

**IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE-I
MUVATTUPUZHA**

Present:- Sri.Sajid Andathode Thechan, Judicial First Class Magistrate- I
Tuesday, 20th day of January, 2026/ 30th day of Pousha, 1947

CC No.888/2015

Complainant : State of Kerala-rep. By Sub Inspector of Police, Muvattupuzha in Crime No.2996/14 of Muvattupuzha P.S.
(By Sri. Jayaraj M.B., APP- Gr.II)

Accused : 1. Babu Thomas, age 32/15,
S/o Thomas, Azhakanparambil House, Thalayanadu Kara, Karikkodu Village, Thodupuzha Taluk, Idukki District.
(By Advocate Tony John Kalambattuparambil)

2. Sutheshkumar, age 32/15,
S/o Sukumaran, Thayyil House, Mudavoor Kara, Velloorkkunnam Village, now residing at rented house of Jibi, Nedumpeedikayil House, Vazhakkuzhy Bhagam, Mudavoor Kara, Velloorkkunnam Village.
(By Advocate Sherman A George)

Offence : U/s. 420 r/w 34 of IPC.

Plea : Not guilty

Finding : Not guilty

Sentence or Order : Both accused are acquitted u/s. 248(1) of Cr.PC.

DESCRIPTION OF THE ACCUSED

Sl. No.	Name of the Police Station and the crime No. of the	Name of the accused	Age	Father's Name	Occupation	Residence

	offence					
1.	Cr. No. 2996/2014 of Muvattupuzha Police Station.	Babu Thomas	32/15	Thomas	-	Azhakanparambil House, Thalayanadu Kara, Karikkodu Village, Thodupuzha Taluk, Idukki District.
2.	Cr. No. 2996/2014 of Muvattupuzha Police Station.	Sutheshkumar	32/15	Sukumaran	-	Thayyil House, Mudavoor Kara, Velloorkkunnam Village, now residing at rented house of Jibi, Nedumpeedikayil House, Vazhakkuzhy Bhagam, Mudavoor Kara, Velloorkkunnam Village.

DATES OF

Occurrence	Complaint	Appearance	Released on Bail	Comm.of trial	Commence ment of evidence	Close of trial	Sentence or Order	Explanatio n for delay
From 25.05.2014	31.08.2015	-14.09.2015	A2- 28.09.2015 A1- 23.08.2016	09.11.2015	02.12.2019	19.01.2026	20.01.2026	No delay

This case coming upon for hearing on today's proceedings, the court delivered the following:-

JUDGMENT

The case was taken on file on the basis of police report filed by Sub Inspector of Police, Muvattupuzha against the accused alleging offence punishable U/s. 420 r/w 34 of Indian Penal Code.

2. **The prosecution case, in brief, is as follows:-**The accused persons in furtherance of their common intention, deceived PW1 to PW7, PW11, PW12 and CW6 by giving promise to them that they would be given employment VISA to Malaysia if amount for the Visa was given and thereby induced them to deliver the amount and after receiving the amount, the accused hadn't given the Visa to them and also hadn't

returned their amount. Thus, the accused persons had committed the aforesaid offences.

3. The court took cognizance of the offence and issued process against the accused. On their appearance before the court, they were enlarged on bail. The accused are represented by a counsel of their own choice. The copies of the final report and other relevant prosecution records were supplied to them. Heard and charge was framed for the offences punishable U/s.420 r/w 34 of IPC. It was read over and explained to the accused to which they pleaded not guilty and claimed to be tried.

4. From the side of the prosecution, PW1 to PW14 witnesses were examined and Exts.P1 to P27 documents were marked. After closing the prosecution evidence, accused were questioned u/s.313(1)(b) of Cr.PC and they denied all the incriminating circumstances appearing in evidence against them. Thereafter, accused were called upon to enter their defence.

5. Heard both sides and perused the records.

6. The following points arise for consideration:-

1. Whether the accused persons in furtherance of their common intention, cheated PW1 to PW7, PW11, PW12 and CW6 and thereby committed the offence punishable u/s.420 of IPC.
2. Whether the accused persons acted in furtherance of their common intention.
3. If found guilty what is the order as to sentence and punishment?

7. **Point No.1 and 2:-** For the sake of convenience and to avoid repeated discussion of the same evidence, these points are considered together. The case of the prosecution, discerned from the evidence adduced

by the prosecution, was that both the accused colluded and deceived PW1 to PW4, PW7, PW11 and PW12 by assuring them that they will be given job visa to Malaysia on payment of money and after obtaining money from them, the accused persons cheated them by not giving the visa promised to them and also hadn't returned the amount received from them. The gist of the deposition of PW1 to PW4, PW7, PW11 and PW12 was that they were induced by the accused to deliver the amount as consideration for providing job visa to Malaysia and they had delivered the amount sought by the accused persons by way of cash and account transfer as per the instructions of the accused but after the receipt of the money from them, they were cheated by the accused.

8. The defence case put forth by the accused was that this is a false case foisted by PW1 to PW4, PW7, PW11 and PW12 after influencing the police and the accused totally denied the case of the prosecution. According to the accused, they hadn't made any promise that the witnesses will be given job visa to Malaysia. Learned counsel appearing on behalf of the accused also argued that even if the case of the prosecution is accepted and the transactions between the accused and the witnesses are believed to be true, still the accused persons cannot be found guilty for the offence punishable under Section 420 of the Indian Penal Code because the accused hadn't had any dishonest intention to cheat the witnesses.

9. Before analysing the fact in issue, it would be apposite to consider the question raised by the accused as to whether the transaction between the accused and the witnesses, if accepted to be true, constitute the offence punishable under Section 420 of the Indian Penal Code. Learned counsel

appearing on behalf of the accused argued that this is a case of civil nature involving the breach of promise. PW1, PW3 and PW4 had stated that they had entered into a written agreement with the accused persons evidencing the transactions between them and the accused. The said agreement stated by PW1 was tendered in evidence through PW1 and it was marked as Exhibit P1. Exhibit P1 document is seen as an agreement executed by the second accused in favour of PW1 to PW3 and Anish, in which the receipt of the amount by the accused was admitted and the first accused had also agreed to give the work visa to them within 30.09.2014. PW5 also stated during the cross-examination that there was a written agreement between him and the accused persons evidencing the transactions between them and he had instituted a civil case on the strength of the said written agreement. The only circumstance relied by the prosecution to show that the accused had the dishonest intention in not fulfilling the promise made by them was that the accused persons couldn't be contacted by the witnesses after the elapse of the time within which they had promised that the visa will be given. None of the witnesses stated that the accused had the dishonest intention to cheat them at the time of receiving the amount or at the time of making the promise. No investigation was conducted to ascertain whether the accused persons had the capacity to procure work visa to the witnesses as promised by them. The prosecution also hadn't had a case that the accused persons had the knowledge that they won't be able to procure the visa to the witnesses as promised by them within the time frame agreed by them. No material was collected by the Investigation Officer in order to ascertain whether the accused persons had engaged in the business of recruiting

people. No investigation was also conducted in order to ascertain whether there occurred any intervening unforeseen circumstances, after the accused had received money from the witnesses, which prevented the accused persons from fulfilling their promise of giving visa to the witnesses. At this juncture, it is important to refer to the observation of the Hon'ble Supreme Court in the State of Kerala v A Pareed Pillai & another (AIR 1973 SC 326) and it is as follows, '*To hold a person guilty of the offence of cheating, it has to be shown that his intention was dishonest at the time of making the promise. Such a dishonest intention cannot be inferred from the mere fact that he could not subsequently fulfil the promise*'. Here, apart from the vague allegations of the witnesses that they were cheated by the accused persons, there is no cogent material not even to probabalise their statement. Here, the prosecution hadn't had a case that the promise made by the accused to the witnesses was either false or the accused hadn't deliberately fulfilled their promise for making unlawful gain. It is obvious that procuring a job visa to a foreign country requires approval from different authorities and the chances of rejection of the application for the visa by the said authorities, cannot be ruled out. No one can be certain, at the time of applying for a job visa to a foreign country, that their application would be approved and they would be able to procure the job visa. So, there arises a reasonable doubt as to whether there occurred any intervening circumstances, which the accused couldn't have foreseen at the time of making the promise and receiving the amount from the witnesses, that incapacitated the accused from procuring the visa and as stated above, lack of investigation in this regard so as to ascertain what actually prevented the accused from procuring the visa, is

fatal to the case of the prosecution. Mere allegation that the accused persons couldn't be contacted by the witnesses after the elapse of the time within which they were promised that they would be given the visa, alone is not sufficient to conclude that the accused had the dishonest intention to not to give the visa to them. Furthermore, learned counsel appearing on behalf of the accused relied on the statement of PW11 to show that the accused hadn't had any dishonest intention to make unlawful gain not only at the time of making the promise and receiving the amount but at any point of time. Statement of PW11 relied by the accused was that PW11 stated during the examination in chief that when his uncle created problems at the house of the second accused, the second accused returned ₹60,000/- and also issued a cheque for ₹40,000/-. Learned counsel appearing on behalf of the accused emphasized that if the accused had any dishonest intention to make unlawful gain, they wouldn't have returned that amount and issued the cheque to PW11. Learned counsel appearing on behalf of the accused also submitted that if the accused had any dishonest intention to cheat the witnesses at the time of the transaction, the accused wouldn't have entered into a written agreement evidencing the said transactions and wouldn't have received the money through the bank account. Considering the entire facts and circumstances of the case, the said submission of the accused has force.

10. Therefore, on the evaluation of the entire evidence and on the basis of the above discussion, the prosecution has failed to prove the guilt of the accused beyond reasonable doubt. Hence, the points are answered in favour of the accused.

10. **Point No.3:-** In view of the discussion on point No.1 and 2, the accused found not guilty of the offences punishable u/s. 420 r/w 34 of IPC.

In the result, the accused are found not guilty of the offence punishable under sections u/s.420 r/w 34 of IPC and they are acquitted under section 248(1) of code of criminal procedure. Their bail bonds stand cancelled and they are set at liberty.

(Dictated to the C.A., data entered by her, corrected and pronounced by me in open Court on this the 20th day of January, 2026)

Sd/-

Judicial First Class Magistrate-I,
Muvattupuzha.

APPENDIX

Witnesses examined for the prosecution:-

PW1 (CW6) : Mahesh dated 02.12.2019
 PW2 (CW1) : Ajeesh dated 15.06.2023
 PW3 (CW2) : Aneesh P.A dated 19.10.2023
 PW4 (CW5) : Jith dated 29.01.2023
 PW5 (CW10) : Sudhakaran dated 08.08.2024.
 PW6 (CW9) : Vinu dated 05.09.2024
 PW7 (CW8) : Priyesh N.V. dated 01.10.2024.
 PW8 (CW11) : Murali T.G dated 01.10.2024.
 PW9 (CW12) : Assis P.M. dated 01.10.2024
 PW10 (CW13) : Unnikrishnan M.G dated 13.11.2024
 PW11 (CW7) : Nibin Mohan dated 16.12.2024
 PW12 (CW4) : Anoop A dated 16.12.2024
 PW13 (CW14) : Sameesh P.H. dated 27.02.2025
 PW14 (CW15) : Remesan Nair dated 20.03.2025
 Addl. Witness.

Exhibits Marked for the Prosecution:-

- Ext.P1 : Agreement proved through PW1 on 02.12.2019
- Ext.P2 : Bond for return of passport dated 16.04.2015 proved through PW1 on 02.12.2019.
- Ext.P3 : Counter foil dated 08.08.2014 proved through PW2 on 15.06.2023.
- Ext.P4 : Counter foil dated 02.08.2014 proved through PW2 on 15.06.2023.
- Ext.P5 : First Information Statement 27.11.2014 proved through PW2 on 15.06.2023.
- Ext.P6 series : Counter foils proved through PW2 on 15.06.2023
- Ext.P7 : Seizure Mahazar dated 29.11.2014 proved through PW5 on 08.08.2024.
- Ext.P8 : Seizure Mahazar dated 10.12.2014 proved through PW8 on 01.10.2024.
- Ext.P9 : Statement of account from 01.05.2014 to 10.12.2014 proved through PW8 on 01.10.2024.
- Ext.P10 : Account from 25.05.2014 to 13.12.2014 proved through PW10 on 13.04.2024.
- Ext.P11 : Blank cheque proved through PW11 on 16.12.2024.
- Ext.P12 : Counter foils dated 07.08.2014 and 11.08.2014 series (P12(a) proved through PW12 on 16.12.2024. and P12(b))
- Ext.P13 : First Information Report dated 27.11.2014 proved through PW13 on 27.02.2025.
- Ext.P14 : Arrest Memo of accused No.2 proved through PW13 on 27.02.2025.
- Ext.P15 : Search Memorandum dated 15.12.2014 proved through PW13 on 27.02.2025
- Ext.P16 : Search list dated 15.12.2014 proved through PW13 on 27.05.2025.

- Ext.P17 : Form 15 (passport) dated 15.12.2014 proved through PW13 on 27.05.2025.
- Ext.P18 : Address report dated 15.12.2014 proved through PW13 on 27.05.2025.
- Ext.P19 : Arrest Memo of accused No.1 dated 17.08.2015 proved through PW13 on 27.02.2025.
- Ext.P20 : Address report of Accused No.1 dated 17.08.2015 proved through PW13 on 27.02.2025.
- Ext.P21 : Seizure mahazar (counter foils) dated 03.02.2015 proved through PW12 on PW13 on 27.02.2025.
- Ext.P22 series : Counter foils dated 10.06.2014, 30.06.2014 and (Ext.P22 (a) to 01.08.2014 proved through PW13 on 27.02.2025. P22(c))
- Ext.P23 : Form 15 (counter foils) dated 03.02.2015 proved through PW13 on 27.02.2025.
- Ext.P24 : Seizure Mahazar (counter foils) dated 28.11.2014 proved through PW14 on 20.03.2025.
- Ext.P25 : Seizure mahazar dated 28.11.2014 proved through PW14 on 20.03.2025.
- Ext.P26 : Seizure Mahazar dated 28.11.2014 proved through PW14 on 20.03.2025.
- Ext.P27 : Form 15 dated 28.11.2014 proved through PW14 on 20.03.2025.

Material objects marked:- Nil

Witness Examined for the defence:- Nil

Exhibits Marked for the defence:- Nil

Sd/-

Judicial First Class Magistrate-I
Muvattupuzha.

|| True Copy ||

Judicial First Class Magistrate-I
Muvattupuzha.