

**IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE-III
KOLLAM**

Present: Smt. Dhanya M S, Civil Judge (Jr. Division)

Dated this the 12th day of May, 2026

CMP No. 2655/2025 in CC 533/2022

(Crime No. 635/2022 of Kollam West Police Station)

Petitioner : 1 Midhun Bose, aged 47,
S/o Subhash Chandra Bose
Pournami, Shakthikulangara Cheri,
Shakthikulangara Village, Kollam.

: 2 Vijaya Bose, aged 52, S/o Chellapan,
Kizhakkedathu Veetil, Pampalil
Cheri, Panayam Village, Kollam.

: 3 Vijaya Das, aged 35, S/o Sivadasan,[Araamam]
Kinattazhikam Veetil, Mayyanadu
Village, Kollam.

Respondent : The State of Kerala represented
By Sub Inspector of Police,
Kollam West Police Station
By A.P.P Gr-I, Kollam

Offence : U/s 420, 418, 406 r/w 34 of the Indian Penal Code

Order : Application is dismissed

ORDER

- 1) This is a discharge petition filed by the petitioner no 1 to 3 in this case under section 239 of CRPC.
- 2) **The prosecution case is as follows:** The de facto complainant, who was unemployed in India, had earlier worked in Saudi Arabia from 2004 to 2010. After returning to India in 2011, he later went to Abu Dhabi in 2016 as a taxi driver. In pursuit of further employment opportunities abroad, he began

enquiring about obtaining a visa. Through a friend named Vijin, the complainant became acquainted with the accused no: 3/petitioner no: 3, who provided him with the phone number of the accused no:1/petitioner no. 1. Acting on the instructions of the accused no: 3/petitioner no. 3, the complainant contacted the accused no. 1/petitioner no. 1 through a conference call. Two days thereafter, he visited the residence of the accused no. 1 at Sakthikulangara, where all the accused persons were present. At that time, the accused no:3/petitioner no:3 informed him that the passport details would be examined before deciding on the issuance of a visa. Subsequently, the accused no. 1/petitioner no:1 sent a copy of a visa to the complainant via WhatsApp. Later, at the office of the accused no. 1/petitioner no:1, where the accused no:3/petitioner no.3 was also present, the complainant was informed that a house driver visa for Kuwait with a salary of ₹45,000 was ready. He was directed to pay an advance of ₹50,000. Accordingly, the complainant transferred ₹50,000 through mobile transaction and thereafter remitted ₹1,15,000 to the account of the accused no:1/petitioner no:1. In total, the complainant transferred ₹1,65,000 between 31.07.2021 and 05.10.2021 from his bank account to the account of the accused no:1/petitioner no:1. Based on the assurances given by accused Nos. 1 to 3/petitioner Nos. 1 to 3, the complainant travelled to Kuwait. However, he did not secure any employment there and, despite repeated attempts to contact the accused, received no response. He was compelled to return to India without obtaining the promised job.

- 3) According to the petitioners, they are innocent and are falsely implicated in this case and stated that there is no offence in this case, as the statement of the witness and the FIS clearly shows that no offence as alleged will be attracted against the accused persons and also stated that there are no ingredients of offence, cheating or criminal breach of trust.
- 4) Heard learned counsel for petitioners and learned Assistant Public Prosecutor and relevant records.
- 5) During the hearing, the learned counsel for the petitioners submitted that CW1, in his First Information Statement, admitted that he had previously gone to Saudi Arabia for employment, where he was imprisoned for one year on charges of passport duplication, and thereafter deported from that country with a prohibition on re-entry. Subsequently, CW1 went to Abu Dhabi for employment as a driver, where he was again apprehended for passport duplication and deported. The learned counsel for the petitioners further contended that the petitioners were not aware of these alleged incidents. He further submitted that the payments received by the accused were towards visa expenses for a foreign country, and that the balance amount, after deducting the visa expenses, was transferred back to the de facto complainant. Hence, according to the petitioners, the allegations raised by the complainant are false and liable to be discarded.
- 6) On the other hand, the learned Assistant Public Prosecutor argued that, at this stage of the proceedings, the only point to be determined is whether there were any grounds to proceed against the petitioners, the monetary transaction

between the complainant and the accused persons is itself admitted by the petitioners themselves, and is a ground to proceed. Learned APP further submitted that the documents produced by the accused cannot be considered at this stage. It is also contended that the petitioners have admitted to monetary transactions with the complainant during the relevant period, and such admission itself constitutes a prima facie ground to proceed against them.

- 7) On analysing the arguments advanced and perusing the prosecution records, it is evident that the de facto complainant and the petitioners were engaged in monetary transactions in connection with the promise of securing a visa to a foreign country. The petitioners themselves admit that payments were received, though they contend that such payments were only towards visa expenses and that a portion of the amount was refunded. They further argue that they were unaware of the complainant's prior deportations from Gulf countries and that the financial dealings between the complainant and the first accused were limited to ₹20,000, which, according to them, has already been settled, supported by a receipt.
- 8) The petitioners also submit that the complainant's difficulties in Kuwait arose due to his own record of deportation and not due to any act of deception on their part. On the other hand, the complainant, in his First Information Statement, has categorically alleged that the petitioners intentionally induced him to part with money under the pretext of arranging a visa, thereby committing the offence of cheating.

9) Here for more clarity, the section is reiterating here section 239 of crpc reads as follows: *If, upon considering the police report and the documents sent with it under Section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.*

10) From the section itself, it is clear that at this stage of enquiry, the court is bound only to analyse whether there is any ground for presuming that the accused has committed the offence. In 2023, **KHC Online 1006 Vishnu Kumar Shukla v. State of Uttar Pradesh**. It was held by the Honourable Supreme Court that the following principles emerge:

(1) *That the Judge, while considering the question of framing the charges under S.227 of the Code, has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.*

(2) *Where the materials placed before the Court disclose a grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial.*

(3) *The test to determine a prima facie case would naturally depend upon the facts of each case, and it is difficult to lay down a rule of universal application. By and large however, if two views are equally possible and the Judge is satisfied that the evidence produced before him, while giving rise to*

some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under S.227 of the Code the Judge which under the present Code is a senior and experienced court cannot act merely as a Post Office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This, however, does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he were conducting a trial.'

11) On perusal of the records, it is evident that monetary transactions between the complainant and the petitioners are admitted. The complainant has specifically alleged cheating in his First Information Statement, narrating the incidents and payments made. The petitioners' contention that they had no intention to cheat and that the complainant concealed material facts are matters of defence, which can only be tested during trial. At this stage, the court cannot evaluate the veracity of documents or weigh evidence in detail.

12) On a comprehensive analysis of the prosecution records and the submissions advanced by both sides, this Court is of the considered view that a prima facie case is made out against the petitioners. The allegations levelled by the de facto complainant, particularly with respect to the monetary transactions and the promise of securing a visa, disclose circumstances which, if proved, may constitute the offence alleged. The petitioners themselves admit receipt of

money from the complainant, though they contend that such payments were towards visa expenses and partly refunded. Whether the petitioners acted with dishonest intention or whether the complainant concealed material facts are matters that can only be tested during trial through evidence.

13) At the stage of considering discharge under Section 239 Cr.P.C., the Court is not expected to meticulously weigh the defence version or evaluate the credibility of documents produced by the accused. The settled principle of law, as reiterated by the Hon'ble Supreme Court, is that the Court must only ascertain whether the materials placed by the prosecution disclose sufficient grounds to proceed. In the present case, the First Information Statement of CW1 narrates specific incidents, dates, and payments, thereby furnishing a factual foundation for the charge.

14) Accordingly, this Court finds that the allegations cannot be brushed aside at the threshold. The truth or falsity of the accusations must be determined only upon appreciation of evidence during trial. Hence, at this preliminary stage, the petitioners are not entitled to discharge.

Ex consequenti, this application is dismissed.

(Typewritten by me on my personal computer, corrected, and pronounced by me in open Court on this the 12th day of May, 2026.)

//True Copy//

**Sd/-
Civil Judge (Jr. Division), Kollam.**

Civil Judge (Jr. Division), Kollam.

