IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE–I, MAVELIKARA

Present: Sri. JAPHINRAJ. J.B, Judicial First Class Magistrate – I, Mavelikara

Dated this the 31st day of March, 2026

CC. No. 356/2017

Complainant : State represented by the Sub Inspector of Police, Mavelikara, Police Station in Crime No. 328/2015
(Rep. by APP. Sri. Sanjai Jacob JFMC-I, Mavelikara)

Accused : A1. Rathi, Aged 43/17, W/o. Biju, Vrindavanam (Panakkal Thekkathil), Kandiyoor Muri, Mavelikkara Village.

A2. Radha Bhayi @ Radha Jayachandran, Aged 50/2017 W/o. Jayachandran, Radeyam, Umbarnadu Muri, Thekkekara Village.
(Rep. by Adv. R Manoj)

Offences : U/Ss. 406 and 420 of IPC.

Plea : Not guilty.

Finding : Not guilty.

Sentence/Order : The 2nd accused is acquitted under section 248(1) of Criminal Procedure Code for the offences punishable u/ss. 406 and 420 of IPC. The case against 1st accused is refiled as CC __ / __

DESCRIPTION OF THE ACCUSED

Sl. No.	Name	Husband's Name	Occupation	Residence	Age
1	Radha Bhayi @ Radha Jayachandran	Jayachandran		Radeyam, Umbarnadu Muri, Thekkekara Village.	50/2017

DATE OF:-

Offence	Complaint	Appearance	Release on bail	Commencement of trial	Close of Trial	Sentence or order
6.07.2011	06.03.2015	29.05.17	29.05.17	24.10.18	30.03.26	31.03.26

This case coming on this day for consideration, the court delivered the following:-

J U D G M E N T

The final report in this case has been filed by the Sub Inspector of Police Mavelikara Police Station against the accused in crime No. 328/2015 alleging the offences punishable u/ss. 406 and 420 of IPC.

2. **Prosecution case in brief is as follows**: **-** With the intention of deceiving PW4 and others, and thereby making unlawful gain while causing wrongful loss to PW4, the accused acted in concert on 6 July 2011. At that time, the first accused was functioning as President and the second accused as Board Member of the Kerala Grameena Vanitha Welfare Society, registered under No. A 72/2007. They persuaded PW1 to join a *chitty* scheme of ₹2,00,000, representing that by paying ₹5,000 in 40 installments, PW4 would receive ₹2,00,000 along with a bonus of ₹10,000 when the chitty matured. Believing this representation, PW4 joined the scheme and remitted ₹5,000 each for 35 instalments, directly depositing the amounts into the Society's account No. 31737356201 maintained at the State Bank of India, Mavelikkara Branch. However, despite receiving these payments, the accused failed to disburse either the chitty amount or the bonus as promised. Thus, the accused are alleged to have committed the aforementioned offences.

3. Upon receipt of the final report, this Court took cognizance of the offences and issued process against the accused. The second accused appeared pursuant to summons and was represented by a lawyer of her own choice. Charges for the offences under Sections 406 and 420 read with Section 34 of the Indian Penal Code were framed, read over, and explained to the second accused. She pleaded not guilty and claimed to be tried. The first accused was absconding, and the case against her was split up.

4. The prosecution has cited 8 witnesses, out of which CW1 and CW8 were examined as PW1 to PW7 respectively. Ext. P1 to P5 were marked from the side of prosecution. As the material witnesses did not support the prosecution case,. The accused was thereafter examined u/s. 313(1)(b) of Code of the Criminal Procedure, 1973. She denied

all incriminating circumstances which appeared in evidence against her. Hence, the defence was invited for presenting evidence. D1 was marked from the side of defence evidence.

5. The matter was considered for final decision after hearing the learned APP and the learned counsel who appeared for the accused. Perused the relevant records.

6. **The following points came up for determination: -**

1. Did the accused, in furtherance of their common intention, receive instalments of ₹5,000 each from PW4, deposit the same into the Society’s account, and thereafter dishonestly misappropriate or convert the said amounts to their own use, thereby committing the offence under Section 420 of the Indian Penal Code?
2. Did the accused, in furtherance of their common intention, fail to return or account for the chitty amount or bonus, thereby committing criminal breach of trust against PW4 and thereby committing the offence under Section 406 of the Indian Penal Code?
3. Sentence or order?

7. **Point No.1 and 2:** As per the prosecution allegation, on 6 July 2011, the accused, acting together as office-bearers of the Kerala Grameena Vanitha Welfare Society, induced PW4 and others to join a ₹2,00,000 chitty, collected ₹5,000 instalments, but failed to pay the promised amount or bonus, thereby cheating them. PW4 is the informant and one of the persons who suffered the loss. PW1 to PW3 are the other victims examined by the prosecution. PW1 to PW3 have given evidence regarding deposit of cash at the society and subsequent failure to repay the amount.

8. PW4 deposed that she joined a chitty of ₹2,00,000 conducted by the Kerala Grameena Vanitha Welfare Society, Kallumala Branch, after seeing an advertisement in *Malayala Manorama*. The chitty required monthly instalments of ₹5,000 for 40 months. She paid the amount through the SBI Mavelikkara Branch. She stated that she paid about 38

installments but did not receive any refund. When she went to collect the cheque, she found the office closed. She stated that Radha Bhai and another person had assured repayment, but they absconded. The complaint filed by PW4 was marked as Ext. P1.

9.PW1 deposed that during 2012, joined a chitty conducted by the Kallumala Vanitha Grameena Welfare Society. He stated that he joined in November 2012 and paid a total of ₹48,000 towards the chitty. He further deposed that he was issued a cheque for ₹46,000 by the agent who came to collect the instalments. When the cheque was presented at the bank, it was dishonoured for want of funds. Thereafter, he lodged a complaint with the police. PW1 further stated that one Kavitha had enrolled him in the chitty, that he had only limited acquaintance with her, and that the chitty was managed by Radha Bhai, whom he could identify.

10.PW2 deposed that during 2012–2013 he joined a chitty at the office of the Vanitha Welfare Society at Kallumala. He stated that the 2nd accused was the manager of the chitty, assisted by her sister 1st accused. He deposed that he paid about ₹50,000 in total towards the chitty and had also availed a loan of ₹20,000. He was entitled to receive the balance of ₹30,000, for which a cheque was issued to him. On presentation, the cheque was dishonoured for insufficiency of funds. When he visited the office, he found it closed.

11.PW3 deposed that he had paid a total of ₹1,38,000 into a chitty conducted by the Mahila Welfare Society, Kallumala, of which 1st accused was the Director. He stated that he had entrusted the money directly to the 1st accused, along with several other subscribers. Despite payments, he did not receive any return. He further deposed that thereafter he lodged a complaint seeking refund. He stated that the chitty was conducted on a monthly instalment of ₹5,000, which he paid for 37 months. He was informed that he would receive the amount after dividend distribution, but the office was closed and no refund was made.

The remaining witnesses examined by the prosecution are official witnesses, who deposed regarding their role in the investigation of the case and the production of bank statements.

12. The accused is alleged to have committed the offences punishable under Section 420 and 406 of IPC. **Section 420** of IPC provides as follows: *Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine*. **Section 405 of IPC** reads as follows: *Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes off that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".*

13.In order to attract the offence under Section 420 IPC, there must be dishonest inducement by the accused. As per Ext. P1, the inducement alleged is through newspaper advertisements inviting persons to join the chitty. In Ext. P1, twelve persons are arrayed as accused, as PW4 alleged that the offence was committed in conspiracy between the President and members of the Society. The second accused is alleged to be a board member and thus included as an accused. From the cross-examination of PW4, it is evident that no representation was made by the second accused to her. She admitted that she was unaware of the specific role played by the accused, that the chitty was registered, and that she had not verified any document showing the second accused to be a board member. PW4 stated that the chitty had several staff and that the second accused used to collect money and affix seals. When suggested that the second accused had no role in the transaction, she replied that he was an important board member. However, there is no evidence that the newspaper advertisements were issued by the second accused.

14.The incriminating part of PW1's evidence is that he joined the chitty and was not paid the promised amount. When he went to collect the cheque, he saw the second accused in the office. On further questioning, PW1 admitted that he was unaware of the purpose or role of the second accused in the office.

15.According to PW2, she was induced to join the chitty by one Sunitha. PW2 claimed that the chitty was managed by the second accused, but this is not supported by other witnesses. PW4 only alleged that the second accused was a board member, and PW1 did not state that the chitty was managed by him. Cross-examination of PW2 revealed that her evidence on this point is not credible. She did not disclose the source of her knowledge and admitted that she did not know whether the second accused was a partner or managing director of the chitty.

16.PW3 stated that he joined the chitty on the instruction of one Manager, Salim Kumar. He claimed that the second accused collected the first instalment and that he had seen the second accused several times at the chitty office. Apart from this, PW3 had no other interaction with the accused.

17.The discussion above shows that there is no evidence before this Court that any dishonest inducement was made by the second accused to any of the victims, or that she acted in furtherance of the common intention of those who did so. PW7 categorically deposed that he could not trace who collected money from PW1 to PW4. PW6 stated that the role of the second accused was confined to being a board member and occasionally collecting chitty instalments.

18.Mere status as a board member or occasional collection of instalments is insufficient to establish guilt under Section 420 IPC, which requires proof of dishonest inducement, or under Section 406 IPC, which requires proof of entrustment and dishonest misappropriation. Even the allegation that the second accused was a board member of the Society is disputed. No documentary evidence has been produced to prove her membership or official role. PW4 admitted that she had not verified any records showing the second accused as a board member. There is no material showing any dishonest intention on her part, nor evidence that she misappropriated the money or used the funds in violation of any direction. PW6, when asked whether he could identify who misappropriated the funds, answered that the money had been remitted into the bank.

19.It is well-settled that for an offence under Section 420 IPC, the prosecution must prove that the accused made a false representation with dishonest intention at the inception, thereby inducing the victim to part with property. Similarly, for an offence under Section 406 IPC, entrustment of property and subsequent dishonest misappropriation must be established. In the present case, neither element has been proved against the second accused. The evidence of PW1 to PW4 does not attribute any specific inducement or misappropriation to her. Their testimonies are vague, inconsistent, and fail to disclose her active participation.

20.The prosecution has also failed to establish common intention under Section 34 IPC. Mere presence in the office or alleged board membership, without proof of active participation in the fraudulent scheme, cannot fasten criminal liability. Suspicion, however strong, cannot take the place of proof. Thus, the prosecution has failed to establish the essential ingredients of the offences punishable under Sections 420 and 406 IPC against the second accused. In the absence of credible evidence of inducement, entrustment, or misappropriation, she cannot be held guilty.

These points are found against the accused.

21. **Point No. 3**: In the result, the 2nd accused is found not guilty of the offences punishable u/ss. 406 and 420 of IPC charged against her and she is acquitted u/s. 248(1) of

CrPC. The bail bonds of the 2nd accused stands cancelled, and she is set at liberty. The case against the 1st accused is refiled as CC __/ ___.

(Dictated to the Confidential Assistant directly, corrected and pronounced by me, in open court, on this the 31st day of March, 2026.)

Sd/-
Judicial Magistrate of the First Class-I

APPENDIX

Witnesses for prosecution

PW1	:	Thomas
PW2	:	Jose Babu
PW3	:	Ramesh Kumar
PW4	:	Geethakumar
PW5	:	Mohana Chandran
PW6	:	N Rajendran
PW7	:	Sreekumar
Pw8	:	SBT Manager

Exhibits for prosecution:			**proved through**
P1	:	Private Complaint	PW4
P2	:	FIR	PW5
P3	:	Report Name and Address	PW6
P4	:	Sectio Alteration Report	PW6
P5	:	Account Statement	PW7
P6	:	Account Statements of SBI	PW9
P6(a)	:	Attestation as per Evidence act	PW9
P6(b)	:	65(B) Certificate	PW9

Material Objects : Nil

Witness for Defence: Nil

Exhibits for defence:

D1:- “അവർ എനിക്ക് 26,000/- രൂപയുടെ തുക എഴുതിയ ചെക്ക് തന്നു .”

Sd/-
Judicial Magistrate of the First Class-I
Mavelikara