

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K. BABU

MONDAY, THE 6TH DAY OF NOVEMBER 2023 / 15TH KARTHIKA, 1945

CRL.MC NO. 7545 OF 2018

CRIME NO.1799/2017 OF KODUNGALLOOR POLICE STATION

CC 528/2018 OF JUDICIAL FIRST CLASS MAGISTRATE

COURT-I, KODUNGALLUR

PETITIONERS:

1 SHOMA G.MADAN,AGED 32 YEARS

2 ASHISH @ KUTTAN,AGED 29 YEARS

BY ADV RAJIV NAMBISAN

RESPONDENTS:

1 KERALA STATE,REP.BY GOVT. PLEADER,
HIGH COURT OF KERALA, ERNAKULAM.

ADDL.2. SATHI LEELA,AGED 68 YEARS, W/O ARAVINDAKSHAN,

(IMPLEADED AS PER ORDER DATED 7.4.2021 IN
CRL.M.A.NO.2/2021 IN CRL.M.C.NO.7545/2018)

R1 BY P.P.SRI.G.SUDHEER

R2 BY ADVS.SRI.K.R.ARUN KRISHNAN
SANJANA RACHEL JOSE

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 06.11.2023, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

ORDER

The petitioners, the accused in C.C.No.528 of 2018 on the file of the Judicial First Class Magistrate Court-I, Kodungallur, seek to quash the final report and all further proceedings in the Calendar Case. The facts leading to the registration of the crime and submission of the final report are as follows:-

Petitioner No.1 is the wife of the deceased Amal. Petitioner No.2 is the brother of petitioner No.1. The defacto complainant is the father of the deceased Amal. The late Amal had owned a Maruti Ritz Car, which remained in the possession of petitioner No.1 after his death. Petitioner No.1, with the aid of petitioner No.2, submitted documents for the permanent registration of the Maruti Ritz Car in the name of Amal after his death. Petitioner No.1 submitted the application seeking registration before the Regional Transport Office, Kodungallur. Petitioner Nos.1 and 2 had not revealed the fact that Amal was not alive at the time of submission of the application for permanent registration of the vehicle. The officers of the Regional Transport Office believed that Shri.Amal was alive and those documents were submitted for and

on behalf of him and registered the vehicle in his name. The petitioners, after obtaining permanent registration, attempted to dispose of the car. The petitioners had maintained a common intention for the commission of the offences. The crime was registered based on the complaint filed by the father of the deceased Amal.

2. The petitioners are alleged to have committed offences punishable under Sections 465, 468, 471 & 420 read with Section 34 of the Indian Penal Code. They allegedly committed forgery for the purpose of cheating and used the forged document as genuine. Sections 463 and 464 of IPC together define "forgery". Sections 463 & 464 of IPC are extracted below:-

"463. Forgery.

Whoever makes any false document or false electronic record or part of a document or electronic record, with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.

464 Making a false document.

A person is said to make a false document or false electronic record—

First —Who dishonestly or fraudulently—

- (a) makes, signs, seals or executes a document or part of a document;
- (b) makes or transmits any electronic record or part of

any electronic record;

(c) affixes any [electronic signature] on any electronic record;

(d) makes any mark denoting the execution of a document or the authenticity of the electronic signature,

with the intention of causing it to be believed that such document or part of document, electronic record or electronic signature was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or

Secondly —Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with electronic signature either by himself or by any other person, whether such person be living or dead at the time of such alteration; or

Thirdly —Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his electronic signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration."

3. The foundation of the offences alleged is "forgery". The definition of "false document" is a part of the definition of 'forgery'. Both definitions are interlinked to form the offence. On a reading of the ingredients of the offence of forgery, the following are essential:-

(1) Fraudulently signing a document or a part of a document with the

intention of causing it to be believed that such document or part of a document was signed by another or under his authority;

(2) Making such a document with the intention to commit fraud or that fraud may be committed.

4. The elements of *mens rea*, as per the definition, are dishonestly and fraudulently. Section 24 of the Indian Penal Code defines "dishonestly" as follows:-

"24. "Dishonestly"

Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing "dishonestly".

Section 25 Of IPC defines 'fraudulently' as follows:-

"25. "Fraudulently"

A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise."

5. The word "defraud" includes an element of deceit. Deceit is not an ingredient in the definition of the word "dishonestly" while it is an important ingredient in the definition of the word 'fraudulently'. The former involves a pecuniary or economic gain or loss, while the latter excludes that element. In the definition of 'dishonestly', wrongful gain or wrongful loss is the necessary ingredient. Both need not exist, and and one would be enough. If the expression "fraudulently" involves the element of injury to the person or persons deceived, it would be

reasonable to assume that the injury should be something others than pecuniary or economic loss. Though almost always an advantage to one causes loss to another and vice versa, it need not necessarily be so. To satisfy the definition of "fraudulently" it would be enough if there was a non-economic advantage to the deceiver or a non-economic loss to the deceived, and both need not co-exist. Therefore, the expression "defraud" involves two elements, namely, deceit and injury to the person deceived. Injury is something other than economic loss, that is, deprivation of property, whether movable or immovable, or of money, and it will include any harm whatever caused to any person in body, mind, reputation or such others. In short, it is a non-economic or non-pecuniary loss. A benefit or advantage to the deceiver will almost always cause loss or detriment to the deceived. Even in those rare cases where there is a benefit or advantage to the deceiver but no corresponding loss to the deceived, the second condition is satisfied. (Vide: **Dr. Vimla v. The Delhi Administration (AIR 1963 SC 1572)**).

6. Now, coming to the present case. The prosecution has not alleged that the petitioners have obtained any advantage or caused any injury to anybody. It is the case of the prosecution that the petitioners defrauded the officers of the Regional Transport Office in

getting the vehicle registered in the name of a deceased person, the husband of petitioner No.1. The prosecution has placed no material or evidence to show that any of the petitioners made, signed or executed the document in question. The prosecution also has no case that the petitioners have obtained any wrongful gain or caused wrongful loss to any other person. This is a case where the uncontroverted allegations made in the FIR, the final report and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the petitioners. This is a case fully covered by category No.3 as enumerated in **State of Haryana and Others v. Bhajan Lal and Others (1992 Supp. (1) 335)**, and therefore, this is a case where the continuance of prosecution would be an abuse of the process of Court.

Resultantly, the Crl.M.C. is allowed. The FIR, final report and all further proceedings in C.C.No.528 of 2018 on the file of the Judicial First Class Magistrate Court-I, Kodungallur stand quashed.

Sd/-
K.BABU
Judge

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APPENDIX OF CRL.MC 7545/2018

PETITIONER'S ANNEXURES

ANNEXURE A FINAL REPORT SUBMITTED BY IN C.C. 528/18
OF JFCM-1, KODUNGALLOOR

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