(2013) 07 KL CK 0014

In the High Court Of Kerala

Case No : B.A. No. 5077 of 2013

Shalu Menon @ Shalu Venugopal APPELLANT

Vs

State of Kerala RESPONDENT

Date of Decision : 29-07-2013

Acts Referred:

Citation : (2013) 3 KHC 317

Hon'ble Judges : S.S. Satheesachandran, J

Bench : Single Bench

Advocate : P. Vijaya Bhanu and M.A. Sheeba and Vipin Narayan, for the Appellant; T. Asaf Ali, Director General of Prosecution, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Satheesachandran, J.—Petitioner is the second accused (A2) in Crime No. 951/2013 of Thampanoor Police Station, Thiruvananthapuram registered for offences punishable under Sections 406, 419, 420 and 471 read with Section 34 IPC. She has filed the above application seeking her release on bail u/s 439 of the Code of Criminal Procedure, for short the Code. The crime was registered on complaint of a doctor that he was defrauded and cheated by first accused (A1) who posed himself as Dr. R.B. Nair operating a company viz. ''Swiz Solar Technologies'' engaged in renewable energy solutions using solar power and wind turbines. An advertisement placed by that Company in newspapers was responded to by the doctor, and thereupon the first accused came to his house. Inducing the doctor with false promises, over installing a solar pannel in his house and later establishing of windmills in a place in Tamil Nadu, the first accused defrauded the doctor of a total sum of Rs. 2960000/-. First accused claimed that he is the Principal Advisor in the Ministry of Energy under Central Government and also that he has close contact and association with the present Central Finance Minister. Much later only the doctor (de facto complainant) realised that he had been cheated and defrauded by first accused. His inquiry revealed that first accused had closed down his office and the employees in his office have not been paid salaries for months together.

2. Crime registered during investigation, revealed that several others apart from the doctor have been defrauded and cheated by first accused and another, a lady associating with him. Both of them pretending and impersonating as holders of responsible posts in concerns which included Asian Development Bank defrauded several persons with the false promises that they would enable them to establish solar pannels, and windmills with land assigned from government, with subsidies and other benefits from various recognised agencies. Investigation in the present crime revealed that from one Razik Ali, a gulf returnee, first accused, who was later identified as Biju Radhakrishnan, with false promises had collected a sum of 1,04,60,000/-, and in the cheating and defrauding of that person present petitioner had also joined with him. Major portion of the amount collected by cheating Razik Ali had been provided to petitioner by first accused, for construction of her house and to purchase properties for her, including a motor vehicle given as a gift. Such revelations in investigation led to inclusion of petitioner as second accused in the crime. She was arrested on 06/07/2013, and later, on production before the Court she was remanded to judicial custody, which still continues.

3. Petitioner is a cinema/serial actress who is presently running a Nritha Vidayalaya (dance school), is the submission of her learned counsel. She is a victim of mischief at the hands of first accused, and much earlier to registration of present crime her mother had filed a complaint against first accused imputing that he had defrauded her and petitioner a sum of Rs. 20 lakhs promising to install solar pannels in her house and dance school. Annexure-C is a copy of the FIR registered on the complaint so given. Petitioner is implicated in the crime as a co-accused with first accused solely on the basis of suspicion, and, in fact, petitioner has pledged her ornaments to repay the loans taken for construction of her house, which was put up with her own funds, is the submission of her counsel relying on some annexures produced with the petition. After the arrest of petitioner her custody had been obtained by police for investigation and her further detention is not at all required is the submission of her counsel.

4. On the allegations imputed against petitioner in the case, to implicate her as a co-accused with first accused, no offence of cheating or criminal breach of trust would lie, submits the counsel. At the most an offence for receiving stolen property punishable u/s 411 IPC, or of assisting concealment of stolen property punishable u/s 414 of that Code, that alone can be imputed against petitioner on the allegations levelled, is the submission of counsel. Petitioner had some contact with first accused previously, but, she was in no way connected with any of his business operations, leave alone of cheating any person with him, is the further submission of counsel. Investigation of the crime does not require continued incarceration of petitioner is the submission of counsel to urge for her release on bail subject to conditions as deemed fit and proper.

5. Opposing the application vehemently learned Public Prosecutor submitted that

now a Special Investigation Team headed by an Additional Director General of Police is in charge of investigation of the present crime and also several other similar crimes, all of which registered over the cheating and defrauding of lot of people of substantial sum by first accused and some of his associates making false promises over establishing of solar pannel, windmill etc. with loan and subsidies from government and other agencies. Thirty three crimes so registered are now being investigated by the Special Investigation Team. Still more crimes of similar nature registered at different stations through out the State on complaints given by persons cheated are reported every day. First accused had even manufactured and used fake letters printed with the letterhead of Chief Minister of the State to cheat and defraud several persons. He had claimed of having close association with the Central Finance Minister, and also impersonated falsely representing as holding responsible position in different Central Agencies and also reputed concerns like ADB to carry out mass scale cheating of several people of substantial sum. He carried out such criminal activities with the active assistance of some others also including present petitioner. Investigation has revealed that petitioner, second accused, had close association with first accused. She had directly received Rs. 20 lakhs from Razik Ali at a textile shop in the presence of first accused. The amount cheated and defrauded from Razik Ali, most of it, learned Public Prosecutor submits, came to the hands of petitioner and was utilised for her enjoyment in the construction of her building and purchase of a motor vehicle and other valuable properties for her. Investigation has revealed that petitioner and first accused mutually agreed upon to have their marriage. First accused provided her with several gold ornaments and also substantial sum for the construction of her house and dance school. Such funds came out of the amounts cheated and defrauded from Razik Ali and others. Investigation continued in the crime and also similar crimes is revealing more and more cases of cheating and defrauding by first accused with the assistance of one ''Saritha'' and in some cases in association with petitioner, or with some others. Cheating carried out with false promises and deception of innocent victims by the above accused persons over establishing of solar pannels, windmills etc. now comes to more than 6.25 crores, and, still, more cases of cheating are reported day by day. A detailed probe is being conducted to trace the defrauded amounts, and investigation so far has revealed that part of the amount defrauded from Razik Ali had been utilised for construction of the house of petitioner and purchasing of valuable properties for her. She has put up a palatial building, and even the PWD officials find it difficult to assess the value of internal furnishings made in that house, most of which are suspected to be imported items, submits Public Prosecutor. She has paid advance for purchasing a valuable immovable property from the funds cheated from Razik Ali, part of which was directly obtained by her from his hands, is the further submission. She knowingly acted hand in glove with first accused for defrauding valuable sum from Razik Ali and she was also a recipient of the defrauded money. Petitioner is very much influential and if released on bail she is likely to influence the witnesses and hamper the investigation of crime, submits learned Public

Prosecutor. Complaint filed against first accused through her mother is nothing but an attempt to screen her knowing fully well that her complicity with that accused would give rise to her prosecution also with him. Petitioner is not entitled to be released, at this stage, when investigation is continuing, submits learned Public Prosecutor.

6. Case Diary has been produced for my perusal. Perusing the materials gathered in investigation with reference to submissions made by counsel on both sides, it is seen, mass scale fraud and cheating with false promises over installation of solar pannels, windmills etc. had taken place in the State during the last few months. Those who carried out cheating and defrauding of innocent victims did so impersonating as holding responsible posts, and, further, of having close association and contact with several influential people who have a say in decision making of the Government. A special investigation team headed by an Additional Director General of Prosecution is now conducting investigation over thirty three crimes registered over the cheating carried out at different places of the State. In that backdrop present crime in which petitioner is proceeded as one among the accused has to be looked into. What, if any, is her association with the prime accused (first accused), and in the mass scale cheating allegedly carried out by that accused, has she assisted or aided him in any manner knowingly the fraud and deception practised over several persons, and defrauding them of substantial sums, necessarily, demand a detailed probe. What was her source of income to put up the building under her occupation, to purchase valuable properties in her possession, and, also to pay the advance amount, allegedly, paid to purchase an immovable property etc. have significance in the probe over tracing of the amounts defrauded by cheating alleged in the crime. She, allegedly, collected Rs. 20 lakhs from Razik Ali, one among the persons cheated, in the presence of first accused, that too at a textile shop. That cannot be brushed aside at this stage as an innocuous circumstance, and not showing her complicity in the cheating of such person. Materials gathered by investigating agency would show that a sum of Rs. 4,75,000/-, first instalment over the motor vehicle, allegedly, purchased and handed over to her by first accused, was paid by that accused from the amounts collected by cheating. A message was sent by first accused over mobile phone to Razik Ali demanding Rs. 10 lakhs towards construction of the house of second accused, according to investigating agency. For the purchase of a property in the name of petitioner, it is alleged, a cheque for Rs. 25 lakhs had been issued to the seller by first accused has also been detected by investigating agency. When such circumstances are presented in the case and materials gathered by the investigating agency give enough room to suspect complicity of petitioner with the first accused in the grave offences imputed and especially where an effective probe over the crime which is one among the many covered by the solar scam cases demand tracing out the defrauded funds which, no doubt, is a time consuming and laborious task, there is much force in the submission made by learned Public Prosecutor that release of petitioner at this stage when investigation is continuing will not be conducive to justice.

7. The case in hand sadly reflects the ineffectiveness of penal provisions under the Penal Code to curb the offence of massive cheating and fraud which has become a recurring feature in the State over the last few years. Absence of a legislation like ''Fraud Act, 2006'' now in force in the United Kingdom fixing the criminal liability for fraud and obtaining services dishonestly to deal with cases of such mass cheatings, may be one among the reasons why such fraud and cheating in large scale has become a recurring feature in the State. It is high time that those who are at the helm of affairs viewed seriously the need for enacting a special legislation to deal with the offence of fraud. Many of the provisions of Penal Code relating to deception based offences are too specific, overlapped and, perhaps, even outdated. A flexible law of fraud with clear, and effective and stringent penal provisions capable of combating increasing sophistication of fraudulent activity has to be brought in force without any delay. Unlike deception based offences, the law on fraud under the ''Fraud Act'', now applicable in United Kingdom, provides for a general offence of fraud which can be committed in three different ways-by false representation, by failing to disclose information and by abuse of position. In all the three situations to constitute the offence of fraud the conduct must be dishonest and intention must be to make a gain or cause a loss to another. No gain or loss need actually have been made. Maximum sentence for fraud extends to ten years imprisonment. Possessing articles for use of frauds is made punishable and it is effectively used over a variety of technology related criminality.

8. The time has now come, where the mischief of fraud has become so rampant, that too in a large scale in the State, to have separate legislation with penal provisions effectively curbing and meting out punishment to those who dupe and defraud innocent public by false representation, failure to disclose information or abuse of their position. Offence of cheating u/s 420 IPC demand strict proof of fraudulent or dishonest inducement deception, delivery of property and that resulting injury to the person deceived, to punish the offender thereof. Even a false representation or failure to disclose information or abuse of position where it has been done dishonestly or fraudulently for gain to such persons or loss to another or expose another to a risk of loss, has to be made punishable making suitable legislation to prevent the mischief of fraud. Effective implementation of the Kerala Money Lenders Act by Police curbing the illegal activities of money lenders, many of whom collect blank signed cheque from their debtors, to some extent, has arrested the filing of criminal complaints on dishonoured cheques by money lenders against their debtors. While disposing the bail application I have adverted to the need for an effective legislation containing adequate penal provisions to deal with fraud since it has now become a very serious issue. If that is not effectively examined and addressed it may impair even the faith of public in the justice delivery system when fraud carried out on mass scale becomes a recurring feature and the offences thereto cannot be effectively punished under the penal laws now in force. Petitioner, second accused, in the facts and circumstances involved in the case, is not entitled to be released on bail at this

stage when investigation is in progress.

Petition is dismissed.

