

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

WEDNESDAY, THE 17TH DAY OF JULY 2024 / 26TH ASHADHA, 1946

CRL.MC NO. 1511 OF 2021

CRIME NO.119/2021 OF Chandera Police Station, Kasargod

PETITIONER/ACCUSED:

ABDUL RAHMAN,
AGED 44 YEARS, S/O. ABDUL AZEEZ,
CHENOTH THIRUTHUMMAL,
CHANDERA, METTAMMEL,
KASARAGOD DISTRICT.

BY ADVS.
SRI.M.V.AMARESAN
SRI.S.S.ARAVIND
SRI.S.SREEKUMAR (SR.)

RESPONDENTS/STATE & COMPLAINANT:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM, PIN - 682031.
- 2 ASIN P.S.
S/O. SIDHARTHAN,
PENAT HOUSE,
KOORIKKUZHI, KIPPAMANGALAM,
THRISSUR DISTRICT, PIN - 680681.
- *3 M/S INVEST BANK,
AL ISTIQLAL STREET,
ABU DHABI, UAE
THROUGH THE POWER OF ATTORNEY HOLDER
XSTREAM INTERNATIONAL MANAGEMENT CONSUTANCY,
40/131C, KUNNATH LANE,
PALARIVATTOM, KOCHI-682 025,
REPRESENTED BY ITS PROPRIETOR, PRINCE SUBRAMANIAN

*(ADDL.R3 IS IMPLEADED AS PER ORDER DATED
17.07.2024 IN CRL.M.APPL. NO.2 OF 2021)

BY ADVS.
SRI.ASHI M.C., PUBLIC PROSECUTOR
SRI.JOHNSON GOMEZ
SRI.SANJAY JOHNSON
SMT.SREEDEVI S.

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
08.07.2024, THE COURT ON 17.07.2024 PASSED THE FOLLOWING:

“C.R.”

BECHU KURIAN THOMAS, J.

CrI.M.C No.1511 of 2021

Dated this the 17th day of July, 2024

ORDER

In this petition under section 482 Cr.P.C, petitioner challenges the crime registered against him as F.I.R. No.119/2021 of the Chandra Police Station, Kasaragod, Kerala.

2. A complaint was filed by the second respondent on 05.02.2021, alleging that he had been authorised by M/s.Invest Bank, Sharjah, United Arab Emirates, to initiate criminal proceedings against the petitioner. The F.I.R was registered pursuant to a complaint alleging that the accused had on 04-10-2017 and 23-01-2018 obtained a total loan of 68.159 million UAE dirhams equivalent to Rs.135 Crores for the business purposes of his establishment by the name 'M/s.Hexsa Oil and Gas Services LLC' and failed to repay 42.898 million UAE dirhams and thereby committed cheating.

3. The complainant alleged that the loan was disbursed since the accused had promised to repay it in 84 months and also that the amount shall be utilised only for the purpose of the business of his company and the accused had personally undertaken to repay the payment. Induced by the promise of the accused, the bank disbursed the loan amount. However, the accused defaulted in repayment and when the bank officials visited the establishment of the accused, they found that he had diverted the loan amount for his personal purposes without utilising the same for his business. When confronted with it, the accused handed over 84 cheques of Rs.3,25,000/- UAE dirhams each, but the first cheque itself, when presented for encashment, returned dishonoured. Thereafter the accused became unreachable as he switched off his phone and soon absconded from Dubai. On verification, the bank realised that the accused had set up business establishments under different names in India, utilising the money taken from the bank. In the meantime, in a civil suit filed by the bank before the court in UAE, it was held that the outstanding amount due to the bank was 48.898 million UAE dirhams, equivalent to more than Rs. 83 Crores. The accused has thereby cheated the bank and committed the offence alleged.

4. Sri.S.Sreekumar, learned Senior Counsel instructed by Sri.M.V.Amaresan, learned counsel for the petitioner contended that even if the entire allegations in the complaint and in the FIR remain uncontroverted, the same would still not make out any offence of cheating as it is a pure loan transaction that is revealed from the complaint. Relying upon the decision in **Lalit Chadurvedy v. State of Uttar Pradesh** [2024 LiveLaw (SC)150] it was submitted that a contractual dispute or a breach of contract per se cannot lead to the initiation of a criminal proceeding, since the existence of a fraudulent or dishonest intention at the initial stage of the promise or representation is necessary to attract the offence of cheating. It was argued that since neither in the complaint nor in the FIR has the complainant made any such allegation, the offence alleged is not attracted. The learned Senior Counsel further submitted that even going by the complainant's allegation, the bank had initiated a civil suit for recovery of money and a decree has also been passed, indicating that the offence alleged cannot be attracted at all.

5. At this juncture it is apposite to mention that though the second respondent had filed the complaint on the basis of a power of attorney executed by the Bank, subsequently, a new power of

attorney was executed in favour of another person who has thereafter in this proceeding as third respondent. Additional materials were submitted to the police by the third respondent pointing out that initially an agreement was entered into on 19.06.2016 between the parties and that the accused had nurtured a fraudulent intention to defraud the bank from the very beginning. It was also mentioned that the mental state of the accused at the time of granting loan was understood from the events that followed thereafter and that the intention of the accused was to defraud the bank which was evident from his subsequent conduct.

6. Sri. Johnson Gomez, the learned counsel appearing on behalf of the third respondent contended that the crime is only at the investigation stage and what has been revealed so far is a large-scale fraud and deception played by the petitioner who had absconded from UAE after defrauding the bank of several crores of rupees. It was pointed out that after absconding from UAE, the petitioner commenced businesses in India utilising the amount received by him from the bank in UAE and even diverted it to his relatives. The learned counsel further submitted that the accused had slowly procured the confidence of the bank with the intention of

ultimately cheating it of a substantial amount and that the manner in which it was committed could be unravelled only by a proper investigation.

7. Sri. M.C.Ashi, the learned Public Prosecutor, also submitted that, due to the interim order, an effective investigation has not been carried out till date.

8. While considering the rival contentions this Court bears in mind that a mere breach of contract cannot give rise to a criminal prosecution for cheating, unless a fraudulent or dishonest intention is shown to exist right from the beginning of the transaction, i.e., the time when the offence is alleged to have been committed. In **International Advanced Research Centre for Powder Metallurgy and New Materials (ARCI) and Others v. Nimra Cerglass Technics (P) Ltd. and Another** (2016) 1 SCC 348), while deliberating upon the difference between a mere breach of contract and the offence of cheating, it was observed that the distinction depends upon the intention of the accused at the time of the alleged incident. If dishonest intention on the part of the accused can be established at the time of entering into the transaction with the complainant, then criminal liability would be attracted.

9. Intention to deceive from the beginning is therefore the gist of the offence of cheating and a mere failure to keep a promise, subsequently cannot give rise to any assumption that there was culpable intention from the beginning. Deception being the quintessence of the offence of cheating, it is essential that deception be performed by the accused to induce the complainant. Deception can certainly be carried out by words or by conduct and what is deception, will depend upon the facts and circumstances of each case. No straitjacket formula can be prescribed for the nature of deception that may be carried out, as it is generally done in a subtle and wily manner brought about by craft, guile and even cunningly, which cannot be identified easily by others. A person can have a habitual propensity for deception and in such circumstances it becomes the character of that person, while deceit can occur, even in isolated instances as well, which will come to light only much later. In either event, the deception alleged will have to be appreciated on the basis of the circumstances arising in each individual case. Thus, intention is a mental state of being, which will have to be gathered from various circumstances. Moreover, section 415 IPC does not limit, in any manner in which the deception may take place. It is also

not necessary that the deception should be by express words as it can even be by conduct.

10. In a recent judgment in **Mahmood Ali and Others v. State of UP and Others** (2023 SCC OnLine SC 950), it was observed by the Supreme Court that when an accused seeks to invoke the inherent powers under section 482 Cr.P.C. to get the FIR quashed, the High Court owes a duty to look into the FIR with care and a little more closely. It was further observed that it will not be enough to look into the averments made in the FIR or complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not, as the court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and if need be, with due care and circumspection to try and read between the lines. The aforesaid principle was reiterated recently in **Achin Gupta v. State of Haryana and Another** (2024 INSC 369) also.

11. Moreover, in the decision in **State of Haryana v. Bhajanlal** (1992 Supp 1 SCC 335) the Supreme Court had, while laying down the principles for quashing the proceedings, observed that the power under section 482 ought to be exercised *ex debito justitiae* to do real

and substantial justice and the authority of the court exists for the advancement of justice and to prevent abuse of the process of law. In the decision in **Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra and Others** (2021 SCC Online SC 315) it has been added as a note of caution that quashing of FIR is an exception rather than an ordinary rule and the High Court should exercise the powers under S.482 CrPC, sparingly and with circumspection.

12. In this context, it is necessary to mention that a complaint or an FIR only triggers an investigation. During the course of an investigation, if the investigating officer obtains materials regarding the nature of the crime committed, it is always open to him to alter the charge, delete the charge and even add other charges. All these are within the domain and powers of the investigating officer. It is for this reason that the court must always be circumspect and cautious in nipping off in the bud itself, an allegation relating to an offence, even before the investigation is completed. Of course, in cases where the proceedings are initiated with malafides or when there is no possibility of any offence being revealed, the court is vested with the power to quash the proceedings.

13. While appreciating the circumstances alleged in the

complaint and the additional complaint filed by the third respondent, this Court reckons that the complainant has alleged that the accused had, with the intention to defraud the bank, procured loans and thereafter diverted the same to his relatives and other persons and absconded from UAE after switching off his phone and came down to India and commenced businesses. Though in the civil proceedings there is a decree obtained by the bank for repayment of the amount, the same by itself is not a reason to assume that a criminal proceeding will not lie. In certain circumstances, the criminal proceedings as well as civil proceedings can proceed simultaneously. Merely because a civil proceeding has been initiated does not mean that a criminal offence cannot be attracted. From the nature of the complaint and the allegations made thereon, it cannot be prima facie stated that the FIR is totally bereft of any legal basis. As observed in the decisions in **Achin Gupta v. State of Haryana and Mahmood Ali and Others v. State of UP and Other** (supra), the circumstances emerging from the records of the case over and above the averments in the complaint and in the FIR do indicate that the offence alleged against the petitioner can be made out at least at this stage of the proceedings.

14. Further, the credibility of Indians in UAE and of others who seek loans from banks can be prejudicially affected if such alleged frauds are permitted to be perpetrated by the citizens of this country, and when criminal proceedings are initiated, they are quashed without even being investigated.

15. Quashing the FIR itself at this stage of the proceedings would seriously prejudice the complainant and therefore this is not a case which may fall within the purview of exceptional circumstances warranting an interference to quash the FIR.

Hence, I find no merit in this Crl.M.C and it is dismissed.

Sd/-

**BECHU KURIAN THOMAS
JUDGE**

vps

APPENDIX

PETITIONER'S/S' ANNEXURES

ANNEXURE 1 TRUE COPY OF THE FIR NO. 119/2021 DATED 5.2.2021 REGISTERED BY SHO CHANDERA POLICE STATION.

ANNEXURE 2 TRUE COPY OF RELEVANT PAGES OF THE PASSPORT OF THE PETITIONER.

RESPONDENT'S/S' ANNEXURES

Annexure R3A A TRUE COPY OF THE REPRESENTATION DATED 12TH JUNE 2024 SUBMITTED BY THE RESPONDENT NO.3 TO THE STATION HOUSE OFFICER, CHANDERA POLICE STATION

Annexure R3B A TRUE COPY OF THE LETTER NO. FAG/MUS/014/14 DATED 6TH MAY 2014 ISSUED BY THE RESPONDENT NO.3 TO MANAGING DIRECTOR, M/S HEXA OIL & GAS SERVICE LLC

Annexure R3C A TRUE COPY OF THE LETTER NO. FAG/MUS/08/14 DATED 17TH FEBRUARY 2014 ISSUED BY THE RESPONDENT NO.3 TO MANAGING DIRECTOR, M/S HEXA OIL & GAS SERVICE LLC

Annexure R3D A TRUE COPY OF THE LETTER NO. FAG/MUS/027/14 DATED 14TH JULY 2014

Annexure R3E A TRUE COPY OF THE REPORT AND FINANCIAL STATEMENT FOR THE YEAR ENDED 31 DECEMBER 2015 OF HEXA OIL AND GAS SERVICE LLC ABU DHABI SUBMITTED BY THE PETITIONER TO RESPONDENT NO.3

Annexure R3F

A TRUE COPY OF THE AUDITORS REPORT AND FINANCIAL STATEMENT AS ON 31ST DECEMBER 2017 SUBMITTED BY ACCUSED TO THE RESPONDENT NO.3

Annexure R3G

A TRUE COPY OF THE INHOUSE FINANCIAL REPORT DATED 30TH SEPTEMBER 2016 SUBMITTED BY THE PETITIONER TO THE RESPONDENT NO. 3

Annexure R3H

A TRUE COPY OF THE FACILITY AGREEMENT BETWEEN THE PETITIONER AND THE RESPONDENT NO. 3, DATED 19-06-2016