

IN THE COURT OF THE IV ADDITIONAL SESSIONS JUDGE, THRISSUR

Present:-

Sri. ANIL T.P, IV ADDITIONAL SESSIONS JUDGE.

Tuesday, the 21st day of April, 2026/1st Vaisakha 1948 SE.

Criminal R.P. 79/2019

(CMP 5871/2017 in CC 20/2017 of Chief Judicial Magistrate Court, Thrissur)

Revision
Petitioner/Accu
sed 1& 2:

1. Rajeshkumar, S/o Kumaran, Kalarikkal House, Konikkara Post, Thrissur
2. Roy Antony, S/o Antony, Kannath House, Amballur, Alagappanagar Post, Pudukkad, Thrissur

Adv.Haridas M.

Revision
Respondents/Co
mplainant:

State of Kerala , Rep. by Sub Inspector of Police, Town West Police Station, Thrissur (Crime No. 2243/2016)

Rep.by Public Prosecutor. - Adv. Soly Joseph C.

This Crl. Revision petitions having been finally heard on 20.04.2026 having stood over for consideration to this day, the court passed the following:

ORDER

Revision petition filed u/s.397 Cr.PC.

2. The revision petitioners are A1 and A2 in CC.20/2017 on the file of Chief Judicial Magistrate Court, Thrissur. This revision is filed against the order dated 07.12.2019 in Crl.M.P. 5871/2017 filed u/s. 239 Cr.PC.

3. According to the revision petitioners, they were alleged to have committed offences u/s.406, 420, 506 r/w. 34 IPC as per the final report filed by Town West Polcie Station, Thrissur based upon a complaint filed by Mr.

Santhoshkumar. The allegation was that these accused had borrowed a total amount of Rs. 10 Lakhs on various dates from 08.01.2015. It was told that the defacto complainant will be made as a partner in Homefit Finance and Leasing Ltd. Accused had given a partnership deed for the same. But the establishment had never functioned and they have not given money back to the defacto complainant. The revision petitioners contended that there was no ingredients of the offences brought out and this is a civil dispute. There was involvement of one Sri.Sukumaran in filing the complaint against whom a civil suit has been filed by the revision petitioners. The cheque amounts alleged to have withdrawn by the accused are with regard to alleged transaction with the defacto complainant and the accused.

4. After hearing both sides, the learned Chief Judicial Magistrate dismissed the petition and framing charge u/s 406, 420 r/w. 34 IPC. Aggrieved by this order, this revision is filed contending that the allegation made in the final report is not correct. The complaint is made in collusion with Sri. Sukumaran, who was one of the business rivals of the accused. The allegation amounts to civil dispute and a civil suit is already pending in Munsiff court filed by accused against the managing director of the company. The trial court ought to have found that this is a counter case and a tactical measure. The trial court failed to arrive in a proper conclusion and order regarding prima facie evidence is based upon prejudicial statements of CW1 and CW2. Hence this revision.

5. The trial court records are called for and the same was received.

6. Both sides were heard.

7. Now the points that arise for consideration are:

1. Whether there is any illegality, impropriety or irregularity in the order or proceedings of the Trial Court ?

2. Whether the interference of the Revisional Court is necessary ?

3. What is the proper order ?

8. **Point Nos.1 and 2:** The revision petitioners are challenging the order in CrI.MP No. 5871/2017 dated 07.12.2019 by which the learned Chief Judicial Magistrate, Thrissur decided to frame charge against petitioners under Sections 406, 420 r/w 34 IPC and dismissed the discharge petition. The main contention of the revision petitioners is that the order is based upon the statements of CW1 and CW2, who are prejudiced against these accused. It is further contended that the complaint is filed in collusion with CW3. It is also contended that allegation will reveal only civil dispute and this is a counter case filed for the reason that accused filed civil suit against CW3. It is also the case of revision petitioners that there is no oral evidence or documentary evidence to frame charge against them.

9. The trial court had considered the settled legal position that at this stage of framing charge court is expected to verify the materials produced by prosecution to ascertain that any prima facie case is made out. There is no dispute

regarding the ingredients which are required to convict for an offence u/s. 406, 420 r/w. 34 IPC. The consideration needed at this stage is whether the prosecution materials if unrebutted would warrant conviction. The Hon'ble Supreme Court in ***R.S Nayak v. A.R. Antulay and Another (1986 KHC 791)*** in paragraph 42 held that:-

“ It is a fact that S.227 and S.239 provide for discharge being ordered before the recording of evidence and the consideration as to whether charge has to be framed or not is required to be made on the basis of the record of the case, including documents and oral hearing of the accused and the prosecution or the police report, the documents send along with it and examination of accused and after affording an opportunity to the two parties to be heard. The stage of discharge u/s 245, on the other hand is reached only after the evidence, referred to in S.244 has been taken. Notwithstanding this difference in the position there is no scope for doubt that the stage at which the Magistrate is required to consider the question of framing of charge u/s. 245(1) is a preliminary one and the test of “prima facie” case has to be applied. In spite of the difference in the language of the three sections the legal position is that if the trial court is satisfied that a prima facie case is made out, charge has to be framed.”

10. Going by the principles laid down by Hon'ble Supreme Court, the court is bound to consider the prosecution materials. The material witnesses are CW1 to CW4. In their statements before the investigating officer there is averments about giving money by way of bank transaction. However the revision petitioners

would contend that those are not transaction with respect to the allegation in the complaint, but a different transaction. So the transaction by way of cheque are admitted. Similarly, statements of CW2 and CW3 also speaks about dishonest intention as well as receiving money from defacto complainant by the accused. So as found by the trial court there was prima facie materials for framing charge with respect to the offence u/s. 406 and 420 r/w. 34 IPC. The question of believing the witnesses at this stage cannot be considered as it is a matter of appreciation of evidence. I find that there is no irregularity, illegality or impropriety in the order passed by the trial court. There is no interference required by the revisional court. Points No. 1 & 2 answered against the revision petitioners.

11. **Point No.3:** In view of my findings on point No. 1 and 2, I find that petitioners are not entitled for any relief.

In the result, Revision Petition is dismissed.

(Dictated to the Confidential Assistant, transcribed by her, corrected and pronounced by me in open court this the 21th day of April, 2026).

sd/-

ANIL T.P

**IV ADDL. SESSIONS JUDGE
THRISSUR.**

APPENDIX

NIL

sd/-

**IV ADDL. SESSIONS JUDGE
THRISSUR.**

By Order

Copied by: at

Compared by:kr

/True Copy/

Sheristadar

Order in Crl. R.P. 79/2019.
Dated: 21.04.2026.