



2023/KER/49054

IN THE HIGH COURT OF KERALA AT ERNAKULAM  
PRESENT  
THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V  
MONDAY, THE 7<sup>TH</sup> DAY OF AUGUST 2023 / 16<sup>TH</sup> SRAVANA, 1945  
CRL.MC NO. 2126 OF 2022  
CC 146/2022 OF JUDICIAL FIRST CLASS MAGISTRATE COURT,  
ANGAMALY

**PETITIONER/ACCUSED:**

K.O. ANTONY  
AGED 65 YEARS  
KARUMATHY HOUSE, NAYATHODE P.O, NAYATHODE, SECRETARY,  
CIAL AIR CARGO LOADING AND UNLOADING WORKERS UNION,  
NEDUMBASSERY

BY ADV K.K.ASHKAR

**RESPONDENTS/COMPLAINANT & DE FACTO COMPLAINANT:**

- 1 STATE OF KERALA  
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF  
KERALA, PIN - 682031
- 2 T.P. BABU  
AGED 55 YEARS, S/O PAPU,  
RESIDING AT THOPIL HOUSE, NAYATHODE P.O, NAYATHODE,  
ANGAMALY, PIN - 683572
- 3 ADDL R3  
  
DEPUTY SUPERINTENDENT OF POLICE  
DISTRICT SPECIAL BRANCH, ERNAKULAM RURAL POLICE,  
ALUVA REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF  
KERALA

ADDL R3 IMPEADED AS PER ORDER DATED 10.5.2022 IN  
CRL.M.A NO.2 OF 2022 IN CRL.MC.2126/2022

BY ADVS.  
Thomas J Anakkallunkal  
JAYARAMAN S.(K/1244/2019)  
NIRMAL CHERIYAN VARGHESE(K/2389/2021)  
ABISHEK JOHNY(K/1223/2019)

SRI. T R RANJITH, SR. PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON  
07.08.2023, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**ORDER**

The petitioner herein is the accused in CC No.146 of 2022 on the files of the Judicial First Class Magistrate Court, Angamaly. The aforesaid case has arisen from Crime No.1003 of 2021 of the Nedumbassery Police Station registered based on information furnished by the 2<sup>nd</sup> respondent. The offense alleged is under Section 406 of the IPC.

2. The prosecution allegation is as under:

The petitioner, a headload worker in the Air Cargo Section of the Cochin International Airport Ltd. (CIAL), was also the Secretary of the CIAL Air Cargo Loading and Unloading Workers Union. He is alleged to have approached the complainant and other workers and convinced them that CIAL had challenged the Government order granting permanence to the employment of the workers in court. He is alleged to have apprised them that a lawyer would be needed to fight the case and that the workers would have to pay their share of the legal fees when they received the benefits. As security, he obtained blank signed cheques from the complainant and others. When the cheques were demanded back, he refused to return them. This prompted the complainant to file a police complaint, and a case was registered. After the investigation, a final report was filed in court.



3. Sri.Ashkar, the learned counsel appearing for the petitioner, submitted that to attract the offense under Section 406 of the IPC, in addition to the entrustment of the property, it needs to be shown that the accused had misappropriated or converted the same to his own use. It is submitted that the cheque was retained by the petitioner in pursuance to the decision taken by the General Body of the Union. The complainant has no case that the cheque was presented or the proceeds misappropriated by either the petitioner or the Union. In order to substantiate his contention, profuse reliance is placed by the learned counsel to the law laid down by the Apex Court in **Suryalakshmi Cotton Industries Ltd. v Rajvir Industries Ltd. and Others** ( 2008 (1) KHC 337).

4. I have heard the learned counsel appearing for the party respondent and the learned public prosecutor.

5. A reading of the allegations in the complaint would disclose that the petitioner herein is the Secretary of a labor Union in which the informant is a member. Annexure-A6 minutes of the Annual General Body meeting of the Union would reveal that the executive committee of the Union took a decision to collect blank cheques from each of the employees for discharging the fees to their lawyer as and when the litigation pending before various courts attain fruition. We are not concerned in this petition as regards the legality of the decision taken by the Union. It is in terms of



the decision taken by the Union that several members of the Society had handed over cheques to the petitioner. It is interesting to note that the party respondent was the president of the Union, and his statement would disclose that he had also collected cheques from various members and had entrusted the same to the petitioner in terms of the collective decision taken by them. Annexure-A9 discloses that the executive committee, based on grievances expressed by the members of the Union, had taken a decision to return the cheques after getting a signed undertaking that the worker will not have any claim in the benefits which are received due to the contributory efforts of the Union. Annexure-A10 minutes would also disclose that the cheques of 27 workers were returned to the respective workers. The cheque issued by the 2nd respondent has been seized by the police, and the same has been produced before court.

6. In light of the above fact scenario, the question is whether Section 406 of the IPC would be attracted in the facts of the instant case. Section 405 of IPC defines Criminal Breach of Trust which reads as under:

"405. Criminal breach of trust. - Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".

The essential ingredients of the offence of criminal breach of trust



are:

- (1) The accused must be entrusted with the property or with dominion over it,
- (2) The person so entrusted must use that property, or;
- (3) The accused must dishonestly use or dispose of that property or wilfully suffer any other person to do so in violation,
  - (a) of any direction of law prescribing the mode in which such trust is to be discharged, or;
  - (b) of any legal contract made touching the discharge of such trust.

7. "Entrustment" of property under Section 405 of the Indian Penal Code, 1860, is pivotal to constitute an offense under the above penal provision. The words used are 'in any manner entrusted with property'. So, it extends to entrustments of all kinds, whether to clerks, servants, business partners, or other persons, provided they are holding a position of 'trust'. It ought to be noted that the crucial word used in Section 405 IPC is 'dishonestly', and therefore, it presupposes the existence of mens rea. In other words, mere retention of property entrusted to a person without any misappropriation cannot fall within the ambit of criminal breach of trust. Unless there is some actual use by the accused in violation of law or contract, coupled with dishonest intention, there is no criminal breach of trust. The second significant expression is 'misappropriates',



which means improperly setting apart for one's use and to the exclusion of the owner. (See **Raghavender N v State of Andhra Pradesh** (AIR 2022 SC 836))

8. In **Sudhir Shantilal Mehta v. CBI**, [(2009) 8 SCC 1] it was observed that the act of criminal breach of trust would, inter - alia mean using or disposing of the property by a person who is entrusted with or has otherwise dominion thereover. Such an act must not only be done dishonestly but also in violation of any direction of law or any contract, express or implied, relating to carrying out the trust.

9. In the case on hand, cheques were entrusted with the petitioner in terms of the collective decision taken by the General Body of the Union. However, to attract the offense under Section 406 of the IPC, the accused must dishonestly use or dispose of that property or wilfully suffer any other person to do so in violation of any direction of law prescribing the mode in which such trust is to be discharged or of any legal contract made touching the discharge of such trust. There is no case for the prosecution that the petitioner has dishonestly misappropriated property entrusted to him contrary to the terms of an obligation imposed. Admittedly, except for retaining blank cheques in his possession, the petitioner has neither dishonestly used nor disposed of the same. The cheques have been seized by the police, and the same has been produced



before the learned Magistrate. In that view of the matter, the ingredients of the offense under Section 406 of the IPC is not satisfied in the instant case.

10. Now the question is whether this Court will be justified in terminating the proceedings in the light of the above conclusion. The Apex Court in **State of Haryana and Others v. Bhajan Lal and Others** [(1992) Supp 1 SCC 335] has laid down the scope of the High Court powers under S.482 Cr.P.C. and / or Art.226 of the Constitution of India to quash the FIR and referred to several judicial precedents and held that the High Court should not embark upon an inquiry into the merits and demerits of the allegations and quash the proceedings without allowing the investigating agency to complete its task. At the same time, this Court identified the following cases in which FIR/complaint can be quashed:

"102. (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under S.156(1) of the Code except under an order of a Magistrate within the purview of S.155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non - cognizable offence, no investigation is permitted by a police officer without an order of



a Magistrate as contemplated under S.155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the 21 proceedings and / or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and / or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

11. In **Inder Mohan Goswami and Another v. State of Uttaranchal and Others**, [(2007) 12 SCC 1], the Apex Court has observed thus:

"27. The powers possessed by the High Court under S.482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. The Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court should normally refrain from giving a prima facie decision in a case where all the facts are incomplete and hazy; more so, when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of such magnitude that they cannot be seen in their true perspective without sufficient material. Of course, no hard and fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceedings at any stage"

12. Having considered the facts of the instant case, in the light of the principles laid down by the Apex Court in **Bhajan Lal** (supra), I am of





the view that the uncontroverted allegations made in the FIR and the charge and the evidence collected in support of the same do not disclose the commission of any offence against the petitioner. In that view of the matter, this Court will be well justified in invoking its powers under section 482 of the Code to quash the criminal proceedings against the petitioner.

Resultantly, this petition will stand allowed. Annexure-A1 final Report in Crime No.1003/2021 of the Nedumbassery Police Station and all further proceedings insofar as it concern the petitioner and pending as C.C.No.146/2022 on the file of the Judicial First Class Magistrate Court, Angamaly, are quashed.

Sd/-

**RAJA VIJAYARAGHAVAN V,  
JUDGE**

IAP



**APPENDIX OF CRL.MC 2126/2022**

PETITIONER'S ANNEXURES:

- Annexure1 CERTIFIED COPY OF CHARGESHEET FILED BY NEDUMBASSERY POLICE IN CRIME NO.1003/2021.
- Annexure2 CERTIFIED COPY OF FIR IN CRIME NO.1003/2021 OF NEDUMBASSERY POLICE.
- Annexure3 CERTIFIED COPY OF FIS IN CRIME NO.1003/2021 OF NEDUMBASSERY POLICE.
- Annexure4 TRUE COPY OF THE RESIGNATION LETTER DATED 07.01.2021 SUBMITTED BY 2ND RESPONDENT TO PETITIONER.
- Annexure5 TRUE COPY OF THE MINUTES OF EXECUTIVE COMMITTEE MEETING DATED 09.01.2021 OF CIAL AIR CARGO LOADING AND UNLOADING WORKERS UNION.
- Annexure6 TRUE COPY OF THE MINUTES OF GENERAL BODY MEETING DATED 27.10.2019 OF CIAL AIR CARGO LOADING AND UNLOADING WORKERS UNION.
- Annexure7 TRUE COPY OF THE BYELAW OF THE CIAL AIR CARGO LOADING AND UNLOADING WORKERS UNION.
- Annexure8 TRUE COPY OF THE POLICE COMPLAINT DATED 21.07.2021 MADE BY 2ND RESPONDENT AND OTHER 9 WORKERS AGAINST PETITIONER.
- Annexure9 TRUE COPY OF THE MINUTES OF EXECUTIVE COMMITTEE MEETING DATED 24.08.2021 OF CIAL AIR CARGO LOADING AND UNLOADING WORKERS UNION.
- Annexure10 TRUE COPY OF THE MINUTES OF EXECUTIVE COMMITTEE MEETING DATED 08.02.2022 OF CIAL AIR CARGO LOADING AND UNLOADING WORKERS



UNION.

- Annexure11 TRUE COPY OF THE COVERING LETTER DATED 08.02.2022 MADE BY PETITIONER TO SHO, NEDUMBASSERY WHILE PRODUCING 27 CHEQUES.
- Annexure12 TRUE COPY OF THE MALAYALA MANORAMA DAILY DATED 18.02.2022 REPORTING REGISTRATION OF CRIMINAL CASE AGAINST PETITIONER U/S.406 IPC.
- Annexure13 TRUE COPY OF THE RTI REQUEST DATED 18.02.2022 BEFORE SHO, NEDUMBASSERY POLICE.
- Annexure14 TRUE COPY OF THE STATEMENT DATED 21.02.2022 SUBMITTED BY PETITIONER BEFORE SHO, NEDUMBASSERY.
- Annexure15 TRUE COPY OF THE LETTER DATED 14.03.2022 MADE BY CIAL MANAGEMENT TO PETITIONER.
- Annexure16 TRUE COPY OF THE LIST OF DOCUMENTS SUBMITTED BY SHO, NEDUMBASSERY IN CRIME NO.1003/2021.
- ANNEXURE A17 TRUE COPY OF THE PCC APPLICATION DATED 04.04.2022 MADE BY THE PETITIONER BEFORE THE DIST.POLICE CHIEF, ERNAKULAM RURAL POLICE, ALUVA
- ANNEXURE A18 TRUE COPY OF THE COMMUNICATION DATED 21.04.2022 ISSUED BY DYSP, DISTRICT SPECIAL BRANCH, ERNAKULAM RURAL POLICE, ALUVA.