

## Sindhu Vs State of Kerala

**Court:** High Court Of Kerala

**Date of Decision:** March 21, 2014

**Acts Referred:** Criminal Procedure Code, 1973 (CrPC) â€” Section 482  
Penal Code, 1860 (IPC) â€” Section 420, 506

**Hon'ble Judges:** P. Ubaid, J

**Bench:** Single Bench

**Advocate:** Abraham P. George, Sri. K. Vinodkumar (707/89) and Smt. M. Santhy, Advocate for the Appellant; K.K. Balakrishnan (Kodiyura), Smt. S. Nazeera, Advocates for R2 and Smt. Bindu Gopinath, Public Prosecutor, Advocate for the Respondent

**Final Decision:** Partly Allowed

### Judgement

@JUDGMENTTAG-ORDER

P. Ubaid, J.

The petitioners herein are the accused in C.C.No. 206/2009 before the Judicial First Class Magistrate Court-I,

Neyyattinkara. The offences alleged against them are under Sections 420 and 506 IPC. The crime in this case was registered on the complaint of

one Jamma Titus, who is the 2nd respondent herein. Her complaint is that on a false promise to provide job abroad the 2nd petitioner herein had

received an amount of 4,00,000/- from her deceased husband, and her husband was also taken to Singapore, on the basis of the said promise. But

her husband had to return when he could not obtain any job as promised by the 2nd petitioner, and thus the 2nd petitioner cheated her deceased

husband. When demands were made repeatedly the 2nd petitioner issued two cheques out of which one was bounced due to insufficiency of

funds. Her complaint contains a definite allegation that the amount of 4,00,000/- was received by the 2nd petitioner under a false promise to

arrange job abroad, or with dishonest intention of extracting money from her husband.

2. The petitioners have brought this application u/s 482 Cr.P.C. to quash the prosecution as against them in C.C.No. 206/2009.

3. On hearing both sides and on a perusal of the case records I find nothing to implicate the 1st petitioner who is assigned as the 1st accused in the

case, and the complaint of the 2nd respondent does not contain any allegation against the 1st accused. There is absolutely nothing in the complaint

to show that the 1st accused had any involvement in the alleged transaction. It is not known why, or on what basis, the 1st petitioner was assigned

as the first accused in the prosecution. The learned counsel for the 2nd respondent submitted that during investigation one witness had given some

statements against the 1st accused. When the complainant does not have any allegation or case against the 1st petitioner, she cannot be prosecuted

on the basis of some statements given by some witness. I find that the present prosecution as against the 1st petitioner is clearly an abuse of legal

process, and the prosecution as against her is liable to be quashed.

4. However, a reading of the complaint preferred by the 2nd petitioner will show that she has some grievance as against the 2nd petitioner, who is

the 2nd accused in the case. Whether he had any dishonest intention when he received huge amount from the husband of the 2nd respondent, or

whether the promise made by him to arrange job was in fact a false promise, are all matters to be looked into by the trial court. It is admitted that

on persistent demands, the 2nd petitioner had issued two cheques; one for 2,00,000/- and the other for 1,85,000/-. The complainant alleges that

the cheque for 2,00,000/- was bounced due to insufficiency of funds. In view of the fact that the 2nd petitioner had issued two cheques in

discharge of the liability, or towards payment of the amount allegedly received by him, it is a matter to be looked into by the trial court whether the

2nd petitioner really had any intention to cheat, or whether he received the amount with such a dishonest intention. Any way let these matters be

looked into by the trial court. If the 2nd petitioner is confident that he received the amount under a genuine promise with the confidence that he

could arrange a job abroad, but he could not provide job due to some circumstances or reason beyond his control, he can very well convince the

learned Magistrate, regarding all these aspects and make a plea for discharge. In the circumstances where some allegations are there against him in

the complainant the powers u/s 482 Cr.P.C cannot be exercised to quash the proceedings against the 2nd petitioner. However, without prejudice

to his right to plea for discharge before the trial court, his request to quash the prosecution against him can be disallowed.

In the result, this CrI.M.C. is allowed in part. The prayer made by the 2nd petitioner to quash the prosecution as against him is disallowed.

However, the prayer made by the 1st petitioner is allowed u/s 482 Cr.P.C. The prosecution as against her as the 1st accused in C.C.No.

206/2009 pending before the Judicial First Class Magistrate Court-I, Neyyattinkara is hereby quashed u/s 482 Cr.P.C. She is released from

prosecution, and the bail bond, if any, executed by her will stand discharged.