IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE -II, KANJIRAPPALLY

Present :-Niyatha Prasad,
Judicial First Class Magistrate – II, Kanjirappally

Friday, the 08th day of August, 2025
(17th day of Sravana, 1947)

CC No. 994/2016

Complainant : State of Kerala represented by the Sub-Inspector of Police, Karukachal PS in Crime No. 1819/2015.

(***By APP-II, Kanjirappally***)

Description of accused

SL. No.	Name	Father's Name	Age	Occupation	Residence
A1.	Saji Mathai	K. E Mathai	47/15	...	Panayampala Nadukkeppadi Bhagom, Nedumgadappalli P. O, Karukachal Village.

(***By Adv. Sri. P. S Navas***)

Offence : Under sections 406 & 420 of IPC

Plea : Not Guilty.

Finding : Not Guilty.

Sentence/Order : Accused is acquitted u/s.248(1) of Criminal Procedure Code 1973.

Dates of :-

Offence	Complaint	Apprehension	Release on bail	Commitment	Commencement of trial	Commencement of evidence
23.03.11 - 21.03.14	18.10.15	05.12.15	07.12.15	...	18.06.19	05.02.20

Close of trial	Sentence or order	Service of copy of judgment or finding on accused	Explanation of delay	Period of detention undergone during investigation, inquiry or trial for the purpose of Section 428 Cr.P.C
05.08.25	08.08.25	...	No delay	....

JUDGMENT

This is a case charge sheeted by the Sub Inspector of Police, Karukachal Police Station in crime No.1819/15, against the accused person alleging commission of offences punishable under sections 406 & 420 of Indian Penal Code (hereinafter referred to as IPC).

2. **The prosecution case in brief is as follows:-**The accused with the intention to commit the offence of cheating and thereby make wrongful loss to CW1 made him to believe that the accused is the board member of Kingfisher Company and that he can arrange job for Mr. Tijo @ Joseph Thomas the son of CW1 as a male nurse at Sion Hospital in Milan, Italy. For the said purpose CW1 had given a total amount of Rs. 22,90,000/- to the accused on various occasions from 23.02.2011 till 21.03.2014. However, the accused did not arrange job as promised and when CW1 demanded the said amount back the accused executed an agreement dated 16.07.2015 agreeing to return the said amount and for that purpose issued cheque bearing No. 496711 drawn on Karukachal Branch of SBT dated 25.08.2015 and handed it over to CW1. However, when the said cheque was presented the same was dishonoured. Thus, the accused person is alleged to have committed the offences u/ss. 406 & 420 of IPC.

3. On the basis of the statement given by the informant to CW10, he registered FIR under sections 406 & 420 r/w 34 of IPC. During the course of investigation it was revealed that S. 34 of IPC is not attracted. Hence, after

completion of investigation, final report was filed by CW11 for the offences punishable u/ss. 406 & 420 of IPC before the court and cognizance was taken for the offences punishable under sections 406 & 420 of IPC and the case was initially taken on file as C.C. 212/2016 of the of Judicial First Class Magistrate Court - I, Changanacherry. Copies of all relevant prosecution records were furnished to the accused person and thereby the mandate under section 207 of the Code of Criminal Procedure (hereinafter referred to as “Cr.P.C.”) was complied with. On the appearance of the accused person, he was heard on the question of framing of charge. After perusing the prosecution records, charge was framed u/s. 240 Cr.P.C and it was read over and explained to the accused person u/s 240(2) Cr.P.C for the offences punishable under sections 406 & 420 of IPC to which the accused person pleaded not guilty and claimed to be tried. While so, as per the O.M No. 1306/25 dated 19.03.2025 of the Hon’ble Chief Judicial Magistrate Court, Kottayam, the case was transferred to this court and it was taken on file as CC 994/2016 on 09.04.2025.

4. From the side of prosecution, PW1 to PW11 were examined and Exts. P1 to P10 were marked. Since there were incriminating circumstances against the accused person, he was examined under section 313 (1)(b) Cr.P.C and he denied all the incriminating circumstances against him and maintained the plea of innocence. During 313 Cr.P.C examination, the accused person stated that he is innocent in this case and that he has no connection with the alleged offences. He filed an additional statement contending that he had obtained money from PW1 on two occasions at an exorbitant interest rate. When he failed to repay the amount to PW1 he threatened the accused to issue blank signed papers and the same was utilized by PW1 to falsely implicate him in this case. From the side of defence Exts. D1 to D4 were marked. No oral evidence was adduced.

5. Heard both sides. Perused the records.

6. Points that arise for consideration are: -

(i) Whether the accused person committed criminal breach of trust and thereby committed the offence punishable u/s.406 IPC?

(ii) Whether the accused person with intention to cheat PW1, obtained money from him on various dates promising to arrange a job for his son and thereafter failed to obtain a job as promised and failed to return the amount and thereby committed the offences punishable u/s.420 IPC?

(iii) If found guilty, order as to sentence?

7. **Point Nos. (i) & (ii)**: Since these points are interconnected, they are considered together for the sake of brevity and to avoid repetition. The prosecution case started when PW11 registered Ext. P10 FIR on the basis of the Ext. P1 statement given by PW1. The investigation was conducted by PW10 and after completion of investigation, final report was filed by him. The learned APP argued that the prosecution has adduced enough evidence to prove the guilt of the accused person and hence the accused person is liable to be convicted for the alleged offences. *Per contra*, the learned counsel for the accused person argued that the prosecution has failed to prove their case and hence the accused person is entitled to get a clean acquittal.

8. The specific case of the prosecution is that, the accused with the intention to commit the offence of cheating and thereby make wrongful loss to PW1 made him to believe that the accused is the board member of Kingfisher Company and that he can arrange job for Mr. Tijo @ Joseph Thomas the son of PW1 as a male nurse at Sion Hospital in Milan, Italy. For the said purpose PW1 had given a total amount of Rs. 22,90,000/- to the accused on various occasions from 23.02.2011 till 21.03.2014. However, the accused did not arrange job as promised and when PW1 demanded the said amount back the accused executed an agreement dated

16.07.2015 agreeing to return the said amount and for that purpose issued cheque bearing No. 496711 drawn on Karukachal Branch of SBT dated 25.08.2015 and handed it over to PW1. However, when the said cheque was presented the same was dishonoured for the reasons funds were insufficient.

9. The informant in this case was examined as PW1. He deposed that, the accused made him to believe that he is the Board member of Kingfisher Company and promised him to secure a job for his son, Mr. Joseph Thomas, as a male nurse in Sion Hospital in Milan, Italy. He further testified that he is a plumber by profession and he had worked for the accused and hence is acquainted with him. It is on the basis of the said acquaintance the accused had promised to secure a job for his son. The accused then directed PW1 to teach his son Italian language and apply for passport. Accordingly, the son of PW1 joined language coaching class at Thodupuzha and applied for passport and gave all the certificates to the accused. At first, the accused had informed PW1 that no amount other than VISA processing fee was to be given to him and that currently they were busy with sending three persons to Italy. After some days the accused informed PW1 that Kingfisher company was closed and for the purpose of processing the VISA, some amount may be handed over to him. Accordingly, in January 2011 Rs. 2 lakh was given and in return a mail was sent to him. This continued for quite some time and a total amount of Rs. 22,90,000/- was entrusted to the accused. But the accused failed to take his son to Italy as promised by him. Hence on becoming suspicious about the conduct of the accused he conducted a local enquiry and also with Indian Embassy at Italy and found that no application for VISA processing was given at the Italian Embassy. Hence, PW1 came to the conclusion that the accused was purposefully cheating him.

10. The definite case of PW1 is that, when the amount so given to the accused was demanded back, the accused promised PW1 that he will return the amount and in pursuance of the same he issued a cheque drawn on Karukachal

branch of SBT. Apart from that an agreement was also executed by him in the year 2015. PW3 and PW4 are the witnesses to the said agreement. When the said cheque was produced for encashment it was returned for the reason funds were insufficient. He further testified that the cheque was issued for an amount of Rs. 22,90,000/- but does not remember the date on which the cheque was handed over. PW1 informed the dishonour of cheque to the accused who then replied that an amount of Rs. 50 lakh will be transferred to his account soon from the company and then the cheque will be encashed. However, so far the amount was not received by him. Hence he gave statement to the police which is marked as Ext. P1.

11. PW1 further stated that the amount was given to the accused on various dates at his house and at his shop at Karukachal. He further testified that at the time of handing over money to the accused employees of the shop were also present. The cheque issued by the accused is marked as Ext. P2 and the agreement executed by the accused and PW1 is marked as Ext. P3.

12. PW3 and PW4 are the attesting witnesses to Ext. P3 agreement. PW2 is the wife of PW1. She deposed that her husband, PW1, in the year 2011 had gone for plumbing work in the house of the accused and got acquainted with him and on the basis of the said acquaintance the accused promised to arrange a job for their son in Italy. The accused informed that he is one of the Board members of Kingfisher company involved in sending educated persons abroad on sponsorship basis. He stated that he can arrange a job as a male nurse at Sion Hospital, Milan in Italy and currently 2-3 persons are waiting to go abroad under his guidance. Thereafter, the accused had obtained a total amount of Rs. 22,90,000/- on various dates from 22.02.2011 till 21.03.2014. She stated that the amount was given to the accused at her shop at Karukachal. However, the accused failed to arrange a job as promised. Hence on becoming suspicious they conducted an enquiry and realised that no arrangements were made by the accused to secure a job for their son.

Hence, PW1 demanded back the money and the accused executed a cheque for the said amount drawn on Karukachal branch of SBT. But the said cheque was dishonoured for the reason funds were insufficient. Hence, they understood that the accused had cheated them purposefully. She also identified Ext. P2 and P3 documents executed by the accused.

13. PW3 deposed that he is doing upholstery work in the shop room of PW1 and PW2. He deposed that the accused had obtained an amount of Rs. 22,90,000/- from PW1 and executed an agreement in which he had signed as a witness. He identified the said agreement marked as Ext. P3. He further testified that Ext. P3 was executed by the accused agreeing to secure a job for the son of PW1 and the same was executed in the year 2015. He also deposed that in his knowledge the accused had failed to arrange a job and also did not return the amount borrowed. PW4 is also an attesting witness to Ext. P3 agreement. PW4 is also an employee of PW1 and he deposed in tune with the version of PW3.

14. The learned APP submitted that the evidence of PW1 to PW4 would categorically go to show that the accused had obtained an amount of Rs. 22,90,000/- from PW1 promising to arrange a job for his son in Italy. However, the accused did not provide the job as promised and did not return the amount borrowed. *Per contra,* the learned counsel for the accused vehemently argued that it is a false and fabricated case and that the prosecution has miserably failed to prove its case beyond all reasonable doubts.

15. The first and foremost contention of the learned counsel for the accused is that the place of occurrence is different for each of the prosecution witnesses from that of Ext. P1. As per Ext. P1 statement, money was given to the accused on various occasions at the house of the accused and in the shop room owned by PW2 at Karukachal. As per the evidence of PW1, during chief examination he stated that money was transferred to the accused at the house of PW1 and at the shop room

owned by PW2. During cross examination PW1 stated that initially 2 lakh rupees was given to the accused at the office of Karukachal Orthodox Church. He further stated that a certain amount was given to the accused inside the car of the accused and denied that no amount was given to the accused at the house of the accused. These material contradictions were put to PW10, the investigating officer also. PW2 also does not have a case that any amount was given to the accused at the office of the church or inside the car of the accused. Whereas, PW3 and PW4, the employees of PW1 and PW2 deposed that they had seen PW1 giving money to the accused at their shop room in Karukachal. It is interesting to note that PW3 and PW4 have deposed that they had seen PW1 transferring Rs. 22,90,000/- to the accused on various occasions in their shop room. Admittedly, the prosecution does not have a case that any amount was given to the accused at the house of PW1. Hence, the argument advanced by the learned defence counsel that the place of handing over money to the accused is not consistent has some merit.

16. Another contention advanced by the learned counsel for the accused is that PW1 had suppressed real and material facts in this case. The definite case of the accused is that he never offered any employment opportunity to the son of PW1 in Italy and did not obtain any amount from him as alleged. The accused had borrowed an amount of Rs. 4 lakh from PW1 in the year 2013 at an exorbitant interest rate. The accused was regularly paying the monthly interest for the above amount till June, 2015 and thereafter made default in payment due to financial contingency. Thereafter, PW1 came to the residential house of the accused along with his henchmen and made troubles in his house and threatened him to issue cheque and other documents. In pursuance of the same, the accused was forced to hand over blank signed cheque leaves and blank signed stamp papers to PW1. The said documents were misused by PW1 and using the same he had filed OS No. 78/2016 before the Hon’ble Sub Court, Kottayam. The said suit was decreed in favour of PW1 against which appeal is pending before the Hon’ble High Court of Kerala.

17. In **Dalip Kaur and others v. Jagnar Singh and another** reported in **(2009) 14 SCC 696**, the Hon'ble Apex Court noticed the ingredients of offence under section 420 of IPC as follows; (i) deception of any persons (ii) fraudulently or dishonestly inducing any person to deliver any property (iii) to consent that any person shall retain any property and finally (iv) intentionally inducing that person to do or omit to do anything which he would not do or omit. The learned counsel for the accused argued that to attract the offence punishable u/s. 420 of IPC there must be an intention to cheat PW1 right from the beginning of the transaction. To substantiate his point the learned counsel referred to the deposition of PW1. During cross examination, PW1 stated that the accused did not state about the total amount required for arranging job and that he did not demand any amount during the initial stage. He also stated that no discussion with respect to the transaction was made either with the accused or any other person. However, on going through Ext. P1, it can be seen that the brother of the accused and another person named Kuriakose had come to the house of PW1 and that they had discussed about procuring job for the son of PW1 in Italy. The learned counsel for the accused also referred to Ext. D2, the portion of deposition of PW1 made by him in OS No. 78/2016 wherein he had stated that he made discussion with the accused and other persons regarding the same.

18. It is also the deposition of PW1 that the accused had demanded money for the first time after one year from the date of the discussion made between himself and the accused. He also admitted that the accused did not demand the whole amount all at once but was given on various occasions. The learned counsel also stated that PW1 does not know the date or time on which the passport and other documents were alleged to be handed over to the accused. According to the learned counsel, PW1 is stating utter falsehood and hence he is unable to recollect the exact date and time.

19. The learned counsel for the accused also stated that from the various

contradictory statements of PW1, it can be safely concluded that PW1 is stating falsehood and that the accused had no dishonest or fraudulent intention. He also stated that as per the evidence of PW1 during cross examination, PW1 had given a written complaint to Superintendent of Police, Kottayam alleging the commission of the offences against three persons. In Ext. P10, FIR registered by PW11 in column No. 4 the nature of information is also seen written as ‘written’. However, PW11 during cross examination stated that he does not know about the written complaint alleged to be given by PW1 and further went on to state that the answer in column No. 4 of Ext. P10 is a clerical mistake.

20. As per the prosecution case the accused had borrowed an amount of Rs. 22,90,000/- during the period from 23.02.2011 to 21.03.2014 from PW1. During cross examination of PW1, he stated that the amount of Rs. 22,90,000/- is the amount given to the accused along with its interest and loss sustained to them by not providing a job to their son. The said statement of PW1 is totally contradictory to the entire prosecution case. As I have already stated, the prosecution case itself is that the accused had obtained wrongfully an amount of Rs. 22,90,000/- . Whereas PW1 during cross examination stated that the said amount includes interest and a small part of the salary of his son also. PW1 also stated that he had recorded about the transactions with the accused in a book and the same is kept safely in his house. He also stated that the said book was given to the investigating officer as part of investigation but the same is not seen produced before this court. The learned counsel for the accused submitted that the said book was purposefully withheld by the prosecution so as to suppress the original truth.

21. Another contention raised by the learned defence counsel is with respect to the source of funds. Ext. P1 statement would go to show that PW1 had arranged the amount by borrowing money on interest, from his friends and relatives and had also taken bank loan and pledged gold. However, during cross examination, PW1 had taken a totally different version and stated that the amount was arranged by

pledging gold, selling rubber, the amount which they had in their possession and also borrowed a certain amount from friends and relatives. According to PW2, the wife of PW1 amount was obtained by pledging 10 cents of property belonging to them. The learned counsel submitted that, PW1 and PW2 does not have a consistent case regarding the same. PW1 also stated that the amount was given directly to the accused and not through any account transaction. PW10, the investigating officer also stated that he did not conduct any specific investigation regarding the source of funds of PW1. He also did not conduct any investigation with respect to the hand writing in Ext. P2 and P3 documents.

22. It is also relevant to note that as per the evidence of PW3 and PW4 Ext. P3 agreement was executed inside the shop room of PW2. However, in their respective S.161 Cr.PC statements given to the police, they have stated that Ext. P3 was executed at the house of PW1. The said contradictions in the depositions of PW3 and PW4 is marked as Ext. D3 and D4. The same is proved through PW10. There are also material contradictions with respect to the stamp value of Ext. P3 agreement.

23. The offence u/s. 420 of IPC is highly technical in nature and prosecution has to prove its ingredients with cogent and convincing evidence. It is the primary duty of the prosecution to prove that the accused had dishonest intention from the very beginning which is the *sine qua non* to hold that the accused is guilty for the above offence. The inducement and delivery of property should be coupled together. The prosecution must also prove the requisite *mens rea* on the part of the accused. It is interesting to note that PW10, the investigating officer himself had deposed that PW1 did not give a statement to the effect that the accused had approached him with the intention to cheat him. He also admitted that in his investigation he was convinced that it was only a breach of agreement. The learned defence counsel vehemently argued that the investigating officer has committed a grave mistake and injustice while filing a final report against the accused even

though he was convinced that it is only a breach of agreement giving rise to only a civil dispute.

24. The accused is also alleged to have committed the offence punishable u/s. 406 of IPC. The learned counsel for the accused argued that offence u/s. 420 and 406 would not stand together. The learned counsel for the accused referred to the decision of the Hon'ble High Court of Kerala in **Mansoor Ali v. State of Kerala** reported in **2024 KHC 568**. It was observed in Paragraph 6 that "*Each and every breach of contract would not amount to breach of trust or cheating unless the very intention to cheat and defraud the defacto complainant at the very inception is to be borne out from the prosecution records. Merely for breach of contract, criminal proceedings would not lie and the remedy in case of such breach of trust is to sue for damages*". In order to attract the offence punishable under section 406 of IPC the essential element of entrustment is to be proved. Mere non payment of any amount based on contract will not satisfy the essential ingredients of entrustment or dishonest inducement required for the offence u/s. 406 & 420 of IPC.

25. The learned counsel for the accused referring to the decision of the Hon'ble High Court of Kerala in **Premchand R Nair v. Integrated housing developers Ltd** reported in **2024 (2) KHC 211**. In Paragraph 18 it was observed that "*The Supreme Court has on more than one occasion observed that when disputes are of a civil nature, complaints alleging criminal offences ought not to be permitted.*" In the instant case, as evident PW1 has preferred a civil suit and it was decreed in his favour also. There is an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. But the same would cause irreparable injury to the accused. This case is not different.

26. Considering the evidence on record by yardstick of probabilities, its intrinsic worth and animus of witnesses, this court is of the view that the accused

person is entitled to get the benefit of doubt in his favour. Hence point nos. (i) & (ii) are found against the prosecution.

27. **<u>Point No.(iii):</u>** In view of point Nos. (i) & (ii) this point does not arise for consideration. Hence, the accused person is found not guilty for the offences punishable under sections 406 & 420 of IPC and accused person is liable to be acquitted for the said offences.

<u>In the result:-</u>

Accused person is acquitted U/s.248(1) Cr.P.C for the offences punishable under sections 406 & 420 of IPC. Bail bond executed by the accused person stands cancelled and he is set at liberty.

(*Dictated to the Confidential Assistant, transcribed and typed by her, corrected by me and pronounced in the open court on this the 08th day of August, 2025.)*

JUDICIAL FIRST CLASS MAGISTRATE-II
KANJIRAPPALLY

<u>A P P E N D I X</u>

<u>List of Prosecution /Defence/Court Witnesses</u>

A. Prosecution witnesses

Rank	Name	Whether Eye Witness,Police Witness, Expert witness, Medical Witness, other witness
PW1	T. J Thomas	Informant
PW2	Saramma Thomas	Occurrence witness
PW3	Sudheesh	Occurrence witness
PW4	Sabu Mathew	Occurrence witness
PW5	Sadasivan	Mahazar witness
PW6	Santhosh	Mahazar witness
PW7	Cheriyan Mathew	Mahazar witness
PW8	Satheesh Kumar	Mahazar witness

PW9	Sebastian E. I	Bank official
PW10	V. R Vijayachandran	Investigating officer
PW11	Abhilash M. J	Police witness

B. Defence Witness

Rank	Name	Whether Eye Witness,Police Witness, Expert witness, Medical Witness, other witness
	Nil	

C. Court Witness

Rank	Name	Whether Eye Witness,Police Witness, Expert witness, Medical Witness, other witness
	Nil	

List of Prosecution/Defence/Court Exhibits

A. Prosecution Exhibits

Sl.No	Exhibit Number	Description
1.	Ext P1/PW1	FIS dated 18.10.2015
2.	Ext P2/PW1	Original cheque bearing No. 496701 dated 03.09.2015
3.	Ext P3/PW1	Original agreement dated 16.07.2015
4.	Ext P4/PW5	Seizure mahazar dated 28.10.2015
5.	Ext P5/PW7	Seizure mahazar dated 30.10.2015
6.	Ext P6/PW9	Letter dated 30.10.2015
7.	Ext P7/PW10	Form 15 dated 05.01.2016
8.	Ext P7(a)/PW10	Form 15 dated 05.01.2016
9.	Ext P8/PW10	Arrest memo dated Nil
10.	Ext P8 (a)/PW10	Inspection memo dated 05.12.2015
11.	Ext P8(b)/PW10	Custody memo dated Nil
12.	Ext P9/PW10	Address memo dated Nil
13.	Ext P10/PW11	FIR dated 18.10.2015

B. Defence Exhibits

Sl.No	Exhibit Number	Description
1.	Ext D1/PW1	Contradiction of PW1 in Ext. P1 FIS
2.	Ext D2/PW1	Deposition of PW1 in Sub Court
3.	Ext D3/PW3	Relevant portion in 161 statement of PW3

4.	Ext D4/PW4	Relevant portion in 161 statement of PW4

C. Court Exhibits

Sl.No	Exhibit Number	Description
	Nil	

D Material objects

Sl.No	Material object	Description
	Nil	

JUDICIAL FIRST CLASS MAGISTRATE-II
KANJIRAPPALLY