

## Mani C. Kappan Vs State Of Kerala

**Court:** High Court Of Kerala

**Date of Decision:** March 17, 2023

**Acts Referred:** Code of Criminal Procedure, 1973 â€” Section 482

Indian Penal Code, 1860 â€” Section 406, 417, 418, 420, 423

**Hon'ble Judges:** Bechu Kurian Thomas, J

**Bench:** Single Bench

**Advocate:** Deepu Thankan, Ummul Fida, Lakshmi Sreedhar, V.Sethunath, Noushad.K.A

**Final Decision:** Dismissed

### Judgement

Bechu Kurian Thomas, J

1. Petitioner is a member of the Kerala Legislative Assembly (MLA) from Pala constituency, having been elected in September 2019. He is facing

prosecution as C.C No. 118/2021 on the files of the Judicial First Class Magistrate Court-VIII, Ernakulam for the offences punishable under Sections

406, 417 and 420 of the Indian Penal Code, 1860 (for short "IPC"). He seeks to quash all further proceedings in the above said criminal case.

2. The prosecution is based on a complaint filed by the second respondent alleging offences punishable under Sections 406, 417, 418, 420 and 423 of

IPC. The learned Magistrate however took cognizance only for the offences under sections 406, 417 and 420 of IPC.

3. According to the complainant, the accused had cheated him by dishonestly and, without any intention to repay, borrowed an amount of Rs. 2 Crores

in the year 2010 and failed to repay the amount except for Rs.25,00,000/-. When the defacto complainant insisted on re-payment, he induced the

complainant to enter into an agreement on 19.11.2013 promising to repay the outstanding amount of Rs.3,25,00,000/- (inclusive of Rs.25,00,000/-

already paid) on two separate dates and induced confidence in him by furnishing security in the form of immovable property and also issued four

cheques. Since the amount was not repaid as promised, the said agreement was later renewed on 12.12.2014 and again on 12.02.2015, and the earlier

cheques were replaced with new cheques for the aforementioned amount. The complainant also alleges that when the cheques were sent for

collection, they were dishonoured with the memo that "drawers signature differs", for which cases under the Negotiable Instruments Act 1881

were filed. When the asset declaration of the accused for the election was verified, it was realised that there was a subsisting mortgage on the

property offered as security. It was further realised that proceedings had been initiated against that property by the Bank in 2013. The complainant

also alleged that the accused is now understood to be facing prosecution in 12 other criminal cases, most of which are for dishonouring of cheques and

also that all his properties are pledged and huge amounts are due to all banks. According to the complainant, the series of acts reveal that the accused

had the intention to cheat from the very beginning. Thus, the accused is alleged to have committed the offences punishable under Sections 406 and

420 of IPC.

4. Sri. Deepu Thankan, the learned counsel for the petitioner contended that the prosecution is inherently an abuse of the process of court since, even

if the allegations are assumed to be correct, the same would only reveal a civil dispute. It was further stated that cheating as defined under law

requires fraudulent or dishonest intention from the very beginning and since, the relationship between the petitioner and the defacto complainant arises

out of an agreement, the attempt of the complainant is only to create a facade of a criminal offence in respect of a dispute of a civil nature. The

learned counsel further submitted that if the complainant has a grievance, it has to be agitated before the Civil Courts, and the initiation of the criminal

complaint is a malafide act, warranting interference under Section 482 of Cr.P.C. The learned counsel also submitted that considering the petitioner's

position, the complainant's attempt becomes even more glaring. Various decisions were also referred to by the learned Counsel which shall be

adverted to later.

5. Adv. V.Sethunath, the learned counsel appearing on behalf of the 2nd respondent, contended that petitioner had fraudulently and without any

intention to repay induced the defacto complainant to lend a large amount of Rs. 2 Crores in the year 2010. When the amount was not being repaid

and when 2nd respondent was about to initiate legal proceedings, petitioner offered to execute an agreement offering to repay the amount and even

volunteered to provide security in the form of immovable property as well as four cheques. Induced by the above security and believing the petitioner,

the agreement was entered into. Since it was believed that the huge amount due from the petitioner could easily be recovered from the immovable

property and through the cheques, the 2nd respondent was fraudulently induced to permit the petitioner to continue to retain the amount borrowed. The

property offered as a security had an extent of 40.15 Ares in resurvey No.142/6 and it was informed that it was free from encumbrances and that a

charge could be created on the property. In the meantime, since there was no repayment, and petitioner repeatedly requested for extension of time,

the agreement was extended and later when the cheques were presented they returned dishonoured. It is contended that, later, when the complainant

searched the internet, it was realised that the property offered as a security was already subject to a mortgage with the Kottayam Co-operative

Agricultural and Rural Development Bank. Due to default in repayment, the bank had, as of 1.09.2013 itself, proceeded against the said property. This

startling revelation made the 2nd respondent realise that the intention of the petitioner from the beginning was to cheat him, and hence the private

complaint was lodged alleging the offences.

6. I have considered the rival contentions.

7. Annexure A1 is the complaint filed by the 2nd respondent. Paragraph 8 of Annexure A1 reads as follows:

“From the series of events it is

discernable that the accused had a criminal intention at the inception to cheat the complainant and thereby committed the criminal breach of trust.”

A further perusal of the complaint reveals that, from the affidavit given by the accused before the Election Commission, the defacto complainant realised

that properties of the accused are all pledged with different banks and therefore, he could not have offered the very same property as a security to the

defacto complainant.

8. The three offences for which cognizance has been taken are sections 406, 417 and 420 of the IPC. Regarding the latter two sections, the main

requirement is cheating, as defined under section 415 IPC and its essential ingredients are:

(1) deception of any person

(2)(a) fraudulently or dishonestly inducing that person

(i) to deliver any property to any person; or (ii) to consent that any person shall retain any property; or

(b) intentionally inducing that person to do or omit to do anything which he would not do or omit to do 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.

9. Thus, it is evident that a fraudulent or dishonest inducement is an essential ingredient of the offence. A person who dishonestly induces another

person to deliver any property or to retain any property is liable for the offence of cheating. As far as section 420 is concerned, which deals with

cheating and dishonestly inducing delivery of property, the offence can be established if the following ingredients are proven. (i) The representation

was false, (ii) the accused had prior knowledge that the representation he made was false, (iii) the false representation was made by the accused with

the dishonest intention to deceive the person to whom it was made, and (iv) the act of the accused induced the person to deliver the property or to

perform or to abstain from any act which the person would not have done or had otherwise committed.

10. In this context reference to the decisions in Vijay Kumar Ghai and Others v. State of West Bengal and Others [(2022) 7 SCC 124] and

Prof.R.K.Vijayasarathy and Another v. Sudha Seetharam and Another [(2019) 16 SCC 739] are relevant.

11. With the aforesaid principles in mind and taking note of the contentions of the petitioner as well as that of the second respondent and on a perusal

of the complaint, it is revealed that in the year 2010 a huge amount of Rs.2 crores was borrowed by the petitioner from the second respondent with

the promise to repay. When the second respondent was about to initiate legal proceedings to recover the money, an agreement was entered into as a

means to extend the time for payment and in that process, offered security in the form of immovable property and also gave four cheques. The

agreement was extended twice. Later, when payment was not forthcoming, the cheques were presented for encashment but were dishonoured. The

property, which was offered as security, was, even before the initial date of the agreement, subject to a charge and was even being proceeded against

for default in repayment to the bank.

12. The second respondent believes that the cumulative effect of all the above series of transactions indicates that the petitioner had fraudulently and

dishonestly induced the defacto complainant to transfer property and from the very beginning itself had no intention to repay. The ingredients of the

offence can be inferred from the circumstances for the purpose of prima facie satisfaction. Though a mere failure to repay money would not by itself

attract the offence of cheating, a dishonest intention can be inferred from the beginning itself based upon subsequent circumstances. Thus the

circumstances arising in this case prima facie satisfy the ingredients of sections 415 and 420 of the IPC. Petitioner is alleged to have induced the

second respondent to avoid initiating legal proceedings for recovery of money lent by entering into an agreement and that too by offering a property as

security which was already subjected to a charge. He has also avoided repayment for the last several years. The cheques issued were dishonoured

for difference in signature. As pleaded in the complaint, all these events indicate that the accused had a dishonest intention and played deception upon

the second respondent to induce him to lend money and to cheat.

13. On a reading of the complaint, it is evident that the ingredients of offence under Sections 406, 417 and 420 are prima facie made out. It is trite, that

when the allegations in the complaint are made out, the offences alleged cannot be quashed in exercise of the jurisdiction under Section 482 Cr.P.C.

However, whether the allegations are true or not is a matter which can be decided only after appreciating the evidence.

14. Thus, on a consideration of the circumstances pointed out and those pleaded in the complaint filed as Annexure-A1, I am satisfied that the second

respondent has made out a case for proceeding against the petitioner. The offences under sections 406, 417 and 420 are made out from the complaint

and therefore the cognizance taken by the court for the aforesaid offences is legal and proper. I find no reason to exercise the jurisdiction under

section 482 of the Cr.P.C.

This Criminal Miscellaneous case is dismissed.