(2021) 09 KL CK 0013

In the High Court Of Kerala

Case No : Criminal Miscellaneous Application No. 924 Of 2021

Robin Thomas APPELLANT

Vs

State Of Kerala RESPONDENT

Date of Decision : 01-09-2021

Acts Referred:

Code of Criminal Procedure 1973 — Section 156(3), 482
Indian Penal Code, 1860 — Section 34, 420

Citation : (2021) 09 KL CK 0013

Hon'ble Judges : K.Haripal, J

Bench : Single Bench

Advocate : P.S.Nandanan, P.N.Anoop, Biju .C. Abraha, T.R.Renjith

Final Decision : Dismissed

Judgement

K.Haripal, J

1. This is an application filed under Section 482 of the Cr.P.C. seeking to quash Annexure A2 charge sheet in Crime No. 1128 of 2019 of Piravom police station. The crime was registered on the basis of the Annexure A1 complaint preferred by the 2nd respondent before the Judicial First Class Magistrate Piravom, alleging offence punishable under Section 420 read with Section 34 of the IPC. Petitioners are accused numbers 1,2 and 4 in the crime.

2. At the outset, substance of Annexure A1 complaint can be set out. The complainant, second respondent is running a small stationery shop at Pazhoor in Piravom; on getting information that the 1st petitioner is employed in Portugal, he happened to contact him over phone and made enquires about obtaining a visa in Portugal; he happened to contact the 1st petitioner knowing that he used to arrange job visa in Portugal. When contacted, he said that visa can be arranged at an expense of Rs. 7,50,000/-. Then he offered to arrange job of a driver in Portugal for three years at an expense of Rs. 5,50,000/-; he was tod that on getting employment as a driver in Portugal, he would get salary of Indian

Rs. 1,00,000/- per month. On the basis of such an information, and on making him believe that the visa will be arranged and as directed, the 2nd respondent transferred an amount of Rs.50,000/- to the account of the 2nd accused in the Peruva branch of the Federal bank; later on the instructions of the 1st accused, he proceeded to a private consultancy in Bangalore and made certain signed statements. After ten days, 2nd accused collected an amount of Rs. 20,000/- in cash from the complainant. Later, on the instructions of the 1st accused, he contacted the 3rd accused and Rs.3,90,000/- was deposited in the Karippadam branch of Federal Bank of the 2nd accused. He had also transferred an amount of Rs. 30,000/- to the credit of 4th accused through SBI Kalamassery Branch. Further an amount of Rs. 47,000/-was transferred to the account of the 3rd accused. Again Rs. 15,000/- was also transferred. Thus altogether Rs. 5,52,000/- was parted with by him for the purpose of getting visa in Portugal. The 3rd accused had given back his passport on 10-07-2019 along with the visa. But, it came out that, it was a visitors visa using which employment could not be obtained. When accused Nos. 1 and 3 were contacted, they said that, it was a mistake on the part of the Embassy, that on reaching Portugal, his job visa will be cleared. But later he understood that he was being cheated by the accused persons; though Rs. 5,52,000/- was collected from him in different instalments, a job visa as agreed was not arranged, instead a visiting visa which was effective for thirty days alone was given to him and thus, that complainant was filed alleging offence punishable under section 420, read with Section 34 of the IPC.

3. When that complaint was forwarded to the police for investigation under Section 156 (3) of the Cr.P.C., the crime was registered and on completion of investigation charge sheet has been laid against the accused persons four in number. The petitioners are accused Nos. 1,2 and 4.

4. According to the petitioners, they are totally innocent, they did not make any offer to arrange a job visa to the complainant, that everything was done by the 3rd accused; an amount of Rs. 50,000/- and Rs. 20,000/- were collected by the 2nd accused at the instance of the 3rd accused. Similarly, an amount of Rs. 30,000/- was transferred to the credit of the 4th accused on the instructions of the 3rd accused. Even though, a visiting visa was arranged to the 2nd respondent, he was not prepared to proceed to Portugal; at that time, the 1st petitioner had informed the 2nd respondent that, initially he was also given only a visiting visa, and that could be converted as job visa only after reaching the country. Whatever it may be, since the 2nd respondent was not prepared to proceed to Portugal on the basis of the visiting visa, petitioners have refunded an amount of Rs. 1,00,000/- collected by them in three instalments. In support of refund, they have produced documents also. On that basis, now the petitioners want to quash Annexure A2 charge sheet.

5. I heard the learned counsel for the petitioners and also the learned Public Prosecutor.

6. Even though, notice was served on 2nd respondent, no one has represented

him.

7. Petitioners wanted to believe that, they are innocent, they were only acting on the instructions of the 3rd accused, that, they did not make any offer to the 2nd respondent to arrange a job visa. But, a perusal of the Annexure A1 complaint is sufficient to assume that, the 1st accused, the 1st petitioner was the kingpin of the transaction. The 2nd petitioner, the 2nd accused is his wife and the 3rd petitioner, the 4th accused is the brother of the 1st accused. On their own showing, it is evident that they had collected an amount of Rs. 1,00,000/- in three instalments from the 2nd respondent. The 2nd petitioner had collected an amount of Rs. 50,000/-initially through her bank; later, it was alleged that an amount of Rs. 20,000/- was paid to her in cash. Virtually that has been admitted in the statement of facts. Similarly, an amount of Rs. 30,000/- was transferred to the credit of the 4th accused. Now, they claim that the entire amount of Rs. 1,00,000/- collected by them have been refunded, they are liable to be exonerated.

8. Such an argument cannot be accepted in right earnest. It is the specific case of the 2nd respondent complainant that, offering a job visa in Portugal, an amount of Rs. 5,52,000/- was collected from him in different instalments. It may be true that major chunk of the amount was collected by the 3rd accused. All the same, there are specific allegations against the 1st accused. Merely for the reason that the petitioners have refunded an amount of Rs. 1,00,000/-, that would not entitle them to be exonerated from the allegations.

9. It has also come out that, the 3rd accused is still at large. Without taking evidence, the nature of the transaction and nature of capability of accused persons cannot be ascertained. The prosecution clearly alleged that, they had acted in furtherance of their common intention. At this stage, such an allegation cannot be doubted. On their on showing, there are reasons to think that they were acting in tantum.

10. The reasons stated by the petitioners are hardly sufficient to quash the proceedings. The Criminal Miscellaneous Case lacks merit and is liable to be dismissed. Dismissed.