

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

MONDAY, THE 6TH DAY OF JANUARY 2025/16TH POU SHA, 1946

CRL.MC NO. 7867 OF 2023

CRIME NO.1102/2010 OF Sooranadu Police Station, Kollam
AGAINST THE ORDER/JUDGMENT IN CC NO.315 OF 2016
OF JUDICIAL FIRST CLASS MAGISTRATE COURT - II,
SASTHAMCOTTA

PETITIONER/ACCUSED:

ANANDAN R, AGED 75 YEARS,
S/O RAGHAVAN.S, FLAT NO.6, SURABHI APARTMENT,
PANANVILA, NALANCHIRA PO, ULLOOR VILLAGE,
THIRUVANANTHAPURAM, PIN - 695015.

BY ADVS.

C.RAJENDRAN

B.K.GOPALAKRISHNAN

MANOJ RAJAGOPAL

R.S.SREEVIDYA

MANU M.

RESPONDENTS/STATE & DEFACTO COMPLAINANT:

- 1 STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH
COURT OF KERALA, ERNAKULAM., PIN - 682031.
- 2 SUDHARMA R, AGED 70 YEARS,
W/O K. GOPINATHAN , 'RESMI' MAVILA, MAROOR
PO, VIA ADOOR, PATHANAMTHITTA DISTRICT-, PIN
- 691524.

BY ADVS.

B.RAGHUNATHAN

R.SRINATH(K/383/2007)

K.JALADHARAN(K/656/2011)

PUBLIC PROSECUTOR SRI M P PRASANTH

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY
HEARD ON 25.11.2024, THE COURT ON 06.01.2025 PASSED
THE FOLLOWING:



A. BADHARUDEEN, J.

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Crl.M.C.No.7867 of 2023
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Dated this the 6th day of January, 2024

ORDER

This Criminal Miscellaneous Case has been filed under Section 482 of the Code of Criminal Procedure by the sole accused in C.C.No.315 of 2016 on the files of the Judicial First Class Magistrate Court (Temporary), Sasthamcotta, arose out of Crime No.1102 of 2010 of Sooranadu Police Station, seeking the relief to quash Annexures A1 FIR, A4 final report and further proceedings in the above case.

2. Heard the learned counsel for the petitioner and the learned counsel for the defacto complainant as well as the learned Public Prosecutor in detail. Perused the records available and the decisions placed by the learned counsel for the petitioner.

3. The prosecution case is that the accused, who was appointed as the power of attorney holder of the defacto complainant to manage the day-to-day affairs of SPMUP School, Ayikunnam, exceeded the power he was given as the Power of Attorney Holder and appointed



one Rajeev.V, as Peon on 11.06.2007 and obtained Rs.6 lakh from him.

The further allegation is that he also misappropriated gold ornaments weighing 90 grams entrusted by the defacto complainant to arrange air ticket for her by pledging the same for excess amount and thereby he committed the offences punishable under Sections 409 and 420 of the Indian Penal Code ('IPC' for short).

4. While seeking quashment of the crime, the learned counsel for the petitioner would submit that the entire allegations are false. According to the learned counsel for the petitioner, admittedly the defacto complainant appointed the petitioner as a power of attorney holder to manage the school and as per the power of attorney executed by the defacto complainant in favour of the petitioner, he was authorised to make appointments also. Therefore, the appointment is perfectly justifiable and none of the offences would attract. However, the learned counsel fairly conceded that even though on reading the power of attorney, power of appointment also was given, as per Annexure A7 judgment in W.P(c).No.25919/2007 on 30.06.2009 this Court found that the power of attorney executed by the defacto complainant in favour of the petitioner did not confer the power to make appointments. In view of Annexure A7



judgment in W.P(c).No.25919/2007, the contention raised by the petitioner that he was given power of appointment would not succeed.

5. In addendum, it is submitted by the learned counsel for the petitioner that even when the whole allegations are taken as a gospel of truth, offence under Section 409 of IPC would not attract. According to the learned counsel for the petitioner, the ingredients to attract Section 409 of IPC is not made out, *prima facie*. Regarding the allegation as to commission of offence under Section 420 of IPC, it is submitted by the learned counsel for the petitioner that initially the allegation of the defacto complainant was that the accused pledged 90 grams of gold ornaments for the purpose of obtaining air ticket in excess of the amount required and misappropriated the money. But later the statement of the defacto complainant is that after her arrival from abroad when she had given money to release the pledged gold ornaments, the accused, after receiving the money, did not utilise the same for the said purpose and thereby cheated her. Since the allegations regarding commission of offence under Section 420 of IPC are contrary in the above line, the said offence also would not attract. The learned counsel placed decision of the Apex Court reported in [2012 KHC 4612 : 2012 (10) SCALE 299 : AIR 2013 SC 181 :



2012 (10) SCC 741 : 2013 (1) SCC (Civ) 212 : 2013 (1) SCC (Cri) 120], ***Geeta Mehrotra and another v. State of U.P and another***, to contend that when the FIR doesn't disclose specific allegations as to commission of the offences, quashment of the FIR is liable to be allowed. Another decision reported in [2012 KHC 4418 : 2012 (8) SCC 547 : AIR 2012 SC 3242 : 2012 CriLJ 4317], ***Sadhupati Nageswara Rao v. State of Andhra Pradesh***, where the Apex Court considered the offence under Sections 409 and 405 of IPC and held that "in order to prove the offence of criminal breach of trust which attracts the provision of S.409 IPC, the prosecution must prove that one who is, in any manner, entrusted with the property, in this case as a dealer of fair price shop, dishonestly misappropriates the property, commits criminal breach of trust in respect of that property. In other words, in order to sustain conviction under S.409 IPC, two ingredients are to be proved: namely, i) the accused, a public servant or a banker or agent was entrusted with the property of which he is duty bound to account for; and ii) the accused has committed criminal breach of trust. What amounts to criminal breach of trust is provided under S.405 IPC. The basic requirement to bring home the accusations under S.405 are the requirements to dishonest intention or not, misappropriated it or converted



it to his own use to the detriment of the persons who entrusted it.”

6. The learned counsel for the petitioner placed another decision of the Apex Court reported in [2022 KHC 6153 : 2022 (1) KLD 475 : 2022 KHC OnLine 6153 : AIR 2022 SC 820 : 2022 (1) KLT OnLine 1177 : 2022 (6) SCC 599 : 2022 SCC OnLine SC 162], ***Kahkashan Kausar @ Sonam and others v. State of Bihar and others***, to contend that in the absence of specific role attributed against the accused, it would be unjust to allow the accused to go through the troublesome of trial and in such cases, the quashment prayer is liable to be allowed.

7. It is submitted by the learned counsel for the defacto complainant that here the allegations mainly are two fold: the first allegation against the accused is that even without empowering him to make appointments, the accused made new appointment of Sri Rajeev.V by receiving Rs.6 lakh and misappropriated the said amount. The second allegation is that the accused misappropriated the amount obtained from pledging 90 grams of gold ornaments, which were given for arranging air ticket. Therefore, the offences would attract, *prima facie*, and in such circumstances, quashment sought for is liable to fail.

8. The learned Public Prosecutor also supported the



argument of the learned counsel for the defacto complainant.

9. In this connection, it is necessary to refer the ingredients to attract offence under Section 409 of IPC. Section 409 of IPC is extracted as hereunder:

“409. Criminal breach of trust by public servant, or by banker, merchant or agent: Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

10. Section 409 is *pari materia* to Section 316(5) of the Bharatiya Nyaya Sanhita, 2023 ('BNS' for short) and Section 316(5) of BNS reads as under:

“316: Criminal breach of trust: Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

11. Analysing the ingredients to attract offence under Section 409 of IPC, its applicability is as held by the Apex Court in



[(2012) 8 SCC 547 : AIR 2012 SC 3242], *Sadhupati Nageswara Rao v. State of Andhra Pradesh*, as pointed out by the learned counsel for the petitioner.

12. In *Sadhupati Nageswara Rao v. State of Andhra Pradesh*'s case (*supra*), the Apex Court, while upholding the conviction held that, where the appellant, an agent entrusted with the distribution of the rice under the "Food for Work Scheme" to the workers on production of coupons, was charged with misappropriation of 67.65 quintals of rice, the evidence proves that there was entrustment of property to the accused

13. In order to sustain a conviction under section 409 of the Indian Penal Code, 1860, two ingredients are to be proved; namely, (i) the accused, a public servant or a banker or agent was entrusted with the property of which he is duty bound to account for; and (ii) the accused has committed criminal breach of trust. What amounts to criminal breach of trust is provided under Section 405 IPC. The basic requirements to bring home the accusation under Section 405 IPC are to prove conjointly; (i) entrustment and (ii) whether the accused was actuated by a dishonest intention or not, misappropriated it or converted it to his own use or to the detriment of the persons who entrusted it, as held by the Apex Court in



the decision reported in [(2012) 8 SCC 547 : AIR 2012 SC 3242],

Sadhupati Nageswara Ra v. State of Andhra Pradesh.

14. The gravamen of the offence under Section 409 of IPC is dishonest intention on the part of the accused but to establish the dishonest intention, it is not necessary that the prosecution should establish an intention to retain permanently, the property misappropriated. An intention, wrongfully to deprive the owner of the use of the property for a time and to secure the use of that property for his own benefit for a time would be sufficient. Section 409 of IPC cannot be construed as implying that any head of an office, who is negligent in seeing that the rules about remitting money to the treasury are observed, is *ipso facto*, guilty of criminal breach of trust; but something more than that is required to bring home the dishonest intention.

15. Section 420 of IPC is *pari materia* to Section 318(4) of BNS. The essential ingredients to attract Section 420 of IPC are:

(i) There must be deception i.e, the accused must have deceived someone;

(ii) That by the said deception. The accused must induce a person.



(a) to deliver any property; or

(b) to make, alter or destroy the whole or part of the valuable security or any thing which is signed or sealed and which is capable of being converted into a valuable property.

(iii) That the accused did so dishonestly.

16. Coming to the evidence under Section 420 of IPC, for a person to be convicted under Section 420 of the Indian Penal Code, 1860, it has to be established not only that he has cheated someone but also that by doing so, he has dishonestly induced the person who was cheated to deliver any property etc.

17. The Apex Court in *Annamalai v. State of Karnataka*, [2011 CrLJ 692 (SC) : (2010) 8 SCC 524], regarding distinction between breach of contract and cheating, held that, the primary requirement to make out an offence of cheating under Section 415 punishable under Section 420 of the Indian Penal Code, 1860 is that dishonest or fraudulent intention at the time of inducement is made. This distinction depends upon the intention of accused at the time of alleged inducement. Mere breach of contract cannot give rise to criminal prosecution under Section 420 unless fraudulent or dishonest intention is shown right at the



beginning of transaction time, when the offence was said to have been committed. If it is established that the intention of the accused was dishonest at the time of entering into the agreement, then liability will be criminal and the accused will be guilty of the offence of cheating. On the other hand, if all that is established that a representation made by the accused has subsequently not been kept, criminal liability cannot be fastened on the accused and the only right which complainant acquires is to a decree of damages for breach of contract in a Civil Court.

18. In *UOI v. J S Khanna*, [1972 CrLJ 849 (SC) : (1972) 3 SCC 873 : 1973 SCC (Cri) 94] the Apex Court found that, broadly speaking, breach of procedure without involving any fraud or deception cannot amount to cheating. Where two military officers were charged with manipulations in placing supply orders with a firm, of obtaining supplies even before orders in relation to them were placed, and in some cases, even before issuing quotation inquiries as required by the relevant rules, and also that they paid exorbitant prices for those materials, that the quotations were opened contrary to the rules without keeping a second officer present, the procedure might not be in accord with the rules, but a breach of that procedure does not mean fraud or any other criminality. It



was possible that the goods might have been required immediately in the emergency, which was then prevailing, and an officer might find it difficult if not impossible, to go through the routine which was possible and desirable in peace time. Spot inquiries and purchases following them, might have been considered expedient depending upon the degree of urgency with which particular spare parts were needed. No inference of fraud could, therefore, be drawn from the fact of spot enquiries.

19. In *Abdulla Pagarkar v. State (Union Territory of Goa)*, AIR 1980 SC 499 : 1980 CrLJ 220 : (1980) 3 SCC 110 : 1980 SCC (Cri) 546], the Apex Court found that executing a work in disregard of relevant rules does not amount to cheating.

20. Coming to the facts of this case, the first allegation is that while exercising the charge of manager of the school on the strength of the Power of Attorney executed by the defacto complainant, the petitioner appointed one Rajeev.V as Peon and collected Rs.6 lakh and failed to give the same to the defacto complainant. The said allegation would show that in order to appoint a staff in an aided school, the petitioner received illegal gratification being the Manager, without empowerment. In fact, receipt of illegal gratification would not come



within the purview of an offence under Section 409 or 420 of IPC. The remaining allegation is that the petitioner pledged 90 grams of gold ornaments, given by the defacto complainant for the purpose of obtaining air ticket, in excess of the amount required and misappropriated the money as per the initial statement given by the defacto complainant. Later, the statement of the defacto complainant is that after arrival from abroad when she had given money to release the pledged gold ornaments, the accused, after receiving the money, did not utilise the same for the said purpose and thereby cheated her. Thus, *prima facie*, the allegations as to commission of offences punishable under Section 409 of IPC as well as Section 420 of IPC as per the statement of the witness are contrary. It is relevant to note that during investigation, prosecution did not collect any materials regarding pledged gold ornaments or its release by the accused in any manner. Merely relying on the contra statements given by the defacto complainant, the allegation as to pledging of 90 grams of gold ornaments and its misappropriation were alleged. Overall evaluation of the materials placed before this Court would show that, *prima facie*, ingredients to attract offences punishable under Section 409 of IPC and Section 420 of IPC not made out warranting trial of the matter. In view of the above



Cr1.M.C.No.7867/2023

: 14 :

2025:KER:358

discussion, the quashment prayer is liable to succeed.

In the result, this Cr1.M.C stands allowed. Annexures AI FIR, A4 Final Report and all further proceedings in C.C.No.315/2016 pending before the Judicial First Class Magistrate Court (Temporary), Sasthamcottah, arose out of Crime No.1102/2010 of Sooranadu Police Station, Kollam, against the petitioner stand quashed.

Sd/-

A. BADHARUDEEN, JUDGE

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APPENDIX OF CRL.MC 7867/2023**PETITIONER' S ANNEXURES**

- Annexure A1** THE CERTIFIED COPY OF THE FIR IN CRIME NO. 1102/2010 OF SOORANADU POLICE STATION DATED 01/11/2010.
- Annexure A2** THE CERTIFIED COPY OF THE FIR IN CRIME NO.1217/2010 OF SASTHANCOTTAH POLICE STATION DATED 28/10/2010.
- Annexure A3** A TRUE COPY OF THE POWER OF ATTORNEY DATED 12.09.2005.
- Annexure A4** THE CERTIFIED COPY IN FINAL REPORT IN FIR NO.1102/2010 OF SOORANADU POLICE STATION DATED 14/12/2011.
- Annexure A5** A TRUE COPY OF THE DISCHARGE SUMMARY DATED 10.03.2012 ISSUED FROM AT MEDITRINA HOSPITAL, PATTOM, THIRUVANANTHAPURAM DISTRICT.
- Annexure A6** A TRUE COPY OF THE CORONARY ANGIOPLASTY REPORT DATED 08.03.2012 ISSUED BY MEDITRINA HOSPITAL.
- Annexure A7** A TRUE COPY OF THE JUDGMENT IN WP (C) NO.25919/2007 DATED 30.06.2009.
- Annexure A8** A TRUE COPY OF THE APPOINTMENT ORDER DATED 22.09.2005 AND THE LETTER DATED 05.10.2005 ADDRESSED TO AEO SASTHAMCOTTA FOR APPROVAL.
- Annexure A9** TRUE COPIES OF THE APPOINTMENT ORDER AND LETTER DATED 03.08.2006 ADDRESSED TO AEO SASTHAMCOTTA FOR APPROVAL.
- Annexure A10** A TRUE COPY OF THE LOAN APPROVAL LETTER DATED 27.09.2005 ADDRESSED TO SARATHY AUTO CARS PALLIMUKKU KOLLAM ALONG WITH DEMAND DRAFT FOR RS.200000/- DATED 27.09.2005.
- Annexure A11** A TRUE COPY OF THE LETTER/NOTICE OF THE 2ND RESPONDENT DATED 21.06.2007.



Cr1.M.C.No.7867/2023

: 16 :

2025:KER:358

- Annexure A12** **A TRUE COPY OF THE REPLY CUM DEMAND NOTICE OF THE PETITIONER DATED 25.06.2007.**
- Annexure A13** **A TRUE COPY OF THE MEMORANDUM OF WP (C) NO. 25919/2007 DATED 23/08/2007.**
- Annexure A14** **A TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY THE 2ND RESPONDENT HEREIN DATED 20/10/2008.**
- Annexure A15** **A TRUE COPY OF THE RECEIPT GIVEN BY THE 2ND RESPONDENT DATED 01.07.2007.**
- Annexure A16** **A TRUE COPY OF THE DAILY STATUS OF THE JUDICIAL FIRST CLASS MAGISTRATE (TEMPORARY), SASTHAMCOTTA IN CC NO.315/2016 DATED 17/01/2023**
- Annexure A17** **THE TRUE COPY OF THE IDENTITY CARD OF THE PETITIONER ISSUED BY THE KERALA STATE CO-OPERATIVE AGRICULTURAL AND RURAL DEVELOPMENT BANK, THIRUVANANTHAPURAM.**