



Criminal Revision Petition No. 631 of 2024

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

WEDNESDAY, THE 3<sup>RD</sup> DAY OF JULY 2024 / 12TH ASHADHA, 1946

CRL.REV.PET NO. 631 OF 2024

AGAINST THE ORDER/JUDGMENT IN CC NO.29 OF 2023 OF THE SPECIAL  
ADDITIONAL CHIEF JUDICIAL MAGISTRATE (FOR THE TRIAL OF CRIMINAL  
CASES AGAINST SITTING AND FORMER MPS/MLAS OF THE STATE),  
ERNAKULAM

REVISION PETITIONER/S:

MANI C. KAPPAN  
AGED 65 YEARS  
S/O. CHERIAN .J. KAPPAN, KAPPILVEETIL, LALAM  
VILLAGE, PALA.P.O, KOTTAYAM DISTRICT, PIN - 686575

BY ADVS.  
DEEPU THANKAN  
LAKSHMI SREEDHAR  
UMMUL FIDA  
VINEETHA BOSE

RESPONDENT/S:

- 1 STATE OF KERALA  
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF  
KERALA, PIN - 682031
- 2 DINESH MENON  
S/O LATE C.P. MENON RESIDING AT 001 A-14 ARADHANA,  
GOKULDHAM, GOREGAON EAST, MUMBAI, PIN - 400063  
  
Sr PP Sri C.S Hrithwik  
SRI.V.SETHUNATH-R2

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR  
ADMISSION ON 03.07.2024, THE COURT ON THE SAME DAY DELIVERED  
THE FOLLOWING:

**C.S.DIAS,J**

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**Criminal Revision Petition No. 631 of 2024**

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**Dated this the 3<sup>rd</sup> day of July, 2024****ORDER**

The revision petitioner is the accused in CC No.29 of 2023 on the file of the Special Additional Chief Judicial Magistrate (for the trial of criminal cases against sitting and former MPs/MLAs of the State) , Ernakulam, registered against him, for allegedly committing the offences punishable under Secs 406,417 and 420 of the Indian Penal Code. The first respondent is the State and the second respondent is the de-facto complainant.

2. The revision petitioner is aggrieved by the order dated 20.3.2024 framing the charge against him for the above-mentioned offences.



3. The second respondent had filed the complaint, inter alia, contending that the revision petitioner had borrowed Rs.2/- crore from him in the year 2010, but only repaid Rs.25/- Lakh. Subsequently, the revision petitioner and the second respondent entered into an agreement on 19.11.2013, whereby the revision petitioner agreed to repay Rs.3.25/- crore to the second respondent in instalments. He issued post dated cheques towards the repayment. He also created a charge over his property having an extent of 40.15 Ares of land in Aymanam Village in favour of the second respondent. However, the cheques got dishonoured and the second respondent learnt the property was already offered as security in favour of the Kottayam Co-operative Agricultural and Rural Development Bank. Thus, the revision petitioner has cheated the second respondent and committed the offences under Secs.406, 417, 418, 420 and 423 of the Indian Penal Code.



4. The complaint was initially filed before the Judicial Magistrate of the First Class-VIII, Ernakulam. The learned Magistrate took cognizance of the offences under Secs.406, 417 and 420 of the Indian Penal Code and the case was numbered as CC No.118/2021. Subsequently, the case was made over to the Special Court because the revision petitioner is a sitting MLA of the Kerala Legislative Assembly. The complaint was renumbered as CC No.29/2023. At that juncture, the revision petitioner filed Crl.M.C No.2755/2021 before this Court to quash the complaint. Nonetheless, by order dated 17.3.2023, this Court dismissed the said application. Even though the revision petitioner challenged the order before the Hon'ble Supreme Court by filing SLP(Crl) No.5592/2021, the Special Leave Petition was also dismissed. Consequently, the petitioner appeared before the Special Court and got himself enlarged on bail. The Special Court posted the



case for pre-charge evidence under Sec.244 of the Code of Criminal Procedure. The second respondent and his witness were examined and the parties were heard. Nevertheless, the court below, by a one line order, has framed the charge. The said order is illegal, irregular and improper. Hence, the revision petition.

5. Heard; Sri.Deepu Thankan, the learned counsel appearing for the revision petitioner, Sri.C.S Hrithwik, the learned Public Prosecutor and Sri.V Sethunath, the learned counsel appearing for the second respondent.

6. The learned counsel for the revision petitioner vehemently argued that the court below has not applied its mind before framing the impugned charge. A reading of the impugned order would establish that the learned Magistrate has not given any reason to arrive at a conclusion to frame the charge against the revision petitioner. The revision petitioner



had raised several contentions at the time of hearing, but none of the contentions were adverted to in the impugned order. The revision petitioner may be granted an opportunity to file an application for discharge because he was not given such an opportunity. The impugned order is patently wrong, irregular and improper. Hence, the revision petition may be allowed.

7. The learned Public Prosecutor and the learned counsel for the second respondent stoutly resisted the revision petition. They submitted that there is no merit in the contentions raised by the revision petitioner. In fact, the revision petitioner had raised the very same grounds in Crl M.C No.2755/2021, which was dismissed by this Court, on the finding that there are prima facie materials to substantiate that the revision petitioner has committed the offences. The said order was challenged before the Hon'ble Supreme Court, but the same was also dismissed. Therefore, the findings have



become final. It is thereafter the case was posted for pre-trial evidence of the second respondent and his witness. PWs1 and 2 were examined and subsequently the court below has framed the charge. The revision petitioner did not even file an application for discharge. It is after considering the materials on record, the learned Magistrate has framed the charge. There is no illegality, impropriety or irregularity in the impugned order. The revision petition is filed with a sole intention to procrastinate the conclusion of the proceedings. The application is meritless and is dismissed with costs.

8. Is there any illegality, impropriety or irregularity in the impugned order?

9. The second respondent's case is that the revision petitioner had borrowed money from him and failed to repay the same. Subsequently, the parties entered into an agreement whereby the revision petitioner agreed to pay Rs.3,25,00,000/-



to him and issued post dated cheques. He also offered 40.15 Ares of land as security to secure the repayment. However, it was subsequently learnt that the property was offered as a collateral security to a Bank prior to the agreement. Therefore, the revision petitioner has cheated the de-facto complainant and committed the above offences.

10. Indisputably, after the learned Magistrate took cognizance of the offences, the revision petitioner filed Crl M.C 2755/2021 before this Court, inter alia, contending that the offences under Sec.406 and 420 will not be attracted, the second respondent has initiated proceedings under Sec.138 of the Negotiable Instruments Act, the disputes between the parties are purely civil in nature and the revision petitioner had no mens rea at the time of entering into the agreement to cheat the de-facto complainant, which is necessary so as to attract the offences under Secs 406 and 420 of the IPC.



11. This Court, after considering the rival submissions and the materials on record, concluded that there are prima facie materials to substantiate the petitioner's involvement in the crime. Accordingly, this Court declined to exercise its powers under Sec.482 of the Code and consequently, dismissed the petition.

12. The revision petitioner challenged the said order before the Hon'ble Supreme Court by filing SLP(Crl) No.49775/2023. The Hon'ble Supreme Court dismissed the Special Leave Petition.

13. During this interregnum period, the second respondent had filed OP (Crl) No.767/2023 before this Court, for the expeditious disposal of CC No.29/2023 . By judgment dated 31.10.2023, this Court allowed the original petition and directed the Trial Court to dispose of CC No.29/2023



within one year from the date of receipt of a certified copy of the judgment.

14. It is after the dismissal of the Special Leave Petition, the second respondent and his witness were examined as PWs1 and 2. The revision petitioner did not cross-examine the witnesses, though the same is not obligatory. The revision petitioner also did not file any application for discharge.

15. The learned Magistrate passed the following order:

“Complainant is represent. Accused is represent. Heard. Upon making evidence under Sec.244 Criminal Procedure Code and after hearing, I am satisfied that there are grounds to presume that the accused has committed the offences alleged against him. Hence for framing charge. Accused shall be present on 12.4.2024.”

16. In **Onkar Nath Mishra & Ors vs State (Nct Of Delhi) & Anr** [(2008) 2 SCC 561], the Hon’ble Supreme Court has held that the Courts are to form only a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged and is not expected to go deep into the probative value of the materials on record.



17. A three-Judge Bench of the Hon'ble Supreme Court in **State Of Maharashtra vs Som Nath Thapa** [ (1996) 4 SCC 659] has dealt with the question of framing of charge or discharge under Secs.3 to 44 and 245 of the Code by holding thus:

"32...if on the basis of materials on record, a court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently, if the court were to think that the accused might have committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused has committed the offence. It is apparent that at the stage of framing of a charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage."

18. Subsequently, in **State of M.P vs. Mohanlal Soni [2000 KHC 1255]**, the Hon'ble Supreme Court after referring to plethora of judgments, has held as follows:

"7. The crystallised judicial view is that at the stage of framing charge, the court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused."



19. A reading of the above precedents on the point, undoubtedly establishes that the Court has to only form a prima facie opinion as to whether there are any sufficient grounds to proceed against the accused. The court is not expected to appreciate the evidence on record and then conclude whether the materials are sufficient or not for convicting the accused.

20. In the case on hand, as already referred to above, the revision petitioner had initially challenged the proceedings before this Court under Sec.482, which petition was dismissed by this Court and the order was confirmed by the Hon'ble Supreme Court. Thereafter, the second respondent's witness were examined. Yet, the petitioner did not file any application for discharge.

21. A reading of the impugned order would show that the learned Magistrate has applied his mind and arrived at a



conclusion that there are grounds to presume that the accused has committed the above offences. Accordingly, the court below deemed it fit to frame charge against the revision petitioner.

On an overall conspectus of the facts, the rival submissions made across the Bar and the materials placed on record and also the law on the point, I do not find any illegality, impropriety or irregularity in the impugned order warranting interference by this Court. The revision petition is devoid of any merits and is only liable to be dismissed in limine.

Resultantly, the revision petition is dismissed.

**SD/-**

**C.S.DIAS, JUDGE**