

## State of Kerala Vs Thiraviyam Panicker (Accused)

**Court:** High Court Of Kerala

**Date of Decision:** July 29, 1960

**Acts Referred:** Penal Code, 1860 (IPC) â€” Section 415, 420

**Citation:** (1962) CriLJ 654

**Hon'ble Judges:** P. Govinda Menon, J

**Bench:** Single Bench

### Judgement

@JUDGMENTTAG-ORDER

P. Govinda Menon, J.

Criminal Appeal 346/59 and Criminal Revision Petition 321/59 arise out of an order passed by the Sub-Divisional

Magistrate of Trivandrum in C.C. 22/59. Criminal Appeal 346/59 is filed by the State against the order or acquittal of the four respondents who

had been charged along with another for an offence punishable u/s 420 I.P.C. Criminal Revision Petition 321/59 is a petition filed earlier by the 1st

informant Pw. 1 in the case for revising the order of the learned Magistrate challenging the order of acquittal of, the accused and also the order

regarding the disposal of the properties. These two matters were heard together and I propose to pass one common order.

2. The Sub-Inspector of Police, Puthenchantha had charged the four respondents who were accused Nos. 1 to 3 and 5 for having cheated, P.W.

1, an offence punishable u/s 420 I.P.C. Pw. 1 is a big businessman belonging to Kanyakumari District. It is stated that he had made arrangements

with a firm ""Kulathunkal Corporation"" to take delivery of a motor-chasis. For that purpose on 18.11.1958 he came to Trivandrum by the morning

bus with a sum of Rs. 5000/- all in hundred rupee notes.

Accused 1 and 2 who were known to Pw. 1 before and who, it is suggested, had known that. Pw. 1 was coming to Trivandrum with money, met

him at Pazhavangadi. They took him to ones Jacob's Hotel near the Ayurveda College. They occupied a room in the hotel and after resting there

for some time, accused 1, and 2 represented that the 1st accused had to get a sum of over Rs. 5000/- from a shop in Chalai towards the price of

rice sold by him, that the said amount is kept there in small denomination notes and that if Pw. 1 would help him by giving Rs. 5000/- in hundred

rupee notes he would go at once to Chalai and get the small denomination notes for Rs. 5000/. Pw. 1, it is Stated believed they representation

and handed over the 50 hundred rupee currency notes to the 1st accused. The 1st accused received the notes and went out promising to return

immediately with the small notes leaving the 2nd accused with Pw. 1.

3. Pw. 1 waited for a long time but not finding the 1st accused returning he grew restive and suspicious. He asked the 2nd accused as to why the

1st accused was not returning. The 2nd accused then offered to go in search of the 1st accused but Pw. 1 did not allow him to go. Then a taxi was

engaged and in the company of the 2nd accused they searched the whole town for the 1st accused, but without any success. In the evening he

called his clerk over the phone and directed him to bring the list of the number of hundred rupee notes which he had brought with him to

Trivandrum in the morning. Then he went with the 2nd accused to the Kulathungal Corporation and apprised Mr. Pothen, the proprietor of what

had happened. Under instructions from him Pw. 1 went to the Police Station and lodged a complaint. Ext. P-1 is that complaint and Ext. P-2 is the

list showing the-number of the currency notes which was, by that time brought by Pw. 1's clerk.

4. The police registered a case and arrested the second accused who was also with Pw. 1-On information furnished by the 2nd accused all of

them went to Varkalai the next day and arrested the 1st accused from the house of Pw. 6. First accused was questioned and on information

furnished by him a bag belonging to the 1st accused containing Rs. 983/- was recovered from the house of Pw. 7. The bag was opened with the

key given by the 1st accused and among the currency notes found in the bag were found 3 hundred rupee notes which bore the same number

shown in the list Ext. P-2. The police also recovered Rs. 3590/- from the shop of the 5th accused on the basis of information given by the 1st

accused. In the meanwhile Pw. 10 one Mr. George finding a notification in the paper regarding the missing of some hundred rupee notes and their

numbers and finding that 3 hundred rupee notes with him bore the same numbers produced them before the police. Those three notes were among

the notes which he had got by cashing a cheque from the Travancore Bank.

5. The police questioned Pws. 3 and 4, the officers of the Trivandrum Permanent Bank. According to them on 18.11.1958 the 1st accused had

gone to their bank and encashed thirty-One hundred rupee notes. Similarly, Pw 2 the cashier of the Travancore Bank stated that the 1st accused

had changed seven, hundred rupee notes in that bank on the afternoon of 18.11.1958. Pw. 9 is a driver of a taxi, who deposes that on

18.11.1958 accused 1, 3 and 5 had traveled in in his taxi at about noon time. He also says that the 3rd accused had in his hand M.O. 1 the bag.

6. The learned Magistrate found that the prosecution has not succeeded in proving any false representation and even though money might have

been given to the 1st accused by Pw. 1 it could not have been in the manner spoken to by Pw. 1 and he found that the evidence of the recovery

was inadmissible in evidence and acquitted all the accused. He also ordered M.O. 1 bag M.O. II notes for Rs. 983/- with M.O.V., lock and key

of the bag to be returned to the 1st accused and Rs. 3590/- recovered from the shop of the 5th accused to be returned to him. The State has

therefore filed an appeal against the order of acquittal and the complainant has filed a revision for the return of the money to him.

7-10. His Lordship then discussed the evidence of the prosecution and continued as follows:

11. Now as far as the offence of cheating is concerned, the most essential ingredient that had to be proved by the prosecution was that Pw. 1 was

cheated and thereby he was dishonestly induced to deliver the money to the 1st accused Merely parting with money will not amount to cheating.

Section 415, I.P.C., defines what cheating is:

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

properly, is said to "cheat".

Section 420 I.P.C., says:

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.

I have already dealt with the prosecution evidence. It is Pw. 1's case that the 1st accused represented that he had Rs. 5000/- in small

denomination notes which he got from a merchant at Chalai for the sale of rice and because it was small denomination notes he would like the

notes to be converted into notes of higher denomination and he asked Pw. 1 whether he would give 50 hundred rupee notes in exchange for the

small denomination notes and believing that representation to be true he parted with Rs. 5000/- worth of currency notes. Pw. 1 is a big

businessman running an oil mill, conducting a, fairly big shop at Kottar and having motor business with T.V.S. Brothers at Madurai. He is therefore

a man well versed in business transactions.

If the 1st accused had said that he had Rs. 5000/- in small denomination currency notes got by the sale of rice one would normally expect the

money to be with the 1st accused rather than leaving it with any shop keeper at Chalai. If he wanted the money to be changed into high

denomination notes anybody would have asked the 1st accused where the notes were and to get those notes before parting with such a big amount

as Rs 5000/-. It is too much to believe that a shrewd businessman like Pw. 1 would be so foolish as to believe the 1st accused's story and put this

huge amount of Rs. 5000/- in the hands of a person with whom he had no business dealings and who were only passing acquaintances.

The learned Magistrate has given valid and. convincing reasons why the story of false representation could not be accepted. I agree that it will not

be safe to accept the uncorroborated testimony of Pw. 1 to find that he had been cheated. It must be remembered that this is an appeal against

acquittal. There are no substantial or compelling reasons to differ from the view taken by the learned Magistrate acquitting the accused. Criminal

Appeal No. 346/59 is therefore dismissed.

12. With regard to the disposal of the property u/s 517 CrI.P.C. which is the subject matter of Criminal Revision Petition 321/59, I am not satisfied

with the way in which the matter had been disposed of. The learned Magistrate observes:

Since I have now found that the prosecution has not proved any offence having been perpetrated in regard to these sums of money the only

alternative for the court is to place them status quo ante

And so the money was ordered to be returned to the 1st accused and the 5th accused. Section 517 CrI.P.C. refers not only to property in respect

of which offence has been committed but also to the property before the court and in its custody. It does not matter if the property has not been

used for the commission of any offence or is not one regarding which any offence has been committed. Section 517 as amended by Act 18/1923

empowers the criminal court to deliver the property or document to any person ""claiming to be entitled"" to its possession. The court has therefore

jurisdiction to decide the question of possession.

13. In normal circumstances, on acquittal or discharge the property would be returned to the person from whom it was seized. But when there are

circumstances showing that the person concerned either has not claimed the property as his, specifically, or when there are no grounds to hold that

the property could belong to the accused or the evidence in the case would suggest that the property belongs to the complainant or when the

discharge or the acquittal is based upon inadequacy or doubtfulness of the proof offered, the Magistrate has certainly got a discretion to return the

property to the complainant and in such a case it may even be unreasonable to return the property to the accused persons. It depends on the facts

of each case. No doubt, it is not the function of a criminal court to decide nice questions involving principles of civil law if there is a dispute

between, rival parties claiming a return of the property. Some of the decisions have gone to the extent of holding that the court is entitled in such

cases to keep the property in its custody pending the decision of a competent civil court. Reference in this connection may be made to the

decision, in *Ram Khalawan Abir v. Tulsi Telini* AIR 1924 Cal 1040. So it is not imperative that in all cases of acquittal the Magistrate shall return

the property to the accused as the learned Magistrate seems to think.

14. In this case there are facts and circumstances which might suggest that the property does not belong to the accused and belongs to the

complainant. As I have stated before, accused 1 and 2 had met Pw. 1 at the Jacob's Hotel. The evidence of Pw. 11, the hotel attendant

corroborates the evidence of Pw. 1. The probabilities of the case also indicate that Pw. 1 had the currency notes with him and that he had handed

over the 50 hundred rupee notes to the 1st accused as alleged. There is also the subsequent conduct of the 1st accused spoken to by Pws. 2, 3

and 4, the Bank officials that the 1st accused hurriedly was changing the hundred rupee notes into small denomination notes immediately after the

alleged incident.

15. There was also the evidence offered by the confessional statements of the accused persons. The confessional statement may not strictly be

admissible in a trial of the accused for having committed an offence. But in proceedings u/s 517 which are more in the nature of proceedings

analogous to civil proceedings in which the question of guilt of the accused is not to be determined the court will be justified in acting on those

confessions. Reference may be made to the decision in *Mahanta Singh Natha Singh Vs. Het Ram Pakhar and Another*, *Pohlu v. Emperor* AIR

1943 Lah 312 and *Timapa Shanbhog v. Maneshvar Kashi* ILR 9 Bom 181.

These are matters which really merit consideration. As none of these factors have been considered at all by the learned Magistrate, probably not

argued before him, the order of the learned Magistrate has to be set aside. The case will go back to the learned Magistrate who will issue notice to

the complainant and accused 1 and 5 and after considering the evidence that has already been adduced in the case and such further evidence

which may hereafter be produced by the parties, pass appropriate orders regarding the disposal of the property. Nothing that has been stated in

this order is intended to fetter the discretion of the learned Magistrate in appraising the effect of the evidence that would be produced before him

and passing necessary orders in the matter.

16. In the result, the Order u/s 517 Cr.P.C., regarding the disposal of the currency notes produced before the court is set aside. The case is sent

back to the lower court for fresh hearing and disposal according to law. The revision petition is allowed to this extent.