

(2016) 03 KL CK 0008

In the High Court Of Kerala

Case No : W.P.(C) Nos. 19310 of 2015 (K) and 6378 of 2016

Ashish Aror and Others

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 01-03-2016

Acts Referred:

Constitution of India, 1950 — Article 32
Criminal Procedure Code, 1973 (CrPC) — Section 212(2), Section 218
Income Tax Act, 1961 — Section 65, Section 66(c)
Penal Code, 1860 (IPC) — Section 120B, Section 34, Section 406, Section 407

Citation : (2016) 2 KerLJ 603 : (2016) 2 KHC 758 : (2016) 2 KLT 714

Hon'ble Judges : B. Kemal Pasha, J.

Bench : Single Bench

Advocate : Rajit, Adv, for the Appellant; Tome Jose Padigarekara, Addl. Director General of Prosecution, for the Respondent

Final Decision : Dismissed

Judgement

B. Kemal Pasha, J.—1. Five among the accused in 23 crimes registered at different police stations have come up before this Court with a request to have the cases relating to all those crimes to be clubbed together as one case, thereby enabling the same to be tried together before one among the courts.

2. Petitioners are youngsters of the age group of 25-30. They are hailing from the State of Punjab. They have invented a peculiar modus operandi to cheat the State Bank of Travancore as well as the Federal Bank Limited. They used to fly from New Delhi to Nedumbassery, from where they used to hire a taxi and proceed to Thiruvananthapuram and other different locations, and to return to Nedumbassery. On the way, they used to step down at the ATM counters of the Federal Bank Limited and the State Bank of Travancore. By making use of different ATM cards procured from ICICI Bank, Axis Bank as well as HDFC Bank, they used to withdraw money from the ATM counters of the State Bank of Travancore and the Federal Bank Limited. For getting money, they used to insert the ATM cards and feed the PIN number. When money comes out for Rs.

10,000/-, they used to pick up Rs. 9,500/- out of it and leave the balance for Rs. 500/-. During the period of incident of these cases, in the ATMs of State Bank of Travancore as well as the Federal Bank Limited, the machine used to take back that currency left at the machine. As and when the money goes inside, the original transaction wherein an amount of Rs. 10,000/- was requested to be withdrawn would be reversed, thereby the account holder of that particular Bank would not lose any money from the account. At the same time, the persons withdrawing money from such ATMs could obtain the amounts taken by them out of the machine.

3. It is alleged that by applying the aforesaid modus operandi, they have cheated and defrauded the Federal Bank Limited as well as the State Bank of Travancore for crores of rupees. According to both the learned counsel for the petitioners, the amount allegedly defrauded would come only to a few lakhs of rupees and not crores, as alleged.

4. Heard Sri Millu Dandapani and Sri Rajit for the petitioners, Sri Jawahar Jose for the State Bank of India, Sri K. Madhusoodanan for the Federal Bank Limited, and Sri Tom Jose Padinjarekkara, the learned Additional Director General of Prosecutions, for the State.

5. The learned Additional Director General of Prosecutions has produced a statement which shows the details of the crimes against the petitioners, as follows:-

Sl. No.

Police Station

Crime No. & Section of law

Whether charge

sheeted or not &

Name of Court

CC No.

1

Central PS

Cr. 1313/12 u/s. 120B, 419, 420 & 34 IPC & 66A & C of IT Act

Charge sheeted before the CJM Court, EKM on 30.3.13

123/13

2

Central PS

Cr. 1314/12 u/s. 120B, 419, 420 & 34 IPC & 66A & C of IT Act

Charge sheeted before the CJM Court, EKM on 30.3.13

124/13

3

Central PS

Cr. 1315/12 u/s. 120B, 419, 420 & 34 IPC & 66A & C of IT Act

Charge sheeted before the CJM Court, EKM on 30.3.13

120/13

4

Central PS

Cr. 1321/12 u/s. 120B, 419, 420 & 34 IPC & 66A & C of IT Act

Charge sheeted before the CJM Court, EKM on 30.3.13

125/13

5

Kadavanthra PS

Cr. 779/12 u/s. 120B, 419, 420 & 34 IPC & 66A & C of IT Act

Charge sheeted before the CJM Court, EKM on 30.3.13

112/13

6

Kalamassery

Cr. 1027/12 u/s. 420 & 34 IPC

Charge sheeted before the JFCM Court, Kalamassery on 15.4.15

CC No. not obtained

7

ET South PS

Cr. 745/12 u/s. 420 & 34 IPC

Charge sheeted before the ACJM Court, EKM on 20.11.13

829/14

8

ET South PS

Cr. 746/12 u/s. 420 & 34 IPC

Charge sheeted before the ACJM Court (E & O), EKM on 20.11.13

CC No. not obtained

9

ET South PS

Cr. 1029/12 u/s. 420 & 34 IPC

Charge sheeted before the ACJM Court (E & O), EKM on 20.11.13

837/14

10

Harbour PS

Cr. 434/12 u/s. 420 & 34 IPC

Charge sheeted before the JFCM Court-I, Kochi on 29.9.13

CC No. not obtained

11

Panangadu PS

Cr. 725/12 u/s. 120B, 420 & 34 IPC

Charge sheeted before the ACJM Court, EKM on 30.9.13

12

Aluva East PS

Cr. 1456/12 u/s. 120B, 417, 420, 468, 471 r/w. 34 IPC & 65, 66(c) of IT Act

Charge sheeted before the JFCM Court-I, Aluva on 4.4.14

1028/14

13

Cherthala PS

Cr. 784/12 u/s. 420 IPC & Sec. 66(c) of IT Act

Charge sheeted before the JFCM Court-I, Cherthala on 10.6.13

881/13

14

Palarivattom PS

Cr. 1000/12 u/s. 420 & 34 IPC

Under investigation

15

Attingal PS

Cr. 978/12 u/s. 420 & 34 IPC

Charge sheeted before the JFCM Court-I, Attingal on 25.9.12

1065/12

16

Attingal PS

Cr. 1228/12 u/s. 120B, 417, 420, 468, 471 r/w. 34 IPC & 65, 66(c) & 66(D) of IT Act

Charge sheeted before the JFCM Court-I, Attingal on 31.12.12

104/13

17

Balaramapuram PS

Cr. 816/12 u/s. 120B, 417, 420, 468, 471 r/w. 34 IPC & 65, 66(c) & 66(D) of IT Act

Charge sheeted before the JFCM Court-III, Neyyattinkara

3173/14

18

Kattakada PS

Cr. 1009/12 u/s. 120B, 417, 420, 468, 471 r/w. 34 IPC & 65, 66(c) & 66(D) of IT Act

Charge sheeted before the JFCM Court, Kattakada

243/14

19

Mangalapuram PS

Cr. 686/12 u/s. 120B, 417, 420, 468, 471 r/w. 34 IPC & 65, 66(c) & 66(D) of IT Act

Under investigation

20

Kilikollur PS

Cr. 660/12 u/s. 120B, 406, 420, 468, 471 r/w. 34 IPC & 65 & 66(c) of IT Act

Charge sheeted before the JFCM Court-I, Kollam

329/13

21

Cherthala PS

Cr. 784/12 u/s. 420 IPC & Sec. 66(c) of IT Act

Charge sheeted before the JFCM Court-I, Cherthala

881/13

22

Peroorkada PS

Cr. 745/12 u/s. Transferred to CBCID (E & O) Wing, Kollam and re-numbered as 41/CR/EOW-I/KLM/13

Pending investigation

23

Kollam East PS

Cr. 956/12 u/s. 420 & 34 IPC

Charge sheeted before the CJM Court, Kollam

49/13

6. According to the learned counsel for the petitioners, as per Section 212(2) Cr.P.C., in a case like this, it shall be sufficient to specify the gross sum, which was allegedly defrauded or cheated, thereby clubbing all these cases together as one case for enabling the petitioners to meet the trial before one court in all these cases. Section 212(2) Cr.P.C. has no application as far as the present case is concerned. In the above 22 cases, the offences alleged do not include an offence of criminal breach of trust or dishonest misappropriation. Only in cases relating to criminal breach of trust, or dishonest misappropriation, Section 212(2) Cr.P.C. has application. True that, in Crime No. 660/2012 of Kilikollur Police Station shown as serial No. 20 above, the offence under Section 406 IPC has been included. That is only a solitary case wherein the said offence is included. Therefore, Section 212(2) Cr.P.C. cannot have any application at all as far as all these cases are concerned.

7. The learned counsel for the petitioners have further relied on the proviso to Section 218 Cr.P.C. regarding the joinder of charges. As per the said proviso, where the accused person, by an application in writing, so desires and the Magistrate is of the opinion that such person is not likely to be prejudiced,

thereby the Magistrate may try together all or any number of the charges framed against such person. The proviso to Section 218 has also no application as far as these cases are concerned. That relates to distinct offences in a particular case. In a case wherein offences under Sections 420 IPC and 406 IPC are alleged, with regard to the same transaction, distinct charges should be framed for the said two offences and in that case, those two offences should be tried together. Apart from that, the said proviso has no application as far as these crimes are concerned.

8. Both the learned counsel for the Banks as well as the Additional Director General of Prosecutions have pointed out that all these cases have different sets of facts. Different ATM cards were made use of in different ATMs for executing the modus operandi. In such case, the evidence will be different in different cases. Different amounts were cheated in different cases. Different witnesses should be there for identifying the accused in different cases. In such case, it is not at all possible to club these cases together.

9. Both the learned counsel for the petitioners have pointed out that they have moved this Court on the basis of Ext. P18 order passed by the Apex Court in W.P. (Crl.) No. 65/2013, wherein it was held as follows:-

"After hearing learned senior counsel for the petitioners at length, we are not inclined to entertain the present writ petition filed under Article 32 of the Constitution of India. However, in so far as the conditions imposed while granting bail in 18 matters if the petitioners feel that the same are onerous, they are free to approach the appropriate court to vindicate their grievance. It is made clear that we have not expressed any opinion on their proposed claim.

We also permit the petitioners to move the High Court in so far as their claim for clubbing of all the cases which are pending in the State of Kerala.

With the above observation, the writ petition is disposed of."

10. When the petitioners are harping upon the aforesaid provisions for getting the matters clubbed together, this Court is of the view that those provisions do not come to the aid of the petitioners in forwarding such a request. Considering the magnitude of the offences involved and the peculiar modus operandi adopted by the petitioners to cheat and defraud a Nationalised Bank as well as a Scheduled Bank for crores of rupees, this Court is of the view that the petitioners are not entitled to have all the cases clubbed together.

This Court is satisfied that both these writ petitions are devoid of merits and are only to be dismissed, and I do so.

In the result, these writ petitions are dismissed.