

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE R. NARAYANA PISHARADI

WEDNESDAY, THE 10TH DAY OF MARCH 2021 / 19TH PHALGUNA, 1942

Cr1.MC.No.704 OF 2013(H)

CC 273/2012 OF CHIEF JUDICIAL MAGISTRATE ,THRISSUR

CRIME NO.658/2009 OF THRISSUR WEST POLICE STATION

PETITIONER/ACCUSED:

C.R.JAISON
ADVOCATE, S/O.RAPPAI, CHALAKKAL HOUSE, PULLAZHI
VILLAGE, OLLARIKKARA DESOM, THRISSUR DISTRICT.

BY ADVS.
SRI.P.VIJAYA BHANU (SR.)
SRI.M.REVIKRISHNAN
SRI.VIPIN NARAYAN

RESPONDENTS/ DEFACTO COMPLAINANT & STATE:

1 JOLLY STEPHEN
S/O.CHARLY, CHAIRMAN, CHERUPUSHPAM KURIES,
OLLARIKKARA, PULLAZHI, THRISSUR RESIDING AT
THARAYIL HOUSE, OLLARI DESOM, THRISSUR DISTRICT.
680 003.

2 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM.682 031

R1 BY ADV. SRI.P.MARTIN JOSE
R1 BY ADV. SRI.P.PRIJITH
R1 BY ADV. SRI.S.SREEKUMAR SR.

SRI B JAYASURYA -SR PP

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
03.03.2021, THE COURT ON 10.03.2021 PASSED THE FOLLOWING:

R.NARAYANA PISHARADI, J

Crl.M.C.No.704 of 2013

Dated this the 10th day of March, 2021

ORDER

The petitioner is a lawyer. He is the sole accused in the case C.C.No.273/2012 pending in the Court of the Chief Judicial Magistrate, Thrissur.

2. The petitioner was the Deputy Chairman and a Legal Advisor of the company by name M/s.Cherupushpam Kuries. The company had engaged him for instituting suits for realisation of money due from the subscribers to the kuries conducted by it. It is alleged that the petitioner did not file the suits after receiving money from the company towards the expenses to be met in that regard and that he misappropriated the amount. It is also alleged that he provided false suit numbers to the company, as if he had instituted those suits and obtained money from the company. Therefore, it is alleged that he has committed the

offences punishable under Sections 406, 409 and 420 of the Indian Penal Code.

3. The petitioner has filed this application under Section 482 Cr.P.C for quashing Annexure-A final report filed against him by the police for the offences mentioned above.

4. Heard learned senior counsel for the petitioner and also the first respondent and the learned Public Prosecutor.

5. The offences alleged against the petitioner are punishable under Sections 406, 409 and 420 of the Indian Penal Code. *Prima facie*, the allegations contained in the final report against the petitioner, supported by the statements of the witnesses, reveal and constitute the ingredients of the offences of criminal breach of trust and cheating.

6. The offence of criminal breach of trust is defined under Section 405 and it is made punishable under Section 406 of the Indian Penal Code.

7. Section 405 of the Indian Penal Code states that, 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".

8. The offence of criminal breach of trust involves the following ingredients: (a) a person should have been entrusted with property, or entrusted with dominion over property; (b) that person should dishonestly misappropriate or convert to his own use that property, or dishonestly use or dispose of that property or wilfully suffer any other person to do so; and (c) that such misappropriation, conversion, use or disposal should be in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract which the person has made, touching the discharge of such trust.

9. Two distinct parts are involved in the commission of the offence of criminal breach of trust. The first part consists of the creation of an obligation in relation to the property over which

dominion or control is acquired by the accused. The second part involves misappropriation or dealing with the property dishonestly and contrary to the terms of the obligation created.

10. Entrustment of property as envisaged in Section 405 of the Indian Penal Code need not be in any particular manner. The entrustment may arise in "any manner" whatsoever. The words 'in any manner' in the context are significant. The section does not provide that the entrustment of the property with the accused shall be made by some person. As long as the accused is given possession of property for a specific purpose or to deal with it in a particular manner, the ownership being in some person other than the accused, he can be said to be entrusted with that property to be applied in accordance with the terms of entrustment and for the benefit of the owner.

11. The above principles, reiterated by the Apex Court in a catena of decisions, have been highlighted by this Court in **Damodara Panicker v. State of Kerala (2019 (3) KHC 514: 2019 (3) KLT 573)**.

12. In the instant case, there is specific allegation against the petitioner that the company gave him money for meeting the expenses in connection with the institution of suits but the petitioner did not file the suits. The statement of atleast one witness (CW4 Paul) shows that the money received by the petitioner included the court fee to be paid for institution of the suits. Though the professional fees paid by the company to the petitioner may have become his own money, the amount paid to him by the company for payment of court fees still belonged to the company. *Prima facie*, the allegations against the petitioner in this regard attract the ingredients of the offence of criminal breach of trust.

13. In the administration of law and justice, lawyers have to play an important part. They are, in a sense, officers of the court and as such they are given special rights and privileges. The profession of law enjoys high and respected status and reputation of its own and this status carries with it corresponding obligations. Naturally they must zealously safeguard the highest standards of professional morality and integrity (See **Manak Lal**

v. Dr. Prem Chand : AIR 1957 SC 425). Preservation of integrity, dignity and honour is the price one pays for the privilege of belonging to a kind of close and exclusive "club" and enjoying in it special privileges and immunities (See **Mr.'G', a Senior Advocate : AIR 1954 SC 557**).

14. Law is a noble profession. The monopoly conferred on the legal profession by Parliament is coupled with a responsibility towards the clients. Nothing should be done by any member of the legal fraternity which might tend to lessen in any degree the confidence of the public in the fidelity, honesty and integrity of the profession (See **V.C.Rangadurai v. D.Gopalan : AIR 1979 SC 281**).

15. When a lawyer is entrusted with a brief, he is expected to follow the norms of professional ethics and try to protect the interests of his clients, in relation to whom he occupies a position of trust (See **Jaipur Vikas Pradhikaran v. Sri Ashok Kumar Choudhary : (2011) 14 SCC 105**).

16. Learned senior counsel for the petitioner submitted that, the petitioner was defrauded by his clerk and when the

petitioner detected the fraud committed by the clerk, he instituted the suits and no loss was caused to the company. Learned counsel for the petitioner submitted that there was no dishonest intention on the part of the petitioner. However, learned senior counsel for the first respondent would submit that, by the time the petitioner instituted the suits, amount of many instalments of kuri due from the subscribers had become time-barred.

17. Whether or not the clerk of the petitioner had defrauded him is a question of fact. It cannot be decided in this application under Section 482 Cr.P.C, especially when a criminal case is pending against the clerk of the petitioner in that matter. It is a plea which the petitioner has to raise at the time of the trial of the case.

18. Of course, dishonest intention is necessary to attract the offence of criminal breach of trust. But, whether the petitioner had any dishonest intention or not depends upon the fact whether or not he was actually defrauded by his clerk. As noticed above, that fact cannot be decided in this application filed

under Section 482 Cr.P.C.

19. Moreover, when a person allows another person to misappropriate the property entrusted to him, that also constitutes the offence of criminal breach of trust (See **Venkatakrishnan v. CBI : AIR 2010 SC 1812**).

20. Even if it is accepted that the petitioner had subsequently instituted the suits, it does not undo the offence, if any, committed by him. Even temporary misappropriation of money would attract the offence punishable under Section 406 of the Indian Penal Code.

21. A case involving temporary embezzlement attracts the offence defined under Section 405 of the Indian Penal Code. Even a temporary misappropriation comes within the ambit of that offence (See **Venkatakrishnan v. CBI : AIR 2010 SC 1812**).

22. The offence of cheating is also alleged against the petitioner. There is specific allegation against the petitioner that he provided false suits numbers to the company and obtained money as if he had instituted those suits. Dishonest intention

from the very beginning is made out from such allegation and *prima facie*, such act of the petitioner attracts the offence punishable under Section 420 of the Indian Penal Code.

23. The discussion above leads to the conclusion that the prayer for quashing Annexure-A final report cannot be allowed by invoking the power of this Court under Section 482 Cr.P.C. The petition is liable to be dismissed.

Consequently, the petition is dismissed.

(sd/-)

R.NARAYANA PISHARADI, JUDGE

jsr

APPENDIX

PETITIONER'S EXHIBITS:

ANNEXURE A **TRUE COPY OF THE FINAL REPORT IN C.C.NO
273 OF 2012 ON THE FILES OF THE COURT
OF CHIEF JUDICIAL MAGISTRATE, THRISSUR**

ANNEXURE B **TRUE COPY OF THE FINAL REPORT IN CRIME
NO 658 OF 2009 OF THRISSUR WEST POLICE
STATION, THRISSUR**

RESPONDENTS' EXHIBITS : NIL

TRUE COPY

PS TO JUDGE