IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE-I, NADAPURAM.

Present:- Smt.Amrutha Aravind
Judicial First Class Magistrate-I, Nadapuram.

Dated, this the 29th day of April, 2026

<u>CC.975/2017</u>

Complainant	:	State, Rep.by the Sub Inspector of Police, Kuttiady Police Station (Cr.No.896/2016) (Rep.By P.C.Jawad & Lekha.K.V Assistant Public Prosecutor) v.
Accused	:	Shamsu.G.P, S/o.Usman, aged 35/16, Gurikkal Parambath(H), Vattoli(PO). (Rep.By Adv. Fareed Kallery)
Offences	:	U/ss. 406 and 420 of IPC.
Plea	:	Not Guilty.
Finding	:	Not guilty of offence punishable U/s.406 IPC and found guilty of offence punishable U/s.420 of IPC.
Sentence or Order	:	1. The accused is found guilty for the offence punishable u/s.420 IPC and he is convicted u/s.248(2) Cr.P.C. 2.The accused is convicted and sentenced to undergo simple imprisonment for a period of two years and to pay fine of Rs.10,000/- for the commission of offence punishable u/s.420 IPC. In default of payment of fine, the accused shall undergo simple imprisonment for a period of 30 days. 3.The accused is found not guilty of offence u/s.406 IPC and he is acquitted u/s.248(1) of Cr.P.C for that offence.

DESCRIPTION OF ACCUSED

Sl.No.	Name	Father's Name	Occupation	Residence	age
1	Shamsu.G.P	Usman	Business	Vattoli	35/16

RELEVANT DATES

Occurrence	Complaint	Apprehension	Released on bail	Commencement of trial	Commencement of evidence	Close of trial	Sentence or order	Period of detention	Explanation for delay
31.05.15	20.10.17	-	03.02.18	22.10.18	21.01.20	29.04.26	29.04.2026	Nil	Nil

JUDGMENT

The accused is put on trial for the commission of offences punishable U/ss. 406 and 420 of IPC.

2. The prosecution case, in brief, is as follows:- On 31.01.2015 the accused obtained Rs.2 lakh from CW1 on a promise to secure him a government job under compassionate employment scheme as the brother of PW1 died while serving as a public servant. The accused had not arranged the job as promised and had not returned the money obtained from CW1. The accused converted the money to his own use. When CW1 approached the accused for the return of money, the accused issued a cheque of Rs.2,00,000/-, bearing No.005087 of IDBI Bank, Nadapuram branch dated 11.07.2016. When CW1 presented the cheque for encashment, the cheque was returned unpaid for the reason ‘funds insufficient’. Thus, the accused is alleged to have committed the above-mentioned offences.

3. The accused was released on bail at the crime stage. On appearance of the accused before the court, he was permitted to continue on the bail-bond executed at the

crime stage. Copies of all relevant prosecution records were furnished to him U/s. 207 Cr.P.C. After hearing both sides on framing of charge and on satisfaction of the existence of prima facie materials to frame charge against the accused, charges U/ss.406 and 420 IPC were framed against the accused, read over and explained to him, to which he pleaded not guilty and claimed to be tried.

4. On the side of prosecution, PW1 to PW8 were examined and Exts.P1 to Ext. P9 and Ext.D1 were marked. After closing prosecution evidence, the accused was examined U/s. 313 (1) (b) of Cr.P.C. He denied all the incriminating circumstances brought out against him in the prosecution evidence and maintained to be innocent. Thereafter the accused was called upon to enter upon his defence and to produce his evidence. No evidence, either oral or documentary, was adduced from the side of defence.

5. **<u>The points that arose for determination are</u>**:

(i) Whether the accused cheated PW1 by promising to secure him a government job and thereby induced PW1 to deliver Rs.2,00,000/- to the accused?

(ii) Whether the accused converted to his own use, Rs.2,00,000/- belonging to PW1?

(iii) What is the proper sentence to be awarded if found guilty?

6. **<u>Point Nos. (i):-</u>** The case of the prosecution is that the accused promised PW1 to arrange a government job for him and received Rs. 2 Lakh as advance from PW1. Thereafter the accused converted the money to his own use without securing the job for PW1. The offences alleged against the accused are U/ss.406 and 420 of IPC.

7. PW1 is the person who allegedly got cheated by the accused. PW1 deposed that his brother committed suicide on 01.04.2013 while he was working as a CPO at SP Office, Kalppatta. PW1 could not secure job under compassionate employment scheme, as he was married. In November 2014, the accused approached PW1 and offered that he would secure a special order of appointment for PW1 on the ground of illness of the father of PW1. The accused made PW1 to believe that he has influence at the Government level and he would secure a special order of appointment for PW1. He demanded 4 lakh rupees for the purpose. PW2 and PW4 were also involved in the discussions. The discussion was conducted at the house of the daughter of PW4. The accused demanded 2 lakh rupees as advance and told that balance 2 lakh may be paid after securing the job. PW1 paid Rs.2 lakh to the accused on 31.01.2015 in cash, at the house of the daughter of PW4, in the presence of PW2 and PW4. The accused promised that he would arrange the job within one month. The accused broke his promise and started to neglect PW1. PW1 deposed that the accused was cheating him and the accused had an intention to cheat him from the beginning itself. On enquiry, PW1 found that the accused had not tried to arrange job for PW1. The father of the accused promised to settle the matter and the accused gave a cheque of Rs.2lakh to PW1. The cheque was returned unpaid for insufficiency of funds on presentation. The police did not register case eventhough PW1 approached the police and hence Ext.P1 complaint was filed before the Court. The cheque issued by the accused in favour of PW1 is marked as Ext.P2 and return memos from the bank are marked as Ext.P3 and Ext.P4.

8. PW2 and PW4 are stated to be the material witnesses in this case. PW2 is the father-in-law of PW1 and PW4 is the friend of PW2. PW2 and PW4 deposed in tune with PW1. PW2 and PW4 have personal knowledge of the alleged incident. They deposed that the accused bought 2 lakh rupees from PW1 on a promise to secure government job for PW1 and has not secured the job or returned the money. They also

deposed that the cheque issued by the accused was returned due to insufficiency of funds.

9. PW3 is the witness to Ext.P5 seizure mahazar by which Ext.P2 to Ext.P4 were seized by the police. PW5 is the Bank Manager who produced Ext.P6 account statement of the accused during the period from 28.03.2014 to 31.12.2016. He deposed that Ext.P2 cheque was returned due to insufficiency of funds. Ext.P7 is the certificate issued by him as per Bankers Book Evidence Act.

10. PW6 is the Manager of Thuneri Branch Kerala Gramin Bank during the year 2016-2017. He deposed that PW1 presented Ext.P2 cheque dated 11.07.2016 for collection and the same was returned unpaid due to insufficiency of funds. He further deposed that the cheque and cheque return memo dated 05/09/2016 were given to PW1 from the bank.

11. PW7 is the police officer who registered Ext.P8 FIR on the basis of Ext.P1 complaint forwarded from the court. PW8 is the Investigating Officer in this case. He deposed as to the steps taken by him during the course of investigation.

12. In this case, the transfer of Rs.2,00,000/- from PW1 to the accused was proved by the oral evidence of PW1, PW2 and PW4. Nothing was brought out by the defence in cross examination to discredit the evidence of PW1, PW2 and PW4 regarding the alleged transaction. Moreover, the execution of Ext.P2 cheque by the accused in the name of PW1 and its dishonour are established. The defence has no good explanation as to how the cheque signed by the accused came into the possession of PW1. It shows that some previous transaction had taken place between PW1 and the accused.

13. When coming to the ingredients of the offence punishable under Sec.420 of IPC, the accused person must have cheated and dishonestly induced the person deceived to deliver any property to any person. Essential ingredients of Cheating as defined under Section 415 of IPC are:

1) deception of any person,

2) (a) fraudulently or dishonestly inducing that person

(i)to deliver any property, to any person

(ii) to consent that any person shall retain any property or

(b) intentionally inducing that person to do or omit to do anything which he would not do or omit if he were not so deceived.

14. The case of the prosecution is that the accused made PW1 to believe that he has influence at the government level and he would arrange a government job for PW1. The accused demanded four lakh rupees from PW1 and PW1 paid two lakh rupees as the advance payment for the expenses of the accused.

15. In this case, PW1 has to prove that the payment of money to the accused had been caused by the deception exercised by the accused, which PW1 would not have been made, but for the inducement resulting from the deception. Deceiving means causing to believe what is false, or misleading as to a matter of fact or leading into error. Whenever a person fraudulently represents as an existing fact which is not an existing fact, he commits deception. The accused made a false representation that he had influence at the government level and that he would arrange a job for PW1. It can be held that the accused committed deception on PW1 by making the false and misleading representation.

16. It is not sufficient to prove that a false representation had been made, but it is further necessary to prove that the representation was false to the knowledge of the

accused and was made in order to deceive PW1. The primary requirement to make out an offence of cheating is dishonest or fraudulent intention at the time when the inducement was made. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise.

17. The accused induced PW1 to deliver money for arranging a government job. It is obvious from the purpose stated itself that the accused had fraudulent intention to cheat PW1 at the time of promise itself. It is not possible to arrange a government job by giving money. That itself shows the fraudulent intention of the accused to cheat PW1 at the time of making the promise.

18. From the evidence of PW1, PW2 and PW4, it is established that PW1 transferred Rs.2 lakh to the accused believing the version of the accused that he could secure a special order of appointment from the Government. Otherwise, he would not have transferred the money. Thus fraudulent representation made by the accused, fraudulent intention of the accused at the time of making the promise and delivery of property by PW1 to the accused believing the misrepresentation made by him, are present in this case.

19. The learned counsel for the accused argued that the material witnesses in this case are interested witnesses. PW2 is the father-in-law of PW1 and PW3 is the friend of PW2. However, it is a money transaction for arranging a government job. The transaction took place at the house of the daughter of PW3. The purpose for which the transaction was taken place has a secret character and it cannot be expected that such money transactions would take place in the presence of unrelated people or at a public place.

20. The learned counsel for the accused further argued that the transaction was allegedly taken place for an illegal purpose. It is irrelevant in the case of criminal liability. It is relevant in a civil dispute only. The learned counsel for the accused argued that PW1 himself knew that he would not get job under compassionate appointment scheme and he did not approach any authorities concerned against the order of refusal of job. The argument is not sufficient to justify the accused's act.

21.The learned counsel for the accused argued that there is contradiction between the versions of PW1 and PW4 regarding the prior acquaintance of PW1 and the accused. PW1 deposed that he got acquainted with the accused through PW4 and PW4 deposed that the accused approached PW1. On going through the evidence, no contradiction is seen in these versions. PW1 admits that he has prior acquaintance with the accused. However, these are irrelevant facts in this case. Prosecution does not have a case that PW1 did not know the accused until he approached them for the said purpose.

22. The learned counsel for the accused further argued that there is suppression of the previous complaint made by the accused before the police. PW1 has a case that he approached the police and police did not take up the matter. Ext.P1 complaint was made by PW1 before the Court and the Court forwarded the complaint to the police. Investigation was conducted on Ext.P1 complaint. The previous complaint made by PW1 has no relevance in this case.

23. It was also argued by the learned counsel for the accused that the prosecution does not have a case that the accused went to the house of PW1 or PW1 went to the house of the accused and hence the version of the prosecution regarding the discussions held is unreliable. As per the prosecution case, meetings were conducted at the house of the daughter of PW4, Bijina. The learned counsel for the

accused further argued that Bijina is not cited as a witness in this case. Non examination of Bijina in this case is not fatal to the prosecution case as the transaction got proved by the evidence of other witnesses.

24. The learned counsel for the accused further argued that the investigating officer in this case was recalled on the application of prosecution at the final hearing stage, after the execution of steps U/s.82 Cr.PC against him. However, this court is of the opinion that the investigating officer did not introduce any new evidence before the court. The transaction was proved through the evidence of other witnesses.

25. When coming to the execution of cheque, the defence put up by the accused is that the cheque signed by the accused which was kept with one Mr. Pradeepan was misused by PW1. The learned counsel for the accused argued that PW1 admitted in his cross examination that he filled in his name on Ext.P2 cheque and hence Ext.P2 is fabricated. The defence does not have a case that the signature on the cheque is not that of the accused. As long as the signature on the cheque remains admitted, it is irrelevant who filled in the particulars in the cheque. It is the duty of the accused to prove that his cheque has been misused as long as he does not dispute his signature on the cheque. The accused has not taken any steps to prove that the cheque was not issued for the return of any money due to PW1 by him. Hence the argument of the learned counsel for the accused fails in this regard. The defence has no good explanation as to how the cheques signed by the accused came into the possession of PW1.

26. The learned counsel for the accused further argued that PW1 was not able to give the details of the date of delivery of cheque. However, it does not shake the prosecution case as execution of cheque stands proved.

27. It was also argued by the learned counsel for the accused that there is inconsistency between the evidence of PW1 and PW2 as to who filled in the particulars of cheque. He further argued that the prosecution has not taken any steps to forward the cheque for scientific examination to prove the handwriting. As discussed earlier, it is irrelevant who filled in the cheque as long as the signature remains admitted. The learned counsel also submitted that complaint U/s.138 NI Act was not filed by the accused. This Court cannot doubt the prosecution version regarding the execution of cheque merely on the reason that Sec.138 NI act proceedings were not initiated by PW1. It was also argued by the learned counsel for the accused that there is inconsistency in the date of cheque and date of presentation of cheque. The date of cheque was 11.07.2016 and the cheque return memo was dated 05.09.2016. The cheque was presented for collection on 03.09.2016, within three months of the date of cheque. There is no confusion regarding the dates.

28. The only point to be decided is whether the accused cheated PW1 by causing him to believe that he would manage to secure a government job for PW1 and thereby induced him to deliver Rs.2 lakh to the accused.

29. In this case, the transaction was proved by the oral evidence of PW1, PW2 and PW4. Evidence of PW1, PW2 and PW4 are corroborating each other on all material facts. There are no material contradictions with their respective previous statements also.

30. The prosecution could prove that the accused caused PW1 to believe that he had influence at the Government level and he would secure a special order of appointment for PW1. The accused induced PW1 to transfer Rs. 2 lakh for the said purpose. PW1 transferred Rs.2lakh to the accused believing the representation made by the accused and in the absence of such representation, such transfer would not have

been made. The purpose for which the money transaction was made itself shows the dishonest intention of the accused from the inception itself. Thereafter the accused issued a cheque dated 11.07.2016 to PW1 and the cheque was returned unpaid due to insufficiency of funds. On perusal of Ext.P6 account statement, it is seen that the accused had no sufficient balance to encash the cheque during the validity of the cheque. Issuance of cheque without arrangement of sufficient funds amounts to cheating.

31. From the above held discussion, it is seen that the prosecution has succeeded in proving the guilt of the accused u/s.420 IPC beyond reasonable doubt. The point is answered in favour of prosecution.

32. **Point No.(ii):-** The ingredients of Sec. 406 IPC are as follows:

1) Entrusting any person with property or with any dominion over the property,

2) The person entrusted: –

a) dishonestly misappropriating or converting property to his own use that property, or

b) dishonestly using or disposing of that property or wilfully suffering any other person so to do in violation of:

i) any direction of law prescribing the mode in which such trust is to be discharged; or

ii) Any legal contract made touching the discharge of such trust.

33. The first and foremost ingredient to attract Sec.406 IPC is entrustment of property or dominion over property with the accused. In this case, it has to be decided whether there was entrustment of money by PW1 with the accused. The prosecution case is that the accused demanded four lakh rupees from PW1 for arranging a government job for him and PW1 paid Rs.2 lakh to the accused as advance payment.

34. The offence of criminal breach of trust under Section 406 I.P.C. contemplates the creation of a relationship whereby the owner of the property makes it over to another person to be retained by him until a certain contingency arises or to be disposed of by him on the happening on a certain event. The ownership or beneficial interest of the property in respect of which criminal breach of trust is alleged to have been committed, must be in some person other than the accused and the latter must hold it on account of some person or in some way for his benefit. The expression entrustment carries with it the implication that the person handing over the property to the other, continues to be its owner. Further, the person handing over the property must have confidence in the person taking the property so as to create a fiduciary relationship between them.

35. Hence it can be seen that in entrustment of property, the ownership of the property is retained by the person entrusting it. In this case, the money was paid to the accused towards the expenses of the accused for arranging a job for PW1. PW1 cannot be said to be the owner of the money given to the accused anymore. The money was not transferred to the accused with a purpose to hold the money for the beneficial interest of PW1. No fiduciary relationship was intended to create by the transfer of the money. It was given in exchange of arranging a job for PW1. The intention was to make the accused the owner of the money. It cannot be said that the money was entrusted with the accused. When there is no question of any entrustment of property, it can be said that the offence under Section 406 I.P.C. had been made out. Hence it is found that ingredients of section 406 IPC are not attracted in this case. The prosecution has failed to prove the commission of the offence punishable U/s.406 IPC by the accused.

36. **Point No.(iii)**:- In the light of the findings on Point Nos. (i) and (ii), the accused is found not guilty of the offence punishable under section 406 IPC and he is acquitted U/s.248(1) Cr.PC for the commission offence punishable under Section 406 IPC. The accused is found guilty of the offence punishable U/s.420 of IPC. The accused is convicted U/s. 248(2) Cr.P.C for the commission offence punishable under Section 420 IPC.

37. Considering the facts and circumstances of this case, this court is of the view that this is not a fit case to invoke the benevolent provisions of Probation of Offenders Act in favour of the accused.

(Dictated to the Confidential Assistant, typed by her, corrected and pronounced by me in open court, this the 29th day of April, 2026).

JUDICIAL FIRST CLASS MAGISTRATE -I,
NADAPURAM

38. I heard the accused on question of sentence. The accused pleaded for leniency on the ground that he has no criminal antecedents and he is undergoing a treatment. Considering the facts and circumstance of the case, I am of the opinion that the following sentence would serve the purpose of justice.

In the result,

1) The accused shall undergo simple imprisonment for a period of two years and to pay fine of Rs.10,000/-(Rupees Ten Thousand Only) for the commission of offence punishable u/s.420 IPC. In default of payment of fine, the accused shall undergo simple imprisonment for a period of 30 days.

2)The accused is found not guilty of offence u/s.406 IPC and he is acquitted u/s.248(1) of Cr.P.C for that offence.

(Dictated to the Confidential Assistant, typed by her, corrected and pronounced by me in open court, this the 29th day of April, 2026).

JUDICIAL FIRST CLASS MAGISTRATE -I

NADAPURAM.

A P P E N D I X

WITNESSES EXAMINED FOR PROSECUTION

Rank	Name	Whether Eye witness, police witness, Expert witness, Medical Witness, other witness
PW1	Mahesh Kumar, S/o.Kelappan	(CW1/informant)
PW2	Kunjikkannan, S/o.Chathu	(CW2/other witness)
PW3	Shajil Kumar, CPO 7416, Kuttiady P.S	(CW4/police witness)
PW4	Balan, S/o.Kelu	(CW3/other witness)
PW5	Vinod Kumar Pillai, Assist. General Manager, IDBI Bank, Nadapuram branch	(CW5/other witness)
PW6	Radhakrishnan, Manager, Kerala Gramin Bank, Thooneri	(CW6/other witness)
PW7	Hareesh.P.S, SI of Police, Kuttiady P.S	(CW7/police witness)
PW8	Prabhakaran.T.K, SI of Police, Kuttiady P.S	(CW8/police witness)

EXHIBITS MARKED FOR PROSECUTION:

Sl.No	Date	Exhibit number	Description
1	Dt:02.11.16	Ext.P1/PW1	Complaint

2	Dt: 11.07.16	Ext.P2/PW1	Cheque
3	Dt: 05.09.16	Ext.P3/PW1	Cheque return memo
4	Dt: 05.09.16	Ext.P4/PW1	Cheque return memo
5	Dt: 21.11.16	Ext.P5/PW3	Seizure mahazar
6	For the period from 2014 to 31.12.16	Ext.P6/PW5	Account statement
7	Dt:26.09.22	Ext.P7/PW5	Certificate as per Bankers book evidence act
8	Dt:07.11.16	Ext.P8/PW7	FIR
9	Dt: 10.01.17	Ext.P9/PW8	Letter issued by PW5, IDBI Bank Manager

WITNESS EXAMINED FOR ACCUSED:
NIL

EXHIBITS MARKED FOR ACCUSED :
Ext.D1/PW5 Relevant portion in 161 Statement dt:11.01.17

MOS MARKED : NIL

JUDICIAL FIRST CLASS MAGISTRATE -I
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//True copy//

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