

**IN THE COURT OF THE JUDICIAL MAGISTRATE OF THE FIRST
CLASS, KUNNAMANGALAM**

Present :- Smt. Athira. M

Judicial Magistrate of the Ist Class

Dated this the 30th Day of May, 2026

CC 115/2019

Complainant	State represented by the Sub Inspector of Police, Mavoor Police Station in Cr. No.109/15 (Rep. by Smt. Sinya K A.P.P. Gr. II)
Accused	Noufal C T, S/o Koyamutty Aged 28/16, Perumattathodi, Cheruvadi, Mukkom Kozhikode (Adv. T P Jayakumar)
Offence	U/s. 406 , 420 of IPC
Plea	Not guilty
Finding	Not guilty
Sentence/Order	Accused is acquitted u/s 248(1)of Cr PC for the offence punishable u/s 406, 420 of IPC

DESCRIPTION OF THE ACCUSED

Sl. No.	Name and Rank	Father's name	Occupation	Residence	Age
1	Noufal C T	Koyamutty	--	Mukkom	28/16

Date of :-

Offence		Complaint		Apprehension		Released on Bail	
20-06-14		18-03-15		05-04-19		06-04-19	
Commence ment of trial	Commence ment of evidence	Close of trial		Sentence/ Order	Period of detention undergone during investigation, inquiry or trial, for the purpose of		

				Sec. 428 Cr.P.C.
14-06-19	10-01-23	19-05-26	30-06-26	NIL

This case having heard finally, this Court on 30-06-26 delivered the following: -

J U D G M E N T

This case is taken on file upon a final report filed by the Mavoor Police Station in Crime No. 109/15 alleging commission of the offences punishable under sections 406, 420 of the Indian Penal Code, 1860 (hereinafter referred to as the IPC).

2. The prosecution case in brief are as follows: - On 20.06.2014, the defacto complainant, being affected by illness, entrusted his vehicle bearing Reg No. KL 10 X 4403, Swaraj Mazda Lorry to the accused from his house at Parammal, Mavoor on assurance that the accused would entrust him the income arrived out of the said vehicle. The accused obtained the said vehicle along with the copies of the documents from the defacto complainant by altering the registration number of the vehicle, with dishonest intention and to attain wrongful gain deceived the defacto complaint by misusing the vehicle for his own needs by not returning the vehicle and the income earned out of it inspite of repeated demands from the defacto complainant. Therefore, the accused is said to have committed the offences punishable under sections 406, 420 of IPC

3. The accused was absconding. Absconding charge was filed against the accused and non -bailable warrant was issued against him. Thereafter, the accused surrendered and the case was refiled from LP No. 120/17 as CC No 115/19. The accused was enlarged on bail on 06-04-19.

4. Upon filing the charge sheet, the case was taken on file as CC 115/19 and summons was issued to the accused. The accused was represented through

his counsel. On appearance of the accused, copies of the charge sheet and relevant documents were given to the accused under section 207 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the Cr P C). Thereafter, the learned APP and the counsel for the accused were heard under section 239 of Cr P C. On hearing both sides and upon perusal of the records, the court was of the opinion that there are sufficient grounds to presume that the accused had committed the said offences. Hence charge was framed against the accused for the offences punishable under sections 406, 420 of the IPC and the same was read over and explained to him to which he pleaded not guilty and claimed to be tried.

5. From the side of the prosecution, PW1 to PW10 were examined and Exts. P1 to P9 were marked. After the examination of prosecution witnesses, the accused was questioned under section 313(1)(b) of the Code of Criminal Procedure, 1973 (hereinafter referred to as the Cr P C) for enabling him to explain the circumstances appearing in evidence against them. He denied all the incriminating circumstances against him and maintained to be innocent. Thereafter the accused was called upon to enter his defence. No oral or documentary evidence was adduced from the side of the accused.

6. Heard both sides and perused the records.

7. From the available materials of record, the points for determination are as follows:

1. Whether the accused dishonestly misappropriated or converted into his personal use the vehicle entrusted in his dominion by the defacto complainant or violated any legal contract thereby committing the offence punishable under section 406 of the IPC ?

2. Whether the accused with dishonest or fraudulent intent induce the defacto complainant to deliver his vehicle so as to attain any financial gain thereby committing the offence punishable under section 420 of the IPC?

3. What shall be the proper sentence if the is found guilty of the above mentioned offences?

8. Point Nos: 1 and 2 :- For the sake of brevity and convenience and as these points are interconnected, point nos. 1 and 2 shall be discussed together. The prosecution case is that the accused approached the defacto complainant and induced him to deliver his vehicle on the assurance that he shall return the income fetched out of the same and deceived him without returning the vehicle, the documents as well as the earnings. The defacto complainant was examined as PW1. He deposed that he is previously acquainted with the accused. He is a lorry driver. He was bed-ridden in the year 2014 on account of stroke. He stated that during that time, he owned a Swaraj Mazda Tipper Lorry bearing Reg No. KL 10 X 4403. The accused approached him by stating that he would take the said vehicle on rental basis and that he would hand over to him the monthly income attained out of the same, so as per the oral terms, the vehicle was entrusted to him in the presence of CW2, on 20.06.2014 from his house. After one month of handing over the said vehicle, he asked the accused to return the vehicle inspection by the executive officer. The accused did not return the vehicle. Thereafter, in December 2014, he then again demanded the vehicle from the accused for repairing the break even then he did not return the vehicle. Then he along with CW2 filed a complaint before the CI of the Medical College Police Station. The accused was called to the police station and from there, the accused agreed to bring the vehicle to the Kovoov ground for inspecting the break. The accused also signed from the police station. In spite of that, the accused did not bring the vehicle on the said day. Then upon investigation, he got to know that the accused had concealed the said vehicle at his place named Theriri paramb. The next day when he went to the said place and inspected, he did not find his vehicle. Then he got to know that the accused is using the said vehicle for the illegal transportation of the river sand. He got to know that the accused with a fraudulent intent to attain wrongful gain had deceived him and thereby

attained wrongful gain. The terms of the oral agreement were not complied by the accused. He incurred a loss of Rs. 4,00,000/. On the said issue, he filed a private complaint and identified the same as Ext. P1. He also identified the accused.

9. On his cross-examination, he deposed that his contention is not that he did not receive the profit and he had not given the vehicle for rent. There is no written agreement between them. The terms were stated in the presence of CW2, Abdul Khader. He directly spoke to the accused regarding the same. In his complaint, it is seen stated that he used to give the vehicle for rental basis. He deposed that he has nothing to testify if it is seen in Ext. P1 that he asked the accused to run his vehicle. He deposed that he had given a complaint before the Mavoor police station. He was not showed the complaints filed by him in the Mavoor and the Medical College police stations. He had not produced the document where the accused signed before the CI of the Medical College Police Station. He does not recollect the crime details of the cases in which the accused used his vehicle. He had not received any papers or documents from any Court or police station stating that his vehicle was involved in any offences. There are no documents to prove any such transactions. He is not aware as to whether the property Theriri paramb is in the name of the accused. He had not received any amount when he gave the vehicle to the accused. His neighbours had not witnessed him handing over the vehicle to the accused. CW2 is not indebted to him. The documents relating to break is with him. The same is not produced before this Court.

10. PW 2 deposed that PW1 is his friend. He deposed that the accused is his neighbour and PW1 on 20.06.2014 handed over his swaraj Mazda lorry bearing Reg No. KL 10 X 4403 from his house to the accused on assurance that he would entrust the profits or earning out of the said vehicle. PW1, himself and the accused were alone present at that time. Then PW1 called him and said to him that he is not receiving any money.

The accused did not bring the vehicle when PW1 demanded for payment of the Welfare Fund and on 30.12.2014 for inspecting break. He deposed in same parlance with PW1 pertaining to the aspect of reporting to the CI. He understood that the accused with an intent to cause wrongful loss to PW1 deceived him. He identified the accused. On his cross-examination, he deposed that he is aware of the said transaction and he and PW1 had several times contacted the accused but did not get him. He called the accused frequently as he also was involved in the incident. The crux of this case is financial transaction. There are no documents pertaining to the same and the accused and PW1 had signed from the police station but he had not later seen that document. He has seen the accused assuring the defacto complainant by means of oral terms. He was present when the accused and PW1 spoke about the same. He had not seen the entrustment based on the transaction.

11. PW3 deposed that he witnessed the seizure of the RC of the lorry bearing Reg No. KL 10 X 4033 and he is an attesting witness to the said seizure mahazar. He identified Ext. P2. PW4 also deposed in tune with PW3 with respect to Ext. P2. PW 5 deposed that he registered the FIR on the basis of the private complaint forwarded by this Court and he identified Ext. P3, FIR. PW 6 deposed that he is not aware of PW1 and is also not aware of anything pertaining to this case. He was declared hostile at the instance of the learned APP. The relevant portion of his 161 statement was marked as Ext. P4.

12. PW 7 is the SI of the Mukkom police station. He investigated a case pertaining to the illegal transportation of river sand in the vehicle bearing Reg No. KL 10 Z. He understood that the registration number of the said vehicle was forged. The same vehicle with the said registration number was involved in Cr No. 420/13 of the Elathur police station. He then deposed that on investigation, he found that the engine number and

the chasis number of the said vehicle belongs to the registration number KL 10 X 4403.

13. PW8 deposed that he is not aware of anything pertaining to this case. He was declared hostile at the instance of the learned APP. The relevant portion of his 161 statement was marked as Ext. P5. He is not aware of the details of the vehicle of PW1. He stated to the Mukkom police also that he is not aware of the details of the vehicle. The police asked him regarding the vehicle bearing Reg No. KL 10 X 4403. He does not usually remember the registration number of all vehicles. He deposed that police enquired him but he is not aware as to anything pertaining to this case.

14. PW9 is the SI of the Mavoor police station. He deposed that he issued 41 A CrPC notice to the accused and as the accused was not traced out, he filed a report stating absconding. He could not trace out the accused upon his investigation. PW 10 is the SI of the Mavoor police station. He deposed that he conducted further investigation into this case and recorded the statements of the witnesses. He then prepared the seizure mahazar pertaining to the seizure of the RC of the vehicle involved in this case and identified Ext. P2. He submitted form no. 15 which is Ext.P6. He also identified the RC which is Ext. P7. He also obtained the certified copy of the FIR in Cr. No.156/15 which is Ext.P8 and the certified copy of the seizure mahazar in in Cr. No.156/15 which is Ext.P9. Upon completion of the investigation, he submitted the final report before this Court. On his cross-examination, he deposed that there are no documents or agreement pertaining to the vehicle transaction between the accused and PW1. The original documents of the said lorry were handed over to him by PW1. He deposed that he is not aware as to whether the original documents of the said vehicle were in the possession of PW1 at the time of filing the complaint. The case of PW1 is that he did not receive the earning and the vehicle was not returned. In his investigation, he had not ascertained that PW1 incurred any wrongful loss either as per any documents or as per his

statement. PW1 had not given him any statement that the accused attained a wrongful gain and he incurred a wrongful loss. He had not produced the judgment in the Mukkom crime. The case in the same is under section 379 of IPC and offence under the KPRB Act. There is no scene mahazar prepared in this case. He testified that he does not recollect as to from the house of the accused or from his possession, the said vehicle was seized.

15. The defacto complainant, PW1, deposed that the accused approached him by stating that he would take his vehicle on rental basis and that he would hand over to him the monthly income attained out of the same, so as per the oral terms, the vehicle was entrusted to him in the presence of CW2, on 20.06.2014 from his house. After one month of handing over the said vehicle, he asked the accused to return the vehicle for showing it to the executive officer. The accused did not bring back the vehicle. Thereafter, in December 2014, he then again demanded the vehicle from the accused for repairing the break even then he did not return the vehicle. Then he along with CW2 filed a complaint before the CI of the Medical College Police Station. . The accused was called to the police station and from there, the accused agreed to bring the vehicle to the Kovoov ground for checking the break by signing the same from the police station. In spite of that, the accused did not bring the vehicle. His case is that he entrusted his vehicle to the accused on rental basis, however there are no documents or written agreement to show that he had so entrusted his vehicle to the accused. Then he stated that he filed a complaint before the Medical College Police Station, and the accused had signed from the police station stating that he would bring the said vehicle but such a complaint or its receipt is also not seen produced in the Court. He also deposed that he got to know that the accused is using the said vehicle for the illegal transportation of the river sand. He got to know that the accused with a fraudulent intent to attain wrongful gain had deceived him and thereby attained a wrongful gain. However, he admitted in his cross-

examination that he did not face any legal actions or did not get any summons or notice as the RC owner of the said vehicle. He is not aware as to whether the property Theriri paramb is in the name of the accused. Moreover, while he was cross-examined, he deposed that his contention is not that he did not receive the profit and he had not given the vehicle for rent and his case is that the documents were also given to the accused at the time of handing over the vehicle but he subsequently testified that the documents were retained by him, the same is also not produced hence his testimony is not in consonance with the FIS. It is a mutually inconsistent and contradictory. The Investigating officer also deposed that he is not aware as to if the documents were retained by PW1. PW1 deposed that he had given a complaint before the Mavoor police station and he was not shown the complaint given by him at the Mavoor and the Medical College police stations in Court. Those complaints are not produced in the Court. To substantiate that he incurred a wrongful loss of Rs. 4,00,000/- and the accused attained a wrongful gain also there is nothing on record. There is also no evidence to show how much financial gain is acquired by the accused.

16. PW 2 claims that he is aware of the transaction between PW1 and the accused and deposed in same parlance with PW1. On his cross-examination, he deposed that the crux of this case is financial transaction between PW1 and the accused but he had not seen the defacto complainant handing over the vehicle and the accused receiving it. He had not witnessed any financial transactions also. There is admittedly no evidence to show that any financial transaction took place and the accused was entrusted with the vehicle. PW 6 deposed that he is not acquainted with PW1 and is also not aware of anything pertaining to this case. He was declared hostile at the instance of the learned APP. The relevant portion of his 161 statement was marked as Ext. P4 but the same is not proved through the Investigating officer hence it is not admissible. PW 7 is the SI of the

Mukkom police station. He investigated a case pertaining to the illegal transportation of river sand in the vehicle bearing Reg No. KL 10 Z 1481. He understood that the registration number of the said vehicle was forged. He then deposed that on investigation, he found that the engine number and the chasis number of the said vehicle belongs to the registration number KL 10 X 4403. It has not come out in evidence that accused committed those offences, and further it is stated that the registration number is forged for which no action is taken against the accused and he is also not charged with the said offence.

17. PW 8 also deposed that he is not aware of anything pertaining to this case. He was declared hostile at the instance of the learned APP. The relevant portion of his 161 statement was marked as Ext. P5 but the same is also not proved through the investigating officer and hence cannot be relied upon. He deposed that he is not aware of the details of the vehicle of PW1. He stated to the Mukkom police also that he is not aware of the details of the vehicle. The police asked regarding the vehicle KL 10 X 4403. He deposed that police enquired him but he is not aware as to anything pertaining to this case which is contrary to his statement given to the police under section 161 of the CrPC. PW9 on his cross-examination, deposed that there are no documents or agreement pertaining to the vehicle between the accused and PW1. The original documents of the said lorry was handed over to him by PW1. The case of PW1 is that he did not receive the income and the vehicle was not returned. In his investigation, he had not ascertained that PW1 incurred any wrongful loss either as per any documents or as per his statement. PW1 had not given him any statement that the accused attained a wrongful gain and he incurred a wrongful loss. He testified that he does not recollect as to from the house of the accused or from his possession, the said vehicle was seized. The investigating officer himself has no case that the said vehicle was seized from the accused or from his property.

18. In order to attract the offence punishable under section 406 of the IPC, the prosecution must establish that the accused was entrusted with the vehicle of PW 1 and the same was dishonestly misappropriated and converted to his own use by him and thereby committed criminal breach of trust. There is nothing on record to show that the same was entrusted to the accused and he misappropriated it. It is also not stated as to how he misappropriated the same. The entrustment of the vehicle to the accused is also not established. Therefore, the prosecution is not successful in establishing that the accused was entrusted with the vehicle as alleged and he misappropriated the same without returning it back to PW1. Hence, the ingredients of section 406 of the IPC are not attracted against the accused. With respect to the offence punishable under section 420 of the IPC, the prosecution must bring out that there was a dishonest or fraudulent intention to deceive the defacto complainant and the same was present from the very inception. **In Vijay Kumar Ghai and Others v. State of West Bengal and Others, 2022 KHC 6328 and Delhi Race Club Ltd. v. State of Uttar Pradesh, 2024 HKC OnLine 6452**, the Apex Court has held that in order to attract the offences punishable under sections 406 and 420 of IPC, the dishonest intention must be established from the very inception and the act of the accused must have caused wrongful loss to the defacto complainant. Further, in **Vijayan v. State of Kerala, 2023 (4) KLT 617**, the Hon'ble High Court of Kerala has held that mere breach of contract does not result in cheating as it must be established that the accused had mens rea at the inception of the contract and furthermore, to hold the person guilty under section 420 IPC, the evidence must be adduced beyond reasonable doubt. In the case on hand, the defacto complainant had not produced any documents to show entrustment, there is no written agreement to the effect of entrustment of the vehicle, hence there is nothing on record to show that the accused had attained a wrongful gain or PW1 sustained a wrongful loss.

19. On an analysis of the entire evidence on record and having regard to the above-mentioned factors, nothing was brought about by the

prosecution to show that the accused committed the offences charged against them. There are also major contradictions that strike the root of the prosecution case. When there are major contradictions that strike the root of the prosecution case, the accused is entitled to benefit of doubt as the principle of criminal jurisprudence is that the guilt of the accused must be proved beyond reasonable doubt. Thus, it is not safe to conclude that the accused has committed the above-mentioned offences. In the light of the above findings, I am of the view that the prosecution has failed to establish the involvement of the accused in the above-mentioned offences and thereby, the accused is found not guilty of the offences punishable under sections 406, 420 IPC. Therefore, the points are answered accordingly in favour of the accused.

20. **Point No. 3** : In view of the findings in point nos. 1 and 2, this point does not arise for consideration.

In the result, the accused is found not guilty of the offences punishable under sections 406, 420 IPC. Hence, he is acquitted of the offence under sections 406, 420 IPC as per section 248(1) of Cr.PC and is set at liberty. The bail bond of the accused stands cancelled.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected by me and pronounced in open court, this the 30th Day of May 2026)

Judicial First Class Magistrate
Kunnamangalam

APPENDIX

Witnesses for the prosecution:-

PW1	Abdul Majeed (CW1)
PW2	Abdul Ghader (CW2)
PW3	Moosakutty (CW 6)
PW4	Sunil Kumar (CW 5)

PW5 Saseendran (CW 8)
 PW6 Nisamudheen T P (CW 3)
 PW7 Shambunath (CW4)
 PW8 Assankutty (CW 7)
 PW9 Saseendran Chalil (CW10)
 PW10 N Subair (CW 11)

Exhibits for prosecution

P1 Complaint dated 13-03-15 proved through PW1Abdul Majeed on 10-01-23
 P2 Seizure Mahasar dated 09-05-16 proved through PW3 Moosakutty on on 03-10-26
 P3 FIR in Mavoor Cr. 109/15 proved through PW5 Saseendran on 29-04-25
 P4 Portion in 161 statement of PW6 proved through PW6 Nisamudheen T P on 29-04-25
 P5 Portion in 161 statement of PW8 proved through PW8 Assankutty on 17-06-25
 P6 Property List proved through PW10 N Subair on 23-02-26
 P7 RC particulars of KL 10 X 4403 proved through PW10 N Subair on 23-02-26
 P8 Certified Copy of FIR of Mukkom Cr. 156/15 proved through PW10 N Subair on 23-02-26
 P9 Certified Copy of Seizure Mahasar dated 08-04-15 in Mukkom Cr.156/15 proved through PW9 Saseendran Chalil on 23-02-26

Witnesses & exhibits for defence : Nil.

Material objects marked : Nil

Judl. Magistrate of the First Class
 Kunnamangalam

