

(2024) 12 KL CK 0021

In the High Court Of Kerala

Case No : Criminal Miscellaneous Petition No. 1403 Of 2018

Baiju N. Nair

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 05-12-2024

Acts Referred:

Code of Criminal Procedure, 1973 — Section 156(3), 482
Indian Penal Code, 1860 — Section 415, 420

Citation : (2024) 12 KL CK 0021

Hon'ble Judges : G.Girish, J

Bench : Single Bench

Advocate : S.Ranjit, Gokul Das V.V.H., Aysha Abraham, S.Sarath Prasad,
Prasanth.M.D

Final Decision : Dismissed

Judgement

G.Girish, J

1. The accused Nos. 1 and 2 in C.C.No.259/2015 on the files of Judicial First Class Magistrate Court, Perumbavoor, have filed this petition under Section 482 of the Code of Criminal Procedure for quashing the proceedings in the said case.

2. The above case originated from an F.I.R registered on the basis of the complaint of the second respondent alleging cheating on the part of the petitioners in connection with the withdrawal of the amount in deposit in the account of the second respondent's husband at Velloor Service Co-operative Bank Ltd. The second respondent's husband who retired from Madhya Pradesh Government Service, was admittedly suffering from chronic mental ailment. He was taken to his native place Pambadi for the purpose of treatment by his elder brother late Narayanan Nair, who was the father of the first petitioner and the husband of the second petitioner. It is stated that the second respondent's husband had accorded permission to the above said Narayanan Nair to withdraw amounts from his account to meet the expenses of his treatment. However, it is alleged that the petitioners, after the death of the above said Narayanan Nair,

withdrew about Rs.2,00,000/- from the account of the second respondent's husband, making use of the receipt fraudulently and dishonestly obtained from him under the pretext that it was for meeting his treatment expenses, and thereafter misappropriated the above amount causing undue loss to the second respondent and her husband. It is the further allegation against the petitioners that they committed cheating in the above manner in furtherance of their common intention to defraud the second respondent and her husband.

3. In the present petition, the petitioners would allege that the offence of cheating is not attracted in the facts and circumstances of the case. According to the petitioners, the basic ingredients of Section 415 I.P.C and Section 420 I.P.C are not brought out from the prosecution records, and hence the proceedings before the learned Magistrate have to be terminated to prevent the abuse of process of court.

4. Heard the learned counsel for the petitioners, the learned counsel for the second respondent and the learned Public Prosecutor representing the first respondent.

5. It is argued by the learned counsel for the petitioners that the prosecution records would not disclose any fraudulent or dishonest inducement committed by the petitioners, and hence it cannot be said that the offence as envisaged under Section 415 I.P.C and Section 420 I.P.C are brought out in the facts and circumstances of the case. It is not possible to accept the above argument since the very basis of the complaint of the second respondent against the petitioners is that they have fraudulently and dishonestly withdrawn the amount in deposit in the account of her husband making use of the receipt obtained from her husband under the pretext that the amount was sought to be withdrawn for meeting his treatment expenses. The witness schedule forming part of Annexure-II final report would reveal that the staff of the bank concerned where the second respondent's husband was having deposit, are cited to prove the fact that the fixed deposit account of the second respondent's husband was closed on the basis of the relevant document containing the signature of the second respondent's husband, produced before the said bank. The second respondent's husband is arraigned as witness No.2 to prove that he had given cheque only to his brother for the withdrawal of amount from his fixed deposit, and that he had not authorised the petitioners herein to withdraw any such amount.

6. The learned counsel for the petitioners pointed out that the contentions raised by the second respondent in the first information statement differ from the allegations against the petitioners in the final report. It is also submitted that there is no allegation of cheating against the petitioners in the civil suit which the second respondent's husband had instituted before the Sub Court, Kottayam, with the second respondent as his next friend, for realisation of the amount allegedly withdrawn by the petitioners from his account. In respect of the above argument, it has to be stated that those matters pertaining to the inconsistencies in the version of the de facto complainant, cannot be taken into account to nip

the prosecution case in the bud, by invoking the power under Section 482 of the Cr.P.C.

7. On going through the prosecution records, it appears that the de facto complainant has brought out a substantial case against the petitioners in connection with the unauthorised withdrawal and misappropriation of the amount which remained in the fixed deposit account of her husband who was suffering from serious mental ailment. The question whether the allegations in the above regard would come under the definition of cheating or criminal breach of trust under the relevant provisions of the Indian Penal Code, is a matter to be looked into by the Trial Court at the time of framing of charges. At any rate, it is not possible for this Court to have a thread-bare analysis of those aspects in a petition filed under Section 482 Cr.P.C. It is not possible to direct the winding up of the prosecution case at the threshold for the inconsistencies in the versions of the de facto complainant, which do not affect the substratum of the accusations pertaining to the fraudulent and dishonest act of the petitioners whisking away the money of the second respondent's husband. Accordingly, I find no reason to invoke the exceptional powers conferred under Section 482 Cr.P.C. and to terminate the prosecution proceedings at the very inception.

In the result, the petition is hereby dismissed.