complainant and Sushit were examined. In the sworn statement, the complainant has briefly stated the details of the transaction with the accused. The witness Sushit has stated that the

complainant had given the amount to the accused in his presence. He has also stated about the agreement reached between the parties that the accused would repay the amount within a period of two years.

7. Heard learned counsel for the petitioners and the first respondent and the learned Public Prosecutor.

8. Learned counsel for the petitioners has urged the following two grounds to quash the proceedings initiated against the petitioners on the basis of Annexure-1 complaint. They are :

- (1) There is undue and unexplained delay in filing the complaint
- (2) The averments in the complaint do not constitute the ingredients of an offence punishable under Section 420 I.P.C.

9. The transaction alleged by the complainant was on 10.04.2007. The cheque allegedly given by the accused to the complainant is dated 16.05.2007. The complaint against the petitioners was filed only on 29.03.2011.

10. The offence under Section 420 I.P.C is punishable with imprisonment for a term which may extend to seven years. The petitioners have got no plea that the complaint is barred by

limitation under Section 468 of the Code.

11. The complainant has got a case that the accused had agreed to pay the amount within two years. Such period had expired in the year 2009. The complaint was filed only on 29.03.2011. There was undue delay in filing the complaint. The delay is not explained in the complaint.

12. Can the complaint be quashed on the ground of undue delay, even though it is not barred by limitation as prescribed under the Code?

13. The general rule of criminal justice is that "a crime never dies". Mere delay in approaching a court of law would not by itself afford a ground for dismissing the case though it may be a relevant circumstance in reaching a final verdict (See **Japani Sahoo v. Chandra Sekhar Mohanty : AIR 2007 SC 2762**). When no period of limitation is prescribed for filing the complaint, it cannot be thrown out on the sole ground of delay. The question of delay in filing a complaint may be a circumstance to be taken into consideration in arriving at the final decision. But, by itself, it affords no ground for dismissing the complaint. Prosecution

should not be quashed on the ground that there was delay in instituting the complaint (See **Assistant Collector of Customs v. L.R.Melwani : AIR 1970 SC 962**).

14. Inordinate and unexplained delay in filing a complaint regarding commission of an offence would certainly a factor to be taken into account by the court in taking the final decision in the case. But, when the complaint is not barred by limitation, it cannot be thrown out at the threshold, merely on the ground of undue delay.

15. Learned counsel for the petitioners has relied upon the decision in **Suresh v. Mahadevappa Shivappa : AIR 2005 SC 1047** in support of the plea that the complaint is liable to be quashed on the ground of inordinate delay. It was a case in which there was a delay of more than ten years in filing the complaint. Moreover, the complaint was quashed in that case not merely on the ground of delay in filing it. In that case, commission of the offence under Section 420 IPC was alleged based on breach of a contract for sale of property. The Apex Court found that the allegations in the complaint were of civil nature and ingredients

of an offence under Section 420 were not made out. This decision has no application to the facts of the present case.

16. Section 420 IPC provides that whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

17. The ingredients to constitute an offence under Section 420 are : (i) A person must commit the offence of cheating under Section 415 IPC; and (ii) The person cheated must be dishonestly induced to (a) deliver property to any person; or (b) make, alter or destroy valuable security or anything signed or sealed and capable of being converted into valuable security.

18. Cheating is an essential ingredient for an act to constitute an offence under Section 420 IPC. Section 415 IPC states that 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".

19. The ingredients to constitute an offence of cheating are as follows: (i) there should be fraudulent or dishonest inducement of a person by deceiving him; (ii) (a) the person so induced should be intentionally induced to deliver any property to any person or to consent that any person shall retain any property, or (b) the person so induced should be intentionally induced to do or to omit to do anything which he would not do or omit if he were not so deceived; and (iii) in cases covered by (ii) (b) above, the act or omission should be one which caused or is likely to cause damage or harm to the person induced in body, mind, reputation or property.

20. There is a specific averment in the complaint that the

petitioners/accused had dishonestly induced the complainant that the amount would be repaid on 16.05.2007 and that the cheque issued by the first accused would be honoured on presentation and that the complainant paid them the amount on believing their words. It is trite that the complaint must be examined as a whole, without evaluating the merits of the allegations. True, there is distinction between mere breach of contract and cheating. Here, fraudulent inducement of the complainant by the petitioners to part with the money is specifically alleged in the complaint. Regarding the dishonest intention of the accused, their subsequent conduct is also relevant.

21. In a very recent decision, in **Lakshman v. State of Karnataka** (Judgment dated 17.10.2019 in Criminal Appeal Nos.1573-1575 of 2019), the Apex Court has held that in a given case, whether there is any mens rea on the part of the accused or not is a matter which is required to be considered having regard to the facts and circumstances of the case and contents of the complaint etc. It has also been held that in a petition under Section 482 of the Code, it is fairly well settled that it is not

permissible for the High Court to record any findings, wherever there are factual disputes. It has been further held that mere filing of the suits for recovery of the money and complaint filed under Section 138 of the N.I.Act by itself is no ground to quash the proceeding. Even if the case involves breach of contract, if there is an element of cheating and fraud, it is always open for a party to prosecute the other side for the offences alleged. It has also been held that the power under Section 482 of the Code is to be exercised sparingly when the case is not made out for the offences alleged on the reading of the complaint itself or in cases where such complaint is filed by way of abuse of the process.

22. It is true that the complainant did not institute any complaint under Section 138 of the Negotiable Instruments Act inspite of sending notice to the first accused/first petitioner. But, the first petitioner had sent reply notice stating that she had no account in the bank on which the cheque was allegedly drawn. Even if a person has been tried and dealt with for the offence punishable under Section 138 of the Negotiable Instruments Act, on similar facts, he can be subsequently tried for an offence

punishable under Section 420 IPC. The reason is that the ingredients of the two offences are different (See **Sangeetaben v. State of Gujarat : AIR 2012 SC 2844**).

23. In the light of the discussion above, I find that there is no sufficient ground to quash the complaint or the order passed by the learned Magistrate taking cognizance of the offence punishable under Section 420 read with 34 IPC against the petitioners.

Consequently, the petition is dismissed.

(sd/-)

R.NARAYANA PISHARADI, JUDGE

jsr

APPENDIX

PETITIONERS' EXHIBITS:

ANNEXURE P1	ANNEXURE I: TRUE COPY OF THE COMPLAINT IN C.M.P 984/2011.
ANNEXURE P2	ANNEXURE II: TRUE COPY OF THE NOTICE DATED 22/5/2007.
ANNEXURE P3	ANNEXURE III: TRUE COPY OF THE REPLY DATED 30/5/2007
ANNEXURE P4	ANNEXURE IV: TRUE COPY OF THE NOTICE DATED 21/7/2010.
ANNEXURE P5	ANNEXURE V: TRUE COPY OF THE REPLY DATED 2/9/2010.

RESPONDENTS' EXHIBITS: NIL

TRUE COPY

PS TO JUDGE