

IN THE COURT OF JUDICIAL MAGISTRATE OF THE FIRST CLASS-I,
CHERTHALA

Present:-Smt.Sherin K George, Judicial Magistrate of the First Class-I
Dated this, the 31st day of March, 2026

C. C. No.216/2017

Complainant : State-represented by Sub Inspector of
Police, Cherthala police station in crime
No.2025/2016.
[By APP, Cherthala-I]

Accused : A1. Jayaram
A2. Rossy (discharged)
[By Adv. Sri. P Sudheer]

Offences : under sections 406 and 420 of IPC
Plea : Not guilty
Finding : Not guilty
Sentence/order : Accused No.1 is acquitted under section
248(1) of Cr.P.C. Accused No.2 has
already been discharged.

DESCRIPTION OF ACCUSED

Sl. No.	Name	Father's/ Husband's name	Occupation	Residence	Age
1	Jayaram	Sudhakaran	...	Chennanattuthara, Pattanakkad P O., Pattanakkad Panchayat Ward No.6.	49/ 2016
2	Rossy (discharged)	Jayaram	...	Chennanattuthara, Pattanakkad P O., Pattanakkad Panchayat Ward No.6.	48/ 2016

DATE OF:-

Occurrence	Complaint	Appearance	Released on bail	Commencement of trial	Close of trial	Sentence or order
26/09/2016	23/11/2016	25/09/2017	25/09/2017	30/12/2022	31/03/2026	31/03/2026
Service of copy of judgment or finding			Explanation for delay.			
....					

This case having been finally heard and this day the court delivered the following:

J U D G M E N T

1) The accused stands facing trial for the offences punishable under Sections **406 and 420 of IPC**, charge sheeted by the Sub Inspector of Police, Cherthala Police Station in crime No.2025/2016.

2) **The prosecution case in brief is as follows:-**The de facto complainant (PW1) was working as a lab technician at Aswathi Clinical Laboratory owned by the accused. During the course of such acquaintance, the accused allegedly borrowed an amount of **₹2,50,000/-** from PW1 and PW2 for a period of three months. The amount was allegedly paid in cash. Even after the stipulated period, the accused did not repay the amount despite repeated demands. Subsequently, the accused issued a cheque towards discharge of liability. When the cheque was presented for encashment, it was dishonoured on the ground that the account of the accused was closed. Hence, alleging dishonest misappropriation and cheating, the complaint was lodged and crime was registered.

3) Final report was filed and cognizance was taken. Copies were furnished to the accused under Section 207 Cr.P.C. Charge was framed for offences under Sections 406 and 420 IPC. The accused pleaded not guilty and claimed to be tried. Second accused was already discharged as per order in CMP 9579/19 11/4/22.

4) To prove the prosecution case, PW1, PW2, PW3 and PW6 were examined and Ext.P1 to P7 were marked. The accused denied incriminating circumstances under Section 313 Cr.P.C. and maintained innocence.

5) Points for Determination

1. Whether the accused committed criminal breach of trust by dishonestly misappropriating ₹2,50,000/- allegedly entrusted to him by PW1 and PW2?

2. Whether the accused cheated PW1 and PW2 by dishonestly inducing them to part with money and issuing a cheque knowing that the account was closed?

3. If so, whether the accused is guilty and liable to be punished?

6) **Points Nos.1 and 2:-**For the sake of convenience and to avoid repetition, these points are considered together. The prosecution case commenced when PW1, the de facto complainant, lodged Ext.P1 complaint before the police, based on which FIR was registered and investigation was conducted. The prosecution allegation is that the accused borrowed an amount of ₹2,50,000/- from PW1 and PW2 and

thereafter failed to return the same and issued a cheque which was dishonoured. I have carefully gone through the entire oral and documentary evidence on record.

7) The accused is alleged to have committed the offence punishable under Section 406 IPC. In order to attract the said offence, the prosecution has to prove that there was entrustment of property and that the accused dishonestly misappropriated or converted the same to his own use. The most crucial expression in Section 406 IPC is “entrustment”. A plain reading of Section 405 IPC shows that the gist of the offence is dishonest misappropriation of property entrusted to the accused.

8) PW1, the de facto complainant, deposed that she had paid ₹2,50,000/- to the accused and that despite repeated demands, the accused failed to repay the amount and later issued a cheque which was dishonoured. However, her evidence is not free from material contradictions and omissions. In her chief examination, PW1 stated that the transaction took place in the year 2001, whereas in cross-examination she stated that the amount was given in the year 2013. This contradiction goes to the root of the prosecution case and creates serious doubt regarding the very transaction. PW1 also admitted that material particulars such as the date of issuance of cheque and its presentation were not stated before the police. These omissions are material in nature. Further, PW1 expressed lack of memory regarding crucial dates and facts. It is also pertinent to note that PW1 has not identified the accused in court. Thus, her evidence is not wholly reliable.

9) PW2, husband of PW1, deposed in support of PW1. However, his evidence also suffers from serious infirmities. PW2 admitted that he does not know whether the cheque was presented before the bank or dishonoured and also stated that he is not aware whether any document was produced before police to prove dishonour. He further stated that his statement was not recorded by the police. PW2 also admitted that he does not remember the exact date on which repayment was demanded. His evidence is only corroborative in nature and does not inspire confidence. PW3 was examined as a witness to the transaction. PW3 deposed that she had seen PW2 handing over money to the accused. However, her evidence also lacks reliability. She admitted that the purpose of payment was told to her by PW2 and hence that portion of her evidence is hearsay.

10) PW3 further admitted that she did not see whether any staff witnessed the transaction and that she does not remember the details given before the police. Thus, her evidence is not sufficient to corroborate the prosecution case in material particulars. PW6 is only a formal witness who identified the signature of the investigating officer in various documents. His evidence is formal in nature and does not establish any ingredient of the offences alleged.

11) At this juncture, it is relevant to refer to the decision of the Hon'ble Supreme Court in *Madhavarao Jiwaji Rao Scindia v. Sambhajirao Chandrojirao Angre* [(1988) 1 SCC 692], wherein it was held that when the dispute is essentially of a civil nature, criminal proceedings should not be

allowed to continue. The distinction between civil liability and criminal liability must be borne in mind. In the present case, the materials on record indicate at best a civil dispute arising out of a money transaction. Much less, there is no satisfactory evidence to prove entrustment. The alleged transaction, even if accepted, is only a loan transaction. It is well settled that mere failure to repay money or breach of contract, however dishonest, does not constitute criminal breach of trust unless there is clear entrustment and dishonest misappropriation.

12) The accused is also alleged to have committed the offence punishable under Section 420 IPC. In order to establish the offence of cheating, the prosecution must prove that the accused had dishonest intention at the time of inducement and thereby induced the complainant to deliver property. It is well settled that the intention to cheat must exist from the very inception of the transaction. Subsequent failure to fulfil a promise or repay money will not by itself constitute cheating. In the decision of the Hon'ble Supreme Court in *Hridaya Ranjan Prasad Verma v. State of Bihar* [(2000) 4 SCC 168], it was held that the distinction between mere breach of contract and cheating depends upon the intention of the accused at the time of the transaction. If the intention to cheat is not established at the inception, the offence under Section 420 IPC is not made out. In the present case, there is absolutely no evidence to show that the accused had dishonest intention at the time of borrowing the amount. The evidence only shows that the accused allegedly failed to repay the amount and issued a cheque which was dishonoured. Such

circumstances, without more, are insufficient to attract Section 420 IPC.

13) Considering the evidence on record on the yardstick of probabilities, its intrinsic worth, and the inconsistencies and omissions in the testimony of material witnesses, I am of the view that the prosecution has failed to prove the essential ingredients of the offences under Sections 406 and 420 IPC. The prosecution has failed to establish entrustment, dishonest misappropriation or dishonest intention at inception.

14) **Point No.3**:-In the view of point Nos.1 to 2 this point does not arise for consideration. Hence, the accused No.1 is found not guilty for the offence punishable U/s.406 and 420 of IPC and he is to be acquitted for the said offences.

In the result:-

The accused No.1 is acquitted U/s.248(1) of Cr.P.C. for the offences punishable U/s.406 and 420 of IPC. Bail bond executed by the accused No.1 stands cancelled and the accused No.1 is set at liberty. Accused No.2 has already been discharged.

Directly dictation to Adalath AI and pronounced by me in open court on this the 31st day of March, 2026.

Sherin K George,
Judicial Magistrate of the First Class-I,
Cherthala.

APPENDIX**Witnesses for Prosecution:**

PW1 : Veena
PW2 : Gagarin
PW3 : Ambily
PW4 : Ramesan
PW5 : Prasanth
PW6 : Kunjumon

Exhibits for Prosecution :

P1 : First Information Statement marked through PW1
P2 : Cheque marked through PW2
P3 : First Information Report marked through PW6
P4 : Seizure mahazar marked through PW6
P5 : Arrest memo marked through PW6
P6 : Inspection memo marked through PW6
P7 : Check list marked through PW6

Defence witness : Nil

Defence exhibits : Nil

Sherin K George,
Judicial Magistrate of the First Class-I,
Cherthala.