

Smitha Shaji vs State of Kerala

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Court : Kerala Orders

Decided On : Apr-08-2025

Judge : Honourable Mr. Justice G.Girish

Appeal No. : Crl.MC/6723/2019

Appellant : Smitha Shaji

Respondent : State of Kerala

Judgement :

Crl.M.C.No.6723/2019 1

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE G.GIRISH TH
TUESDAY, THE 8 DAY OF APRIL 2025 / 18TH CHAITHRA, 1947
CRL.MC NO. 6723 OF 2019 CRIME NO.977/2017 OF TOWN EAST
POLICE STATION, THRISSUR AGAINST THE ORDER IN CC NO.64
OF 2019 OF CHIEF JUDICIAL MAGISTRATE ,THRISSUR
PETITIONER/ACCUSED: SMITHA SHAJI, AGED 47 YEARS W/O.
SHAJI, DEVADATHAM APARTMENT, PALIYAM ROAD, THRISSUR BY
ADV K.A.SREEJITH RESPONDENTS/STATE & DE FACTO
COMPLAINANT :

1 STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA 2 REENA DAVY, AGED 46 YEARS W/O.
DAVY, NEDUMBAKKARAN HOUSE, NELLIKKUNNU, OLUUKKARA,
THRISSUR - 680 005 3 MARIA DAVY, D/O. DAVY, NEDUMBAKKARAN
HOUSE, NELLIKKUNNU, OLUUKKARA, THRISSUR - 680 005 4 ANNA
DAVY,D/O. DAVY, NEDUMBAKKARAN HOUSE, NELLIKKUNNU,
OLUUKKARA, THRISSUR - 680 005 BY ADVS.SRI.K.S.BHARATHAN
R2 TO R4 SRI.ABEL ANTONY SRI.CHRISTINE MATHEW SMT.
SEETHA S., SR. PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
04.04.2025, THE COURT ON 08.04.2025 PASSED THE FOLLOWING:
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ORDER

Accused in C.C.No.64/2019 on the files of the Chief Judicial Magistrate Court, Thrissur has filed this petition under Section 482 Cr.P.C to quash the proceedings against her in the said case. The allegation against the petitioner is that she committed the offence under Sections 406, 420 and 506(i) I.P.C.

2. The prosecution case is that by fraudulently and

dishonestly inducing the de facto complainant to believe that his daughter would be provided with admission for S.S.W course in FANSHAWE College, Canada, the petitioner made him to remit Rs.3,69,564/- on 05.11.2016, and thereafter did not arrange admission as promised or return the amount remitted by the de facto complainant. It is further alleged that when the de facto complainant demanded back the amount remitted by him, the petitioner criminally intimidated him by way of a telephone call by another person that his daughters future would be spoiled.

3. The case was registered by the Thrissur West Police on 17.05.2017 on the basis of a complaint preferred by the de facto complainant before the Thrissur Range I.G which was forwarded to Crl.M.C.No.6723/2019 3

the S.H.O of Police, Thrissur West for investigation. After the completion of the investigation, the S.I of Police, Thrissur East Police laid the final report before the learned Magistrate.

4. In the present petition, the petitioner would contend that she is totally innocent and that she has been falsely implicated in this

case. According to the petitioner, the seats for S.S.W course at FANSHAW College, Canada were already filled by the time when the de facto complainant remitted the fee Rs.3,69,564/- to the said College on 05.10.2016. It is the further contention of the petitioner that the aforesaid fee amount was transferred to another college by name Mohawk College with the concurrence of the de facto complainant and admission arranged there for the said course. However, the de facto complainant allegedly retracted from his decision to have admission for her daughter at Mohawk College and wanted the return of the fees remitted. The petitioner would also contend that the fee amount remitted, less processing fee to the tune of \$1600, could not be refunded since the de facto complainant was not ready to submit the requisite documents within ten days from the starting of classes, as per the norms for refund of fee.

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5. Since the de facto complainant passed away, his legal representatives were impleaded as additional respondents 2 to 4.

6. Heard the learned counsel for the petitioner, the learned counsel for the additional respondents 2 to 4 and the learned Public Prosecutor representing the State of Kerala.

7. As already stated above, the definite contention of the

additional respondents 2 to 4 who represented the de facto complainant is that the petitioner, with the fraudulent and dishonest intention to cheat the de facto complainant, made him remit an amount of Rs.3,69,564/- on 05.11.2016 by giving the false promise that his daughter (additional third respondent) would be arranged admission for S.S.W course at FANSHAW College, Canada, and

thereafter did not provide the admission as agreed or return the amount collected from the de facto complainant. It is also alleged that the petitioner rebuked the de facto complainant when he demanded back the amount remitted as fees in expectation of getting admission for his daughter at the above college. A person by name Sunil is alleged to have telephoned the de facto complainant at the instance of the petitioner, and threatened him that the future of his

Crl.M.C.No.6723/2019 5 daughter would be spoiled if he continued to pressurise the petitioner for the refund of the amount remitted as fees.

8. The learned counsel for the petitioner, by relying on

Annexures-A6, A7 and A8 documents, would argue that the de facto complainants daughter was arranged admission in Mohawk College, Canada for S.S.W course with the concurrence of the de facto complainant due to non-availability of seats at FANSHAW College. According to the learned counsel for the petitioner, the de facto complainant retracted from his decision to take admission for his daughter at Mohawk College, Canada and wanted the refund of fee remitted by him. The reason for non-refund of the fee excluding the processing fee of \$1600, according to the petitioner, is the failure of the de facto complainant to submit the requisite documents as stated in Annexure-A12. The contention of the petitioner in the above regard is strongly disputed by the de facto complainant.

9. As per the prosecution case, the de facto complainant

demanded the refund of fee remitted by him when he realised that the petitioner is not going to arrange admission for his daughter at FANSHAW College. The disputed question of facts emerging from the Crl.M.C.No.6723/2019 6

rival contentions of the parties in the above regard, cannot be adjudicated by this Court in a proceedings under section 482 Cr.P.C. It is a matter which is to be looked into by the Trial Court at the appropriate stage of proceedings. At any rate, it could be seen from the final report and the other relevant records including the complaint preferred by the de facto complainant before the Inspector General of Police, Thrissur Range, that there is the definite allegation by the de facto

complainant that the petitioner cheated him and dishonestly induced him to make remittance of Rs.3,69,564/- under the false promise of offering admission to his daughter for S.S.W course at FANSHAW College, Canada. Therefore, the offence of cheating

envisaged under Section 420 I.P.C is prima facie attracted in the facts

and circumstances of the case. The defence raised by the petitioner

about the admission arranged at another college with the concurrence of the de facto complainant, and the refusal of the de facto complainant to submit the requisite documents for the refund of fee excluding processing fee \$1600, are all matters to be dealt with by the Trial Court at the appropriate stage of proceedings before it. As the allegations contained in the prosecution records prima facie

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look into the aspect as to the exact offences attracted in the facts

and circumstances of the case and decide the question on framing charges by following the procedures envisaged under Sections 239 and 240 Cr.P.C. Therefore, the prayer in this petition to quash the proceedings against the petitioner by invoking the inherent powers of this Court under Section 482 Cr.P.C cannot be allowed.

In the result, the petition is hereby dismissed. (Sd/-) G. GIRISH, JUDGE jsr
Crl.M.C.No.6723/2019 8 APPENDIX OF CRL.MC 6723/2019 PETITIONER
ANNEXURES ANNEXURE A1 THE CERTIFIED COPY OF COMPLAINT
ANNEXURE A2 THE CERTIFIED COPY OF FIRST INFORMATION REPORT IN
CRIME NO. 977/2017 OF TOWN EAST POLICE STATION, THRISSUR IN CC
64/19 IN THE FILES OF CHIEF JUDICIAL MAGISTRATE COURT, THRISSUR
ANNEXURE A3 THE CERTIFIED COPY OF FINAL REPORT IN CRIME NO

977/2017 OF TOWN EAST POLICE STATION, THRISSUR IN CC 64/19 IN THE FILES OF CHIEF JUDICIAL MAGISTRATE COURT, THRISSUR

ANNEXURE A4 THE TRUE COPY OF INSTRUCTION OF FANSHAW COLLEGE, THAT TRANSACTIONS TO BE DONE BY FLYWIRE ANNEXURE A5 THE TRUE COPY OF RECEIPT ISSUED BY FANSHAW COLLEGE ANNEXURE A6 THE TRUE COPY OF REQUEST LETTER OF CANCELLATION OF THE SEAT OF FANSHAW COLLEGE ANNEXURE A7 THE TRUE COPY OF THE OFFER LETTER OF COLLEGE ANNEXURE A8 THE TRUE COPY OF THE RECEIPT ISSUED BY MOHAWK COLLEGE ANNEXURE A9 THE TRUE COPY OF INTERNATIONAL FEE AND REFERENCE GUIDE OF MOHAWK COLLEGE ANNEXURE A10 THE TRUE COPY OF RECEIPT ISSUED BY MOHAWK COLLEGE ANNEXURE A11 THE TRUE COPY OF REQUEST OF CANCELLATION OF ADMISSION AT MOHAWK COLLEGE AND REFUND APPLICATION CrI.M.C.No.6723/2019 9 ANNEXURE A12 THE TRUE COPY OF COMMUNICATION ISSUED BY MOHAWK COLLEGE ASKING TO SENT REQUIRED DOCUMENTS ANNEXURE A13 THE TRUE COPY OF THE EMAIL SENT BY PETITIONER TO 3RD RESPONDENT ANNEXURE A14 THE TRUE COPY OF BANK STATEMENT OF PETITIONER

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