(2021) 03 KL CK 0027

In the High Court Of Kerala

Case No : Criminal Miscellaneous No. 8117 Of 2018

Pragnish Babu And Ors — APPELLANT

Vs

State Of Kerala And Ors — RESPONDENT

Date of Decision : 01-03-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 156(3), 482
Indian Penal Code, 1860 — Section 34, 120(B), 405, 406, 415, 420, 421, 424

Citation : (2021) 03 KL CK 0027

Hon'ble Judges : R. Narayana Pisharadi, J

Bench : Single Bench

Advocate : T.S. Maya, K. Rajeev, K.A. Sunitha, Celine Joseph, B Jayasurya

Final Decision : Allowed

Judgement

1. The petitioners are the fifth and the sixth accused in the case registered as Crime No. 494/2018 of the Kalpetta Police Station.

2. The aforesaid case is registered on the basis of the complaint (Annexure-A2) filed by the second respondent (hereinafter referred to also as 'the

complainant') in the Court of the Chief Judicial Magistrate, Kalpetta, which was forwarded under Section 156(3) of the Code of Criminal Procedure,

1973 (for short 'the Code') for investigation.

3. The material averments in Annexure-A2 complaint can be stated as follows: The complainant is a person conducting a jewellery shop in Kalpetta.

The fifth and the sixth accused were persons closely acquainted with the complainant. On 07.04.2018, at about 17:00 hours, the fifth and the sixth

accused came to the shop of the complainant. They told the complainant that the marriage of the third accused, who is the daughter of the first and

the second accused, was scheduled to be held on the next day, that is, 08.04.2018 but the first and the second accused could not arrange 20

sovereigns of gold ornaments which they had agreed to give to their daughter and if the gold ornaments could not be given, the marriage will not take

place and then, the first and the second accused had no option other than to commit suicide. The fifth and the sixth accused told the complainant that,

if he gave the first and the second accused 20 sovereigns of gold ornaments, half the price of the gold ornaments would be paid on 09.04.2018 and the

remaining half would be paid on 15.04.2018. On the basis of the inducement and compulsion made by the fifth and the sixth accused, the complainant

agreed to give the gold ornaments. On the same day, at about 19:00 hours, the fifth and the sixth accused came to the jewellery shop of the

complainant along with accused 1 to

4. They purchased 160.100 grams of gold ornaments and the purchase bill to the tune of Rs.5,48,048/- was given in the name of the fifth accused.

Subsequently, the accused did not pay the amount to the complainant. On enquiry, the complainant came to know that the marriage of the third

accused was not conducted and it was with the intention to cheat the complainant that accused 1 to 6 had obtained the gold ornaments from him on

the pretext of such a marriage. Subsequently, the fifth and the sixth accused made a complaint in the police station stating that the complainant was

harassing them by demanding money from them. All the accused, except the third accused, came to the police station and it was agreed there that half

the amount due to the complainant would be given on 15.06.2018 and the remaining amount would be given within a period of one month and that the

liability to pay the amount was only that of the first accused. Even then, the amount due to the complainant was not paid. Then the complainant gave a

petition in the police station and the accused were summoned to the police station. At the police station, accused 1 to 6 promised that they would give

the amount of Rs.5,48,000/- due to the complainant on 05.10.2018. Accused 1 and 4 came to the shop of the complainant and gave him a cheque for

Rs.5,48,000/-, which was signed by the second accused. When the complainant presented the cheque in the bank, it was dishonoured for the reason

that there was no sufficient amount in the account. Accused 1 to 6 had entered into a criminal conspiracy to cheat the complainant and to obtain the

gold ornaments from him. Therefore, it is alleged that the accused have committed the offences punishable under Sections 420, 406 , 421 and 424 read with 34 IPC and 120B IPC.

4. This petition is filed by the fifth and the sixth accused under Section 482 of the Code for quashing Annexure-A1 first information report and Annexure-A2 complaint.

5. Heard the learned counsel for the petitioners and the learned Public Prosecutor and also the learned counsel for the second respondent.

6. The prayer for quashing Annexure-A2 complaint cannot be allowed by invoking the power under Section 482 of the Code as the complaint is not pending in any criminal court and the court has not taken cognizance of the offences on the basis of the complaint.

7. The offences alleged against the petitioners in Annexure-A1 FIR are punishable under Sections 406, 420, 421 and 424 read with 34 IPC and 120B IPC.

8. Section 421 of the IPC states that, whoever dishonestly or fraudulently removes, conceals or delivers to any person, or transfers or causes to be transferred to any person, without adequate consideration, any property intending thereby to prevent, or knowing it to be likely that he will thereby prevent, the distribution of that property according to law among his creditors or the creditors of any other person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

9. In the present case, there is no allegation in Annexure-A2 complainant that the fifth or the sixth accused had removed, concealed or delivered or transferred any property to any person, without adequate consideration. In the absence of any such allegation made against the fifth and the sixth accused in the complaint, the ingredients of the offence punishable under Section 421 IPC are not attracted against them.

10. Section 424 of the IPC states that, whoever dishonestly or fraudulently conceals or removes any property of himself or any other person, or dishonestly or fraudulently assists in the concealment or removal thereof, or dishonestly releases any demand or claim to which he is entitled, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

11. In the present case, there is no allegation in the complaint that the fifth or

the sixth accused had concealed or removed any property or they had

assisted in the concealment or removal of any property. In the absence of any such allegation in the complaint, the ingredients of the offence

punishable under Section 424 IPC are not attracted against them.

12. Purchase of gold ornaments on credit will not amount to an act of dishonest concealment, removal or transfer of a property.

13. The complaint contains allegation that the fifth and the sixth accused had told the complainant that the marriage of the third accused was

scheduled to be held on 08.04.2018 and 20 sovereigns of gold ornaments were required for the marriage and if the first and the second accused could

not obtain the gold ornaments, the marriage would not take place. It is alleged that it was on the basis of the above representation made to him by the

fifth and the sixth accused that the complainant sold the gold ornaments to the other accused on credit. The complaint also contains an allegation to the

effect that, on enquiry, the complainant came to know that the marriage of the third accused did not take place. Therefore, the learned counsel for the

second respondent would contend that the fifth and the sixth accused had dishonestly induced the complainant to sell the gold ornaments to the other

accused on credit. In short, the case of the complainant is that, under the pretext of a marriage, the accused cheated him and induced him to deliver

the gold ornaments to them.

14. There would have been considerable merit in the case of the complainant as above if the marriage of the third accused did not really take place.

At the time of hearing, this Court had put a query to the learned counsel for the second respondent, whether the marriage of the third accused had

really taken place or not on 08.04.2018. Learned counsel would submit that the complainant was not aware of it. If the complainant was not aware of

the fact whether the marriage of the third accused had actually taken place or not, it is not explained how a specific averment could be made in the

complaint that, on enquiry the complainant came to know that no such marriage took place.

15. Annexure-6 is the copy of the certificate issued by a Trust. It is stated in this certificate that, on 08.04.2018, in the Krishnagowdar Auditorium,

which is functioning under the Trust, the marriage between one Abhilash and Aparna B. Nair (A3) took place. Learned counsel for the second respondent has not disputed the genuineness of this document. Therefore, there is material to show that the marriage of the third accused had actually

taken place on 08.04.2018 and it was not a false pretext made by accused 1 to 6 to obtain gold ornaments from the complainant. In such

circumstances, the representations made by the fifth and the sixth accused to the complainant to persuade him to sell the gold ornaments on credit to

the first and the second accused, cannot be found to be dishonest. It cannot be found that the inducement made by them to the complainant in that

regard was dishonest.

16. Section 415 of the 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 â??cheatâ??.

17. The ingredients to constitute an offence of cheating are:

(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. A fraudulent or dishonest

inducement is an essential ingredient of the offence of cheating.

18. Section 420 of the IPC states 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.

19. The ingredients to constitute an offence under Section 420 I.P.C are: (i) a person must commit the offence of cheating under Section 415 I.P.C;

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. Cheating is an essential ingredient for an act to constitute the offence

under Section 420 I.P.C.

20. A mere failure to keep up promise subsequently cannot be presumed as an act leading to cheating. Distinction between mere breach of contract

and cheating would depend upon the intention of the accused at the time of the alleged inducement. If it is established that the intention of the accused

was dishonest at the very time when he made a promise and entered into a transaction with the complainant to part with his property or money, then

the liability is criminal and the accused could be found guilty of the offence of cheating. On the other hand, if all that is established is that a

representation or promise made by the accused has subsequently not been kept, criminal liability cannot be imposed on the accused. Mere breach of

contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown at the beginning of the transaction.

21. In the present case, as already found, since the marriage of the third accused had actually taken place, it cannot be found that the fifth and the

sixth accused had made dishonest representation to the complainant and that they fraudulently or dishonestly induced him to deliver the gold ornaments

on credit to accused 1 to 4. It cannot be found that the fifth and the sixth accused had any dishonest intention at the beginning of the transaction not to

pay the price of the gold ornaments to the complainant. In such circumstances, the offence punishable under Section 420 IPC is also not attracted

against them.

22. The other offence alleged against the accused are punishable under Section 406 IPC. The offence of criminal breach of trust, which is defined

under Section 405 IPC, is made punishable under Section 406 IPC.

23. Section 405 of the IPC states that, whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly

misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing

the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits â??criminal breach of trustâ??.

24. Entrustment of property with the accused is the essential ingredient of an offence of criminal breach of trust which is made punishable under

Section 406 IPC. In the present case, there is no specific allegation in the complaint that it was with the fifth and the sixth accused that the

complainant entrusted the gold ornaments. Moreover, the allegation in the complaint is that the accused purchased the gold ornaments from the

complainant. If that be so, even if such purchase was made on credit basis, they had become the owners of the gold ornaments. In such situation, use

of the gold ornaments by the accused, will not amount to an act of criminal breach of trust which is punishable under Section 406 IPC.

25. It is alleged that accused 1 to 6 had conspired together to cheat the complainant and to obtain gold ornaments from him. If the allegations in the

complaint are considered as a whole, it can be found that the ingredients of the offence of criminal conspiracy are not attracted against the fifth and

the sixth accused, especially in view of the finding that the representations allegedly made by them to the complainant do not amount to dishonest

inducement.

26. The discussion above leads to the conclusion that the allegations contained in Anenxure-A2 complaint, which form the basis of Annexure-A1 FIR,

do not attract the ingredients of the offences alleged against the petitioners. Therefore, I find that this is a fit case in which the power of this Court

under Section 482 of the Code shall be invoked to quash the proceedings initiated against the petitioners on the basis of Annexure-A1 FIR.

27. Consequently, the petition is allowed in part. Annexure-A1 FIR in Crime No. 494/2018 of the Kalpetta Police Station, as far as it relates to the

petitioners alone and all proceedings against the petitioners based on it, are hereby quashed.

All pending interlocutory applications are closed.