

**(2014) 03 KL CK 0133**

**High Court Of Kerala**

**Case No:** Crl. MC. No. 489 of 2013

Sindhu

APPELLANT

Vs

State of Kerala

RESPONDENT

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

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Penal Code, 1860 (IPC) - 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 Crl.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.