

(2024) 06 KL CK 0143

In the High Court Of Kerala

Case No : Criminal Miscellaneous Petition No. 6909 Of 2017

Usman Kurikkal O.V.

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 12-06-2024

Acts Referred:

Code of Criminal Procedure, 1973 — Section 156(3), 482
Indian Penal Code, 1860 — Section 420, 506(ii)

Citation : (2024) 06 KL CK 0143

Hon'ble Judges : A. Badharudeen, J

Bench : Single Bench

Advocate : S.Rajeev, K.K.Dheerendrakrishnan, D.Feroze, V.Vinay, Nima Jacob, K.A.Manzoor Ali

Final Decision : Dismissed

Judgement

1. This Criminal Miscellaneous Case has been filed under Section 482 of the Code of Criminal Procedure (for short, 'the Cr.P.C.' hereinafter), to quash all further proceedings in C.C.No.1963/2012 on the files of the Judicial First Class Magistrate Court, Chittur.

2. Heard the learned counsel for the petitioner, the learned counsel appearing for the 2nd respondent and the learned Public Prosecutor.

3. I have perused the relevant documents, including the judgment of the Hon'ble Supreme Court in Vijay Kumar Ghai and Others v. State of West Bengal and Others reported in [2022 KHC 6328], with reference to paragraph No.42 therein.

4. In this matter, it is alleged by the de facto complainant, who filed protest complaint against the refer report filed by the investigating officer that, the complainant who passed M.A. B.Ed and SET, while searching for a job, she got information from one Pratheesh that there was one vacancy at K.K.M. Higher Secondary School, Vandithavalam. Thereafter, she reached the school and met the accused at his cabin on 21.11.2005. Accordingly, the accused offered the

post of Junior Geography teacher at the school on assuring that the same was a clear vacancy and there was no hindrance to get the post approved. Further, the accused took the responsibility of approval of the post. Accordingly, it is alleged that the accused demanded Rs.10 Lakh, out of which, Rs.5 Lakh was paid on 5.12.2005 and for the remaining amount, 2 cheques were issued. Later, she was given appointment order and she joined on 5.12.2005. She continued there upto 31.5.2010. But the accused did not give salary at all. Apart from that, the amount of Rs.5 Lakh received from her was also not given back. Further allegation is that, when she demanded back the amount, she was threatened. Accordingly, the case of the complainant is that the accused herein committed offences punishable under Sections 420 and 506(ii) of the IPC. Although the first complaint filed by the petitioner, when directed to be investigated by the learned Magistrate, a refer report was filed on completion of investigation. Thereafter, the complainant filed the present protest complaint.

5. The learned Magistrate recorded the statement of the complainant while considering the protest complaint and on satisfying that there are primary materials to proceed against the accused for the offences punishable under Sections 420 and 506(ii) of the IPC. Accordingly, the learned Magistrate took cognizance for the said offences. Now, the protest complaint and the subsequent proceedings are pending as C.C.No.1963/2012 on the files of the Judicial First Class Magistrate Court, Chittur, are under challenge.

6. The learned counsel for the petitioner would submit that, going by the averments of protest complaint, the vital ingredients to constitute an offence under Section 420 of the IPC is lacking, since nowhere in the complaint, it is stated that the accused had a deceitful intention right from the very inception to cheat and defraud the de facto complainant, in any manner. In this connection, he relied on paragraph No.42 of the judgment of the Hon'ble Supreme Court in Vijay Kumar Ghai and Others v. State of West Bengal and Others reported in [2022 KHC 6328] and two other decisions of the Hon'ble Supreme Court in Rajiv Thapar and Others v. Madan Lal Kapoor reported in [2013 KHC 4066] and Vesa Holdings P.Ltd. and Another v. State of Kerala and Others reported in [2015 KHC 4224]. He also submitted that, the petitioner herein filed writ petition and sought the relief to get post of Music Teacher as one converted to Geography Teacher, though this Court was not inclined to the said relief. Accordingly, the learned counsel pressed for quashment.

7. Whereas, the learned counsel for the de facto complainant submitted that, this is a clear case of cheating, since the de facto complainant was appointed as a Teacher in the vacancy of Geography teacher, where, in fact, no such post sanctioned by the Government at the time of making appointment.

8. On perusal of the records, earlier, a complaint was filed by the de facto complainant before the learned Magistrate, seeking investigation and the learned Magistrate ordered investigation by the police under Section 156(3) of the Cr.P.C. and the police filed refer report stating that no offences made out. Thereafter,

the present protest complaint was filed and acting on the same, the learned Magistrate took cognizance for the offences punishable under Sections 420 and 506(ii) of the IPC. On perusal of the materials available, it is perceivable that, the accused, who was well aware of the fact that there was no possibility of getting approval to the post, for which, appointment was given, prima facie had a deceitful intention, at the very inception. But, the said aspect to be proved by evidence. Thus, the prosecution allegations are well made out, prima facie, warranting trial of the matter.

9. Holding so, when this Court was about to dismiss the petition, the learned counsel for the petitioner sought permission to withdraw the petition. Hence, this petition is dismissed as withdrawn, observing so.

Since the case has been pending from 2012 onwards, there shall be a direction to the learned Magistrate to expedite the trial and finalise the same within a period of four months from the date of receipt of a copy of this order.