
(2021) 01 KL CK 0469

In the High Court Of Kerala

Case No : Criminal Miscellaneous Case No. 3849 Of 2020

Sivakumar And Ors

APPELLANT

Vs

State Of Kerala And Ors

RESPONDENT

Date of Decision : 20-01-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 482
Indian Penal Code, 1860 — Section 405, 406, 420, 415

Citation : (2021) 01 KL CK 0469

Hon'ble Judges : P. Somarajan, J

Bench : Single Bench

Advocate : Shajin S. Hameed, P.T. Dinesh, Ajiraj G.R

Final Decision : Allowed

Judgement

1. The accused Nos. 2 & 3 came up under Section 482 Cr.P.C. to quash the crime registered against them. Accused No.2 is the father in law of

accused No.1 and accused No.3 is his wife. The offence alleged are under Section 406 (wrongly stated as 405) and 420 r/w 34 IPC. The main

allegation is against the accused No.1, who had received certain amount from the defacto complainant under the guise of an offer made by him to

grant a franchise of DU Telecom based in Dubai. Accordingly, he had handed over certain amount and even went to Dubai in connection with the

alleged offer but there was failure on the part of accused No.1 to fulfill the undertaking. It is also submitted that the accused No.1 along with others

extracted an amount of Rs. 33,50,000/-under that guise and as such, the crime was registered.

2. In so far as accused No.2 is concerned there are some bald allegation in the complaint. It is yet to be decided after adducing evidence regarding his

alleged role in the commission of offence. But in so far as the accused No.3 is concerned, nothing whispered in the FIS in order to attract the ingredient which would constitute cheating as defined under Section 415 IPC except an assurance made by her subsequently to repay the amount received by her husband, the accused No.1. That itself will not constitute the offence under Section 420 or 406 IPC. The defacto complainant relied on the decision in Superintendent of Police, CBI v. Tapan Kr. Singh (2003 KHC 597) in support of his argument that the FIR need not be an encyclopedia of the entire facts of the case and it is well within the authority of the investigating officer to investigate the involvement of accused No.3 in the alleged crime, even if no allegation was levelled against her in the FIR. There may not be any quarrel with respect to the legal position that the FIR need not be an encyclopedia of the entire facts, but that does not mean that the omission of material facts which requires disclosure at the time of FIR especially when given by a person having direct knowledge can be excused. In the present case, the first information was given by the defacto complainant, the aggrieved person directly and he had not disclosed anything with respect to the role of accused No.3 even by way of whisper. But the allegation levelled are mainly against accused No.1 and some bald allegations were also raised against accused No.2. There is not even a whisper with respect to the role of accused No.3 except an allegation that being the wife of accused No.1, she had subsequently undertook to repay the amount due. That itself will not constitute the offence. Yet another decision rendered by a three Judge Bench of the Apex Court in Kurukshetra University and another v. State of Haryana and another (1977 KHC 711) was also relied on by the defacto complainant regarding the four contours of the jurisdiction under Section 482 Cr.P.C.. In any view of the matter, the crime alleged against accused No.3 for the offence under Section 406 and 420 IPC will not stand. If it is proceeded further as against accused No.3, it will be a futile exercise. Hence the FIR and its further proceedings as against accused No.3 are hereby quashed. CrI.M.C. is allowed in part accordingly.