

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K. HEMA

FRIDAY, THE 3RD JUNE 2005 / 13TH JYAISHTA 1927

Crl.Rev.Pet.No. 459 of 1996()

**CRA.56/1993 of I ADDITIONAL SESSIONS COURT, THRISSUR
CC.26/1992 of JUDL. MAGISTRATE OF FIRST CLASS COURT-I, THRISSUR
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REVN. PETITIONER/APPELLANT/FIRST ACCUSED:

SATHYAN, S/O.VELAYUDHAN, PATTIKKAD, THRISSUR.

BY ADV. SRI.P.VIJAYA BHANU

RESPONDENT/RESPONDENT/COMPLAINANT:

**STATE OF KERALA, REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.**

BY PUBLIC PROSECUTOR SHRI THAVAMANI

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 03/06/2005, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

K. HEMA, J.

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Dated this the 3rd day of June, 2005

O R D E R

Petitioner is the first accused in C.C. No.26 of 1992 on the file of the Judicial Magistrate of First Class, Thrissur. he was convicted and sentenced by the said court under Section 420 of the Indian Penal Code. An appeal as Crl.Appeal No.56 of 1993 was filed before the First Additional Sessions Court, Thrissur and as per the judgment dated 15.4.1996, the Sessions Court confirmed the conviction and sentence passed against the petitioner. Against that concurrent finding, conviction and sentence, this revision is filed.

2. According to the prosecution, the petitioner along with his wife (A2) deceived P.W.4 and C.W.2 stating that they will arrange Visa and also a job abroad for them and induced intentionally P.W.4 and C.W.2 to pay an amount of Rs.22,000/- each to the first accused and thereby deceiving P.W.4 and C.W.2, the accused committed the offence of cheating in furtherance of common intention.

3. To prove the prosecution case, prosecution

examined P.Ws. 1 to 9 and marked Exhibits P1 to P11. The accused did not adduce any evidence. The trial court, after trial, acquitted the second accused, but convicted and sentenced the first accused, the petitioner herein, to undergo Rigorous Imprisonment for 2 years under Section 420 IPC. The appellate court confirmed the conviction and sentence based on the evidence adduced in this case.

4. Learned counsel, Shri Alan Pappali, appearing for the petitioner, vehemently contended that no offence under Section 420 IPC is made out against the petitioner. It was pointed out that the conviction is entered under Section 420 IPC and not with the aid of Section 34 IPC. The evidence in this case will reveal that the ingredients of Section 420 IPC are not made out against the petitioner, it is argued. A reading of Section 420 IPC will show that one of the main ingredients to be proved in an offence under Section 420 IPC is deceit. To understand the offence of 'cheating', Sections 420 and 415 have to be read. Section 420 IPC reads as follows:

“420. Cheating and dishonestly

**inducing delivery of property.-
Whoever, cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine”.**

5. Section 415 IPC which defines 'cheating' reads as follows:

“415. Cheating:- Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally

induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to 'cheat'.

6. From the reading of Sections 415 and 420 IPC, it is clear that one of the main ingredients to prove the offence is that the accused has deceived the aggrieved. Deception is one of the main ingredients of Section 420 IPC read with Section 415 IPC. The word 'deceived' means to make a person believe what is false, mislead purposely. The word 'deceit' means the act or process of deceiving or misleading especially by concealing the truth (vide The Concise Oxford Dictionary 8th Edn.). So, the prosecution, in an offence under Section 420 IPC, has to establish that the accused had made the aggrieved or the deceived to believe what is false or misled him purposely. In other words, he must have made false representations to the aggrieved or the deceived and made

him believe something which is not true or something which is false.

7. According to the prosecution, accused 1 and 2, in furtherance of common intention, have deceived P.W.4 and C.W.2 stating that they would arrange Visa and job abroad for them. As per the evidence in this case, P.W.4 and C.W.2 had gone to the house of the first accused and there was a talk on the issue. Both the accused were present in the house and the second accused told P.W.4 and C.W.2 that the first accused had brought Visa, that several persons were sent through the first accused, that Passport and Rs.10,000/- have to be immediately paid, etc. P.W.4 had believed the words of the second accused and paid Rs.10,000/- to the first accused and also gave the Passport. The first accused counted the money and handed over the same to the second accused.

8. It is also stated by P.W.4 in the chief examination that the first accused later told that Visa is obtained and he showed the photocopy of the Visa. P.W.4 believed the same to be true. But the above fact is denied in the cross-examination. P.W.4 had specifically stated that the first accused did not

give the photocopy of the Visa directly to him, but it was given by another person by name Sivasankaran. He also admitted that in the complaint he had stated that the copy of the Visa was sent to him. In the above circumstances, there is a vital contradiction in respect of the handing over of the copy of the Visa and the alleged deception by the first accused by showing the photocopy of the Visa, etc., it is argued.

9. The only evidence of P.W.4 with respect to the deception or the false representation made to P.W.4 and C.W.2 is as revealed from the evidence, as discussed above. Before convicting a person under Section 420 IPC, the court is bound to consider whether the accused has deceived the aggrieved by making false representation, etc. The main aspect to be considered is whether the accused by deceiving the aggrieved has induced the deceived to do a particular act or induced the person so deceived to deliver any property to any person, etc. The act of inducement is qualified by deception. It is by deceiving a person that is by making false representation and making another person believe that what the accused represents is true, that the accused induces

another person as per Section 415 IPC. What the court has to look into is whether by making such false representation or believing the testimony of another, whether the latter was induced to do the acts stated in Sections 415 and 420 IPC. The important aspect to be considered is whether the accused has deceived the aggrieved.

10. But, on going through the judgment of the lower appellate court, I find that the court has not considered the issue in the correct perspective. The appellate court, in fact, did not consider whether the first accused deceived P.W.4 and C.W.2. The appellate court failed to consider whether the first accused has personally deceived P.W.4 and C.W.2 or whether it was the second accused who had deceived the aggrieved.

11. Learned counsel appearing for the petitioner submitted that as per the evidence, the second accused alone can be said to have deceived P.W.4 and C.W.2 even if P.W.4's evidence is accepted. But, there is absolutely nothing in the evidence of P.W.4 to show that it was the first accused who had deceived P.W.4 and C.W.2 and therefore the conviction against the petitioner independently under Section 420 IPC is

illegal. On going through the evidence and records in the case, I am satisfied that appellate court has failed to consider whether the first accused has deceived P.W.4 and C.W.2 or whether the deception was in furtherance of common intention of both the Accused. There is some striking difference between the two.

12. When a person is accused for an offence under Section 420 IPC independent of Section 34 IPC, there must be cogent and independent evidence to establish that such accused has by himself committed deception. I am satisfied that the concurrent finding cannot be sustained, since both the courts below have failed to appreciate the arguments advanced on behalf of the petitioner that a conviction cannot be entered against the petitioner under section 420 IPC without proving that he has independently deceived the aggrieved P.W.4 and C.W.2. The appellate court shall consider whether there is evidence to make out an offence under Section 420 IPC against the petitioner by entering a specific finding whether he has deceived P.W.4 and C.W.2 by making false representation and made them believe

something which is not true. It is only after concluding whether there is such a deception that the court shall consider whether by such deception the persons so deceived were induced to do a particular act, deliver property, etc.

13. The act of deception and inducement are different. Both cannot be mixed up together. Both are to be considered independently. Only after finding that a person is deceived that the court can decide whether by such deception, the person so deceived was induced to do a particular thing, etc., as stated in Section 415 or 420 IPC. But, the lower appellate court has not considered these aspects in the right perspective and entered specific findings on the relevant issues.

14. In the above circumstances, the conviction and sentence passed against the petitioner are set aside. The case is remanded to the lower appellate court for considering the relevant facts afresh, in the light of the observations made in this judgment. The lower appellate court shall dispose of the matter in accordance with law, after entering finding whether the ingredients of the alleged offence are made out

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or not.

15. The Crl. Revision Petition is allowed.

Criminal Miscellaneous Petition No.1544 of 1996 shall stand dismissed.

K. HEMA, JUDGE.

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K. HEMA, J.

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O R D E R

3RD JUNE, 2005