

## IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE, RAMANKARY

Present:-Sri. Arun Kumar P, Judicial First Class Magistrate

Dated, this day the 30<sup>th</sup> day of May, 2026**C.C.No. 307/2021**

Complainant : State-represented by the Sub Inspector of Police, Ramankary Police Station in crime no. 878/2019  
( By A P P- Ramankary)

Accused : A1. Akhilesh  
A2. Sharmin Gulaam Shah  
(By Adv. R Kishorkumar (for A1) )

Offence : U/ss. 420, 406 r/w 34 of Indian Penal Code.  
Plea : Not guilty

Finding : Not guilty.

Sentence or order : Accused No. 1 is acquitted u/s 248 (1) Cr.PC and is set at liberty. Case against accused no. 2 is refiled as CC 487/2021

**DESCRIPTION OF THE ACCUSED:-**

Sl. No	Accused	Father's name/Husband name	Occupation	Residence	Age
1	Ahkilesh	Ramachandran		Sreemangalam Veedu, Kallupurackal Bhagam, Velloor PO, Velloor Village, Kottayam Muncipal.	32/ 18
2	Sharmin Gulam Shah	D/o Gulaam Shah		Bauddha Seva Sangha, Patilwadi Colony, Govandi, Shivangi	30/ 18

					Nagar, Mumbai, Maharashtra – 400043 now @ A- 41, Chhatarpvr Extension, First Floor, near Nanda Hospital, Delhi – 110074.	
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**DATE OF:-**

Offence	Complaint	Appearance	Release on bail.	Commitment	Commencement of trial	Commencement of Evidence
21.12.2018 onwards		A1 17.01.2023	A1 17.01.2023	...	A1 19.08.2023	A1 04.02.2025
Close of trial	Sentence/ Order	Service of copy of Judgment or finding on account		Explanation of delay	Period of detention undergone during investigation, inquiry of trial for the purpose of section 428 Cr.PC	
29.05.2026	30.05.2026	....		....	....	

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

**J U D G M E N T**

1. This is a case charged by Sub Inspector of police, Ramankary in crime no. 878/2019 against the accused are alleging commission of offences punishable under sections 420, 406 r/w 34 of Indian Penal Code.
2. ***The prosecution case in brief as follows:-*** The accused persons in furtherance of their common intention to cheat the informant, had approached the informant and made a promise that they will secure a nursing job to the informant and thereby from 21.12.2018 onwards, the informant had

transferred an amount of ₹ 6,00,500/- ( Rupees Six lakshs and five hundred only) into the account of accused no. 1 and accused no. 2 and didn't kept his promise and not secured any job to the informant and cheated her. Hence, the accused are alleged to have committed the offenses under sections 420, 406 r/w 34 of Indian Penal Code.

3. On submission of charge sheet by the investigating officer, cognizance was taken for the offence punishable u/s. 420 and 406 r/w 34 of Indian Penal Code, 1860 against the accused persons and the case was taken on file as CC. 307/2021.
4. On issuance of summons first accused entered appearance and he was represented by a counsel. He was released on bail. Copies of relevant records of prosecution case were furnished to him and thereby mandate u/s. 207 of Cr.PC was duly complied with. Accused no. 1 was heard on charge. Charge framed for the offences punishable u/s. 420 and 406 r/w 34 of Indian Penal Code, 1860 and it was read over to the accused to which he pleaded not guilty and claimed to be tried. A2 is continuously absent and even after taking all procedural steps against her, she has not been traced so far.

5. From the side of prosecution, five witnesses were examined as PW1 to PW5 and five document were marked as Ext.P1 to P5 were also marked. After the closure of prosecution evidence the accused was examined u/s.313(1)(b) Cr.Pc. for all incriminating circumstances appeared against him to which he denied and further submitted that he was falsely implicated in the case.
6. Heard the learned Assistant Public Prosecutor and the learned counsel for the accused.

7. **The points that arise for determination are:-**

1. *Whether the accused had dishonestly misappropriated or disposed the money entrusted to them in violation of any direction of law prescribing the mode by which such trust is to be discharged and thereby committed offence punishable under section 406 r/w 34 IPC?*
2. *Whether the accused persons in furtherance of their common intention, had committed the offence of cheating and thereby alleged to have committed offence punishable u/s.420 r/w 34 of Indian Penal Code, 1860?*
3. *What is the order as to sentence, if any, to be passed against the accused?*

7. **Point No.1 and 2 :-** Inorder to avoid repetition, these points are considered together. The learned counsel for the accused had argued that the material witnesses didn't turned up and the witnesses PW1 and PW2 deposed not in consistent with the prosecution case and the officials also didn't supported. Even though their transactions were seen proved, but that will not be

sufficient to prove and attribute the offence of cheating and criminal breach of trust against the first accused by cogent and reliable evidence. Hence, the accused no. 1 is to be entitled to get a benefit of reasonable doubt.

8. Per contra, the learned APP had admitted that CW1- Swathy was abroad and her presence cannot be recovered. Even though the Investigating Officer was not examined by the officials of the bank and the other material witnesses had proved the case beyond reasonable doubt and even though the Investigating Officer didn't turn up, but that will not absolve the accused persons as the prosecution had by oral and documentary evidence proved the essential ingredients of the offence of criminal breach of trust and cheating and the intent of the first and second accused can be seen from these transactions and hence the accused persons are to be convicted for the offence punishable against him.
9. PW1- Sandeep deposed in examination-in-chief that CW1- Swathi Sali was his sister and he was acquainted with the facts of the case. From 2018 onwards CW1- Swathy was working as nurse at Delhi, wherein Akhilesh approached CW1- Swathy with a promise that he will arrange a job at Kuwait to CW1- Swathy and he assured that she had to attend an interview. CW1- Swathy had transferred ₹ 25,500/- (twenty-five thousand five hundred only.)

through mobile banking into the account of Akhilesh. Thereafter on 31.12.2018, ₹ 75,000/- (Rupees seventy five thousand only) was transferred. Thereafter on 14.01.2019, ₹. 1,00,000/- (Rupees One lakh only) was also transferred. Then on 23.01.2019, ₹ 1,00,000/- (Rupees One lakh only) was again transferred. Then on 29.01.2019 ₹ 1,00,000/- (Rupees One lakh only) again transferred. Then on 01.02.2019 ₹ 1,00,000/- (Rupees One lakh only) on 05.02.2019, ₹.5,00,000/- (Rupees Five Lakhs only) and thereby total amount of ₹ 5,50,000/- (Rupees Five Lakhs only) was transferred into the account of first accused Akhilesh. Thereafter, Akhilesh had introduced another person by name Sharmin and instructed to transfer ₹ 50,000/- (rupees fifty thousand only) into his account and thereby on 06.02.2019 ₹ 50,000/- (rupees fifty thousand only) was again transferred to the account of Sharmin. Thereafter, he had made promise that he will arrange job and CW1- Swathi went to airport. Thereafter, after four months period, CW1- Swathi was not able to go abroad and accused had not returned the amount and not secured the job and thereby cheated CW1- Swathi and she had identified the first accused.

10. During cross-examination, he deposed that he went to Delhi in the year 2018 December, but he couldn't remember the date. Then a suggestion was put to him that Sreekanth who was residing at Puthupally Kottayam had transferred

₹ 50,000/- (rupees fifty thousand only) on 31.12.2018 and ₹ 50,000/- (rupees fifty thousand only) on 11.01.2019 and ₹ 1,50,000/- on 04.01.2019 into the account of CW1- Swathy to which he answered that he doesn't know. He then admitted that his sister is having account at Canara Bank and the amount which were transferred into the account of accused was not through Canara Bank. He admitted that he transferred the amount as told by CW1- Swathy. He then admitted that according to him, CW1- Swathy had transferred an amount of ₹ 5,50,500/- (rupees five hundred fifty thousand and five hundred only) into the account of the first accused. Then he was put a question that apart from that ₹ 2.5 lakh were also transferred by CW1- Swathy into the account of first accused to which he answered that he doesn't know the same. Then another suggestion was put to him that the first accused is having no acquaintance with the second accused to which he denied the same. Then an omission was put to him that whether he had given statement to police that he was also present there when the accused had interacted with CW1- Swathy to which he answered that he had given such a statement. Then another suggestion was put to him that his sister had functioned as an agent through a travel agency and there were 10 to 15 nurses who were taken therein to which he denied the same. He further deposed that CW1- Swathy got acquaintance with them when she reached therein. Another suggestion was

also put to him that, CW1- Swathi had transferred the amount of those 15 nurses which he denied the same. Then another suggestion was also put to him that while CW1- Swathy was residing with other nurses and his approach towards one of them was not good and unbecoming and they told the same to the first accused and also to the husband of CW1- Swathy and due to that enmity she has lodged a false complaint against the first accused, to which he denied the same. Then another suggestion was put to him that whether he knows that CW1- Swathy had lodged a crime at Ernakulam police station to which he entered, that he only knows the details of crime registered at Ramankari police station.

11. Hence from his evidence it is seen that even though he deposed that he was present when the first accused interacted with CW1- Swathy, but regarding the transactions done by CW1- Swathy, he deposed that he does not know. He also admitted that there were fifteen other nurses who were also associated with CW1- Swathy. Hence, his version is also not seen as believable as if it doesn't prove the factum of breach of trust and also the element of cheating and is not helpful to prosecution.

12. PW2- Lekha Sali deposed in examination-in-chief that CW1- Swathy was her daughter and her son had transferred the amount. She further deposed that

first accused had approached CW1- Swathy with a promise that he will secure job at Kuwait and ₹ 6,00,500/- was transferred to the account of first accused. But later the amount was also lost and she didn't receive any job and she identified first accused.

13. During cross-examination she deposed that when the amount was transferred, she was also present there. Then she deposed that when the amount was transferred at Delhi, she was in Kerala.

14. Hence from her evidence it is seen that she had only indirect knowledge about the transaction between CW1- Swathy and PW1-Sandeep and her statement is inconsistent within her own deposition that she initially deposed that she was present when the amount were transferred, then she retracted and deposed that when the amount was transferred at Delhi, she was in Kerala. Hence, her evidence doesn't corroborate the version of PW1 and doesn't assist the prosecution.

15. PW3- Shinu deposed in examination-in-chief that while he was working as Operation Head at Kottayam Branch Access Bank, he had issued Exhibit P1 account statement and Exhibit P2 certificate with regard to the account statement of Akhilesh MR.

16. Even though he was not cross examined, but from his evidence only it can be seen that the first accused had maintained an account in Axis Bank, Kottayam branch. That alone will not incriminate him with the offences alleged against him.
17. PW4- Deepu deposed in examination in chief that while he was working as Branch Manager at Canara Bank, as per the request of the Investigating Officer, he had issued the account statement, application form, Voter ID and Aadhar card of CW1- Swathy. The account statement was with respect to the period from 21.12.2018 to 06.02.2019 and he identified Exhibit P3 letter which was issued by him to the Investigating Officer.
18. During cross-examination, he admitted that from Exhibit P3 letter, it cannot be seen that it was pertaining to which account and which account statement was issued by him and he admitted that the Aadhar card and the voter ID were photocopies.
19. Hence from his evidence it is seen that even though he had issued Exhibit P3 letter, but he also admitted that it doesn't show which account it was mentioning therein and hence his evidence also will not assist and he also admitted that the documents produced were all photocopies and hence they

cannot be admitted in evidence without laying foundation for receiving secondary evidence.

20. PW5- Rajesh deposed in examination-in-chief that while he was working as nodel officer at Vodafone during 2019, he had issued CAF with respect to the number 9072077960. He further deposed that the said number was in the name of one Swathi and he had issued Exhibit P4 certificate and its application form.
21. During cross examination he admitted that Exhibit P4 was digitally encrypted one and in Exhibit P4 there was no digital signature of the representative of Vodafone and also the applicant. Then a suggestion was put to him that from Exhibit P4 document it cannot be seen that the application was submitted by CW1- Swathy to which he answered that he had verified the address of CW1- Swathy.
22. Hence from his evidence also it is seen that CW1- Swathy was using that particular phone number. PW5- Rajesh had admitted that from the document Exhibit P4 it cannot be seen that the customer CW1- Swathy had put signature in application. Even if it is taken into account Exhibit P4 certificate and it is seen that the particular number belongs to CW1, but that alone will

not be sufficient to prove the alleged misappropriation and the cheating of the accused upon CW1. Hence his evidence also not assisted persecution.

**23. Honourable Apex court in Arshad Neyaz Khan Vs.State of Jharkhand**

reported in **AIR 2025 SC4620**, the Hon'ble Apex Court held that, *for offence under Section 420 of Indian Penal Code, cheating requires fraudulent intention from the beginning and for the offence of criminal breach of trust, it requires lawful entrustment followed by dishonest misappropriation and both of these cannot coexist on same facts as they are antithetical. The complaint alleging both offences simultaneously is unsustainable.*

24. Here, the prosecution alleges both criminal breach of trust and cheating on the same facts and based on the Apex Court's decision, both cannot co-exist and hence the offence is not unsustainable. Moreover, CW1- Swathy was not examined and the Investigating Officer also did not turn up and the evidence of PW1- Sandeep, he didn't depose the transactions of CW1- Swathy and first accused fully. PW2- Lekha Sali who is the mother of PW1 and CW1- Swathy had only hearsay knowledge about the incident and the other witnesses were the bank officials, their evidence will not assist and also PW5- Rajesh who was Vodafone operator, his evidence also will not assist and so the prosecution failed to prove the essential ingredient of offences

alleged against the accused by cogent and reliable evidence and so the first accused is entitled to get the benefit of reasonable doubt and the offences cannot be attributed towards accused and as per the decision of Hon'ble Apex Court in Arshad Neyaz (cited supra) section 406 and 420 IPC cannot coexist in one fact. Hence these points are found against the prosecution.

25. **Point No.3:-**From point no.1 and 2 , it is found that the first accused had not committed the offences alleged against him and hence he is not found guilty of offence punishable u/s. 420, 406 r/w 34 of Indian Penal Code, 1860 alleged against them. Hence, he is acquitted for the aforesaid offence u/s.248 (1) of Cr.PC. The bail bond of accused is stands cancelled and he is set at liberty. Case against accused no. 2 is refiled as CC 487/2021.

Dictated to the Confidential Assistant transcribed by her, corrected and pronounced by me in open court on this the 30<sup>th</sup> day of May, 2026

sd/-  
Judicial first Class Magistrate

## **APPENDIX**

### **WITNESSES FOR PROSECUTION:-**

- PW1. Sandeep
- PW2. Lekha Sali
- PW3. Sheenu Scaria, Bank Manager, Axis bank
- PW4. Deepu, Bank Manager, Canara Bank
- PW5. Rajesh

**EXHIBITS FOR PROSECUTION:-**

- P1. Bank Statement from Axis Bank for the period from 21.12.2018 – 05.02.2019) proved through PW3 on 07.10.2025.
- P2. Certificate under the Bankers Book Evidence Act from Axis Bank dated 28.10.2019 proved through PW3 on 07.10.2025.
- P3. Statement of Canara Bank for the period from 21.12.2018 till 06.02.2019 proved through PW4 on 27.11.2025.
- P4. Prepared customer application form of CW1- Swathy issued from Vodafone idea limited proved through PW 5 on 17.04.2026.
- P5. Certificate under section 2 (O) of the IT Act proved through PW5 on 17.04.2026.

**WITNESSES FOR DEFENCE:-Nil**

**EXHIBITS FOR DEFENCE:- Nil**

**MATERIAL OBJECT:- Nil**

sd/-  
Judicial First Class Magistrate