

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE SOPHY THOMAS

WEDNESDAY, THE 9TH DAY OF FEBRUARY 2022 / 20TH MAGHA, 1943

CRL.MC NO. 4863 OF 2019

AGAINST CC No.259/2019 OF JUDICIAL MAGISTRATE OF FIRST

CLASS -III, TRIVANDRUM

PETITIONERS/ACCUSED Nos. 1 TO 3:

- 1 SUNDARESWARAN.K
AGED 48 YEARS
S/O. SRI. R KRISHNA IYER, NO.116, 'GEETHAM', SANKAR
NAGAR, NEERAMAN KARA, KAIMANAM P.O.,
THIRUVANANTHAPURAM DISTRAIT - 695 040.
- 2 NAHAS.S.,
AGED 24 YEARS
S/O. SHAHUL HAMEED, T.C. 48/319-A, MITHRA NAGAR,
HOUSE NO.71, PARITHIKUZHI POONTHURA P.O.,
THIRUVANANTHAPURAM DISTRICT - 695 026.
- 3 SUJITH.S.S,
AGED 31 YEARS
S/O. A SUDHAKARAN NAIR, T.C. 79/2296, THIRUVONAM,
ARA- 40, CHAKKAI, KARIKKAKOM P.O.,
THIRUVANANTHAPURAM DISTRICT - 695 021.

BY ADV. SRI.RAJESH P.NAIR

RESPONDENTS/STATE, COMPLAINANT & DE FACTO COMPLAINANT:

- 1 STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM, KOCHI - 682 031.
- 2 THE DIRECTOR GENERAL OF POLICE,
POLICE HEAD QUARTERS,
THIRUVANANTHAPURAM - 695 004.
- 3 THE SUB INSPECTOR OF POLICE,
THAMPANOOR POLICE STATION,
THIRUVANANTHAPURAM DISTRICT - 695 014.

4 MAHESH,
AGED 32 YEARS
S/O. MAHADEVAN, MS BHAVAN, TC 54/699 (1), SASTHRI
NAGAR, NEDUNKAVU, NEDUNKAD WARD, MANACAUD VILLAGE,
THIRUVANANTHAPURAM - 695 009.

BY ADVS.
SMT.SEENA CHANDRAN, PUBLIC PROSECUTOR
SRI.M.RAJENDRAN NAIR
SMT.M.SANTHY

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
02.02.2022, THE COURT ON 09.02.2022 PASSED THE FOLLOWING:

SOPHY THOMAS, J.

C.R

Crl.M.C No.4863 of 2019

Dated this the 9th day of February, 2022

O R D E R

This petition has been filed by accused Nos.1 to 3 in Crime No.1424 of 2018 of Thampanoor Police Station, for quashing the proceedings in C.C No.259 of 2019 on the files of Judicial First Class Magistrate Court-III, Thiruvananthapuram, invoking the inherent jurisdiction of this Court under Section 482 of Cr.P.C.

2. The allegation against the petitioners is that, they being the Manager and employees of Anderson Diagnostics and Labs, which is running without any Municipal licence, fraudulently collected the blood samples of the de facto complainant and his wife, and issued a faulty result, and when the de facto complainant questioned them, the 1st accused criminally intimidated him. Thus they are alleged to have committed the offences punishable under Sections 420, 506 read with Section 34 of IPC and Section 442

read with Section 543 of the Kerala Municipal Act.

3. According to the petitioners, they are the employees of the Thiruvananthapuram Branch of Anderson Diagnostics and Labs, having its registered office at Chennai. The doctor who was treating the de facto complainant and his wife for infertility referred them for blood test and the 2nd accused collected blood sample, and sent it for test to the Chennai Lab. Out of the five test results, one was found to be reactive and it was duly informed to the de facto complainant. The de facto complainant collected the test result on 25.08.2018, and as instructed by the petitioners and the doctor concerned, a confirmatory test was conducted in another lab. In that test, the result showed non-reactive. Due to that fact, the de facto complainant manhandled the petitioners on 31.08.2018 and demanded compensation for the mistake in the test result. Since they were not amenable, after a delay of about four weeks, he lodged a complaint before the Thampanoor Police Station on the basis of which, a crime was registered and investigated, and finally, final report was filed against the petitioners for the offences mentioned above.

4. According to the petitioners, an offence under Section 420 of IPC will not be attracted, as there was no fraudulent or dishonest intention on the part of the petitioners to deceive the de facto complainant. Since the demand for compensation was not heeded to by the petitioners, the de facto complainant lodged a false complaint against them. The owner of the Lab or the Doctors who conducted the blood investigation, were not arrayed as accused. The petitioners are only employees of the Thiruvananthapuram branch of Anderson Lab, based at Chennai. They have nothing to do with the blood investigation result issued by the Lab. They had no role other than collecting the sample and sending the same to the Lab at Chennai for the purpose of investigation by the Doctors there. **The offence under Section 506 IPC and also under Section 442 read with Section 543 of Kerala Municipal Act, will not be attracted against the petitioners.**

5. Learned counsel for the de facto complainant vehemently opposed this petition saying that, the Anderson Lab at Thiruvananthapuram was not having proper licence and it was functioning unauthorisedly, without employing qualified staff, and

they induced the de facto complainant and his wife, to give their blood sample after collecting fees for the same, and issued a test result stating that, the de facto complainant was found reactive to Hepatitis B, causing so much of embarrassment and unnecessary treatment for the same, and thus, the petitioners cheated him.

6. Learned Public Prosecutor also opposed the petition stating that, the petitioners had no authority to run the Lab, and they were not qualified to collect blood sample and that is why, the result was incorrect. So, according to him, an offence under Section 420 of IPC will be attracted.

7. Now the question to be considered is, whether issuance of a faulty test result from an accredited Medical Laboratory will amount to cheating?

8. The petitioners produced Annexure-A1 Certificate of Incorporation to show that Anderson Diagnostic Services Pvt. Ltd., Chennai was incorporated under the Companies Act, 1956. Annexure-A2 is a copy of the Certificate of Accreditation issued to Anderson Diagnostics and Labs in the field of medical testing. Annexure-A5 is a copy of the appointment letter issued by

Anderson Diagnostics and Labs to the 1st accused as its Divisional Manager. Annexure-A3 is a copy of the certificate of BSS Diploma in Medical Laboratory Technician Course issued to the 2nd accused from the Board of Examinations. Annexure-A4 is a copy of the Diploma certificate in General Nursing and Midwifery issued to the 3rd accused, and Annexure-A6 is a copy of the appointment letter issued by Anderson Diagnostics and Labs to the 3rd accused. So, according to the petitioners, Anderson Diagnostics and Labs is an accredited Lab in the filed of medical testing and the petitioners are its qualified employees.

9. The de facto complainant and his wife were undergoing infertility treatment in W&C Hospital, Thycaud and as directed by the Doctor for blood test, the 2nd accused collected their blood sample from the infertility clinic itself as he introduced to them as a hospital staff, and he assured them that the test result will be ready by 23.08.2018. On 23.08.2018, the de facto complainant received a phone call saying that he was found reactive for Hepatitis-B and directed him to collect the test result immediately and to take follow up treatment. But, on doing confirmatory test in

DDRC and Rajiv Gandhi Centre for Biotechnology, his blood result was found non-reactive. So, according to the de facto complainant, the petitioners cheated them.

10. 'Cheating' is defined under Section 415 of IPC. The ingredients to constitute an offence of cheating are as follows:

(i) there should be fraudulent or dishonest inducement of a person by deceiving him:

The person who was induced should be intentionally induced to deliver any property to any person or to consent that any person shall retain any property, or the person who was induced should be intentionally induced to do or to omit to do anything which he would not do or omit if he were not so deceived.

Thus, a fraudulent or dishonest inducement is an essential ingredient of the offence under Section 415 IPC. A person who dishonestly induced any person to deliver any property is liable for the offence of cheating.

11. Now let us examine the facts of this case, keeping in mind the relevant ingredients to constitute an offence under Section 420 of IPC.

12. The de facto complainant has no case that the petitioners

induced him to give blood for conducting the test and intentionally issued a faulty result in order to cheat him. Even according to the de facto complainant, there were five test results, out of which one was found faulty. Annexure-A7 series shows the test results of the de facto complainant issued from Anderson Diagnostics and Labs. Annexure-A7/4 is the test result for HbsAg (Immunochromatography) which was found reactive. In the comment portion of that report, it was stated that "the test was Reactive. Immunochromatography is a screening method only. Kindly correlate results clinically. It is also suggested to confirm the test with more specific tests such as ELISA and also with other Hepatitis B, viral markers". The de facto complainant himself admitted that, on getting the test result on 28.03.2018 itself, he was asked to confirm the same to take follow up treatment. So, we cannot say that the petitioners had an intention to cheat the de facto complainant at the time of collecting blood sample or at the time of issuing the test result. If at all a faulty result was issued after conducting blood test of the de facto complainant, the test was done by Anderson Lab at Chennai, and the employees, who

only collected and sent the sample to Chennai, cannot be held liable for the test result. The Lab is not made an accused in the final report.

13. To bring home the offence of cheating, it must be shown that, at the time of representation being made, it was not only false, but that the person who made such false representation, knew that it was false and with that knowledge, the accused made such representation and thereby induced the party deceived, to deliver the property.

14. In the offence of cheating, there are two elements.- deception and dishonest inducement to do or omit to do something. Mere dishonesty is not a criminal offence. Moreover, to establish the offence of cheating, the complainant would have to show, not only that he was induced to do or omit to do a certain act, but that this induced omission on his part caused, or was likely to cause him, some harm or damage in body, mind, reputation or property – which are presumed to be the four cardinal assets of humanity. (**Chidambaram Chettiar vs Shanmugham** AIR 1938 Mad 129).

15. To constitute cheating, the concept of deception must exist from the very start of the transaction. In order to hold a person guilty of cheating, the intention of a person must be dishonest and there must be *mens rea*. It has to be shown that his intention was dishonest at time of making a promise. Such intention cannot be inferred from the mere fact that he could not subsequently fulfil the promise. Fraud is proved when it is shown that a false representation has been made, knowingly, or without belief in its truth or recklessly, without caring whether it be true or false.

16. In the case in hand, no materials are available to find that, the petitioners collected the blood sample with an intention of cheating and subsequently, issued an incorrect test result with a *mens rea* of cheating him. The FI statement of the de facto complainant is to the effect that, a false result was given by the petitioners after conducting his blood test. As already stated, out of five, only one test result is now challenged by the de facto complainant. Annexure-A7/4 clearly says that, it was only a screening method and so, it has to be correlated clinically and it

was suggested to confirm the test with more specific tests. Moreover as soon as the test result showing 'reactive' was obtained, the de facto complainant was informed by the petitioners to conduct confirmatory tests, and on doing the same, he was found non-reactive. There is nothing to show that he had undertaken any treatment for Hepatitis-B on the basis the faulty result. So, an element of cheating was not there while collecting the blood sample or while issuing the test result.

17. Regarding the offence alleged under Section 506 of IPC, according to the de facto complainant, when he questioned the 1st accused regarding the faulty result, he threatened him and his wife and thus, he criminally intimidated them. It is a matter to be enquired into, by taking evidence. Like that, the allegation of want of licence under the Kerala Municipal Act also has to be enquired into during trial. So, the petitioners have to face the trial for the offences alleged under Section 506 IPC and Section 442 read with Section 543 of the Kerala Municipal Act. Since no trace of cheating could be found out in collecting the blood sample or in issuing the test result, the Crl.M.C could be allowed in part, quashing the

proceedings against the petitioners under Section 420 of IPC.

In the result, the proceedings against the petitioners for the offence punishable under Section 420 of IPC in C.C No.259 of 2019 pending in the Court of Judicial First Class Magistrate-III, Thiruvananthapuram is hereby quashed, and the case shall be continued for the offences punishable under Section 506 of IPC and Section 442 read with Section 543 of Kerala Municipal Act as per the charge sheet, and it shall be disposed of within a period of six months from today, in accordance with law, on its merits.

This Crl.M.C is allowed in part as above.

Sd/-
SOPHY THOMAS
JUDGE

smp

APPENDIX OF CRL.MC 4863/2019

PETITIONER ANNEXURES

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| ANNEXURE A1 | TRUE COPY OF THE CERTIFICATE OF INCORPORATING GIVEN BY THE REGISTRAR OF COMPANIES, CHENNAI TO 'ANDERSON DIAGNOSTICS AND LABS'. |
| ANNEXURE A2 | TRUE COPY OF THE CERTIFICATE OF ACCREDITATION ISSUED BY THE NABL DATED 28.2.2017 |
| ANNEXURE A3 | TRUE COPY OF THE M.L.T CERTIFICATE SECURED BY THE 2ND PETITIONER HEREIN DATED 10.5.2014. |
| ANNEXURE A4 | TRUE COPY OF THE CERTIFICATE ISSUED BY THE SCHOOL OF NURSING S.U.T. THIRUVANANTHAPURAM TO THE 3RD PETITIONER DATED 22.6.2009 |
| ANNEXURE A5 | TRUE COPY OF THE APPOINTMENT LETTER ISSUED BY THE SAID LAB TO THE 1ST PETITIONER DATED 27.3.2017 |
| ANNEXURE A6 | TRUE COPY OF THE APPOINTMENT LETTER ISSUED BY THE SAID LAB TO THE 3RD PETITIONER DATED 6.11.2017 |
| ANNEXURE A7 | TRUE COPY OF THE BILL ISSUED FROM ANDERSON DIAGNOSTICS AND LABS TO THE DE-FACTO COMPLAINT. |
| ANNEXURE A8 | CERTIFIED COPY OF THE FINAL REPORT IN C.C. NO. 259/2019 IN CRIME NO 1424/2018 OF THAMPANOOR POLICE STATION. |

ANNEXURE-A9

TRUE COPY OF THE FIRST INFORMATION
STATEMENT OF DE FACTO COMPLAINANT IN
CRIME No.1424/2018 OF THAMPANOOR POLICE
STATION.

RESPONDENTS' ANNEXURES: NIL.

True Copy

P.S to Judge

smp