

Sanalkumar vs State

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Court : Kerala

Decided On : Nov-20-2023

Judge : Honourable Mr.Justice P.G. Ajithkumar

Appeal No. : Crl.Rev.Pet/960/2018

Appellant : Sanalkumar

Respondent : STATE

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR
MONDAY, THE 20TH DAY OF NOVEMBER 2023 / 29TH KARTHIKA,
1945 CRL.REV.PET NO. 960 OF 2018 AGAINST THE ORDER DATED
16.07.2018 IN CMP NO.2561 OF 2017 IN C.C.NO.427 OF 2014 OF THE
CHIEF JUIDCIAL MAGISTRATE COURT, THIRUVANANTHAPURAM
REVISION PETITIONERS/ACCUSED NOS.3 & 4: 1 SANALKUMAR,
S/O SADASIVAN PILLAI, KUMARAPURAM HOUSE, KAVUMBHAGAM,
WARD NO.28, THIRUVALLA MUNICIPALITY, THIRUVALLA. 2
MURALEEDHARAN NAIR, S/O.RADHAKRISHNAN NAIR,
MURALIKRISHNA, H.NO.8/309, IN FRONT OF KUMARANALLOOR
TEMPLE, KUMARANALLOOR WARD, PERUMPAYIKKODE VILLAGE,

KOTTAYAM. BY ADVS. SRI.M.SHAJU PURUSHOTHAMAN
SRI.K.S.RAJESH SRI.SAJEEV.T.P. RESPONDENTS/STATE &
COMPLAINANT: 1 STATE HIGH COURT OF KERALA,
ERNAKULAM REPRESENTING THE SUB INSPECTOR OF POLICE,
MUSEUM POLICE STATION, THIRUVANANTHAPURAM. 2*
M/S.CHRYSALIS COMMUNICATIONS PVT. LTD. REP. BY ITS
MANAGER (OPERATIONS AND PRODUCTION) R.SUMESH, OFFICE
HOUSED AT CHANDRA A-26, THIRUVANANTHAPURAM - 695003.
*ADDL.R2 IS IMPEADED AS PER ORDER DATED 04.10.2018 IN
CRL.M.A.2/2018. BY ADVS. R1 BY SMT.MAYA M.N., PUBLIC
PROSECUTOR R2 BY SRI.G.P.SHINOD R2 BY SRI.GOVIND
PADMANAABHAN R2 BY SHRI.AJIT G ANJARLEKAR THIS CRIMINAL
REVISION PETITION HAVING COME UP FOR FINAL HEARING ON
10.11.2023, THE COURT ON 20.11.2023 DELIVERED THE
FOLLOWING:

P.G. AJITHKUMAR, J.

----- Dated this the 20th day of
November, 2023

ORDER

In this revision under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 the petitioners question correctness, legality and propriety of the order dated 16.07.2018 in C.M.P.No.2561 of 2017 in C.C.No.427 of 2014 on the files of the Chief Judicial Magistrate Court, Thiruvananthapuram. The petitioners filed that petition seeking discharge, which was dismissed.

2. Heard the learned counsel for the petitioners, the learned Public Prosecutor and the learned counsel for the additional 2nd respondent.

3. The petitioners are accused Nos.3 and 4. There

are four accused in the case. The offence alleged is punishable under Section 420 read with Section 34 of the Indian Penal Code, 1860 (IPC). The allegations are that the 1st accused being the Managing Director of M/s Sonerge Pharma Pvt.Ltd. and accused Nos.2 to 4 being employees in that concern, induced the de facto complainant, who is the Manager of M/s Chry Salis Communications Pvt.Ltd. to

publish advertisements of the 1st accuseds company assuring to pay the charges of Rs.28,12,692/-. Cheques were issued for the payment of the said amount, but the same were not honoured when presented for encashment. Thus, it was alleged that the accused in furtherance of their common intention fraudulently and dishonestly induced the defacto complainant, 2nd respondent herein, to publish advertisements and by dishonouring of the cheques, he was cheated.

4. The contentions of the petitioners before the court

below were twofold. The first is, the transaction created is only a contract, breach of which can be a dispute of civil nature only and not an offence of cheating as defined in Section 415 of the IPC and second is, the evidence proposed by the prosecution is insufficient to implicate the petitioner in the case.

5. The learned counsel for the petitioners by

reiterating the said pleas, contended that the alleged acts of the petitioners can never be a reason for their prosecution. They are only employees under the 1st accused-company and they are not responsible for non-payment of the company. The learned counsel has taken me through the statements of witness Nos.1 to 5 and contended that their statements are totally insufficient to make out a probable case against the petitioners.

6. The learned Public Prosecutor and the learned

counsel for the 2nd respondent defended the impugned order

by contending that the materials produced by the prosecution are sufficient to create a strong suspicion about the petitioners as also other accused and a charge is liable to be framed against the petitioners.

7. In State of Bihar v. Ramesh Singh [AIR 1977

SC 2018] the Apex Court held that at the stage of framing charge, the court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is

sure to end in his conviction. At that stage, the truth, veracity and effect of the evidence, which the prosecution proposes to adduce, are not to be meticulously judged. It is also unnecessary to weigh the probable defence of the accused. The view taken by the Apex Court in *Stree Attyachar Virodhi Parishad v. Dilip Nathumal Chordia and another* [(1989) 1 SCC 715] is that the court need not conduct an elaborate enquiry in sifting and weighing the material at the time of framing charge. It is also not necessary to delve into various aspects. All that the court has to consider is whether the evidentiary material on record, if generally accepted, would reasonably connect the accused with the crime. In *Union of India v. Prafulla Kumar Samal and another* [(1979) 3 SCC 4] the Apex

Court held that where the materials disclosed grave suspicion against the accused, which has not been properly explained, the court would be justified in framing a charge against the accused. In *Soma Chakravarty v. State through CBI* [(2007) 5 SCC 403] the Apex Court reiterated the said view by holding that when there exists a strong suspicion, a charge can be framed. It was also cautioned that a mere suspicion as distinguished from grave suspicion is not enough to frame a charge.

8. In Vijayan P. v. State of Kerala and another

[(2010) 2 SCC 398] the Apex Court held that the judge who considers a question where a charge is liable to be framed is not a mere Post office to frame the charge at the behest of the prosecution. The judge is expected to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. In *State of*

Gujarat v. Dilipsinh Kishorsinh Rao (MANU/SC/1113/ 2023], the Apex Court held that at the stage of considering an application for discharge, the court shall

proceed on an assumption that the material which has been brought on record

by the prosecution is true and evaluate such materials in order

to determine whether the facts emerging from the materials taken on its face value disclosed the existence of the ingredients necessary of the offences alleged.

9. CW1 is the de facto complainant. CWs.2 to 5 are the employees in M/s Chry Salis Communications Pvt.Ltd. CWs.1, 2, 3 and 5 stated identically that on 10.04.2013, the

1st accused, the Managing Director, the 2 nd accused, Administrative Manager and the 3rd accused, Sales Marketing Manager of M/s Sonerge Pharma Pvt.Ltd. reached the office of M/s Chrysalis Communications Pvt.Ltd. and they in the presence of the said witnesses, struck the deal. They further stated that the cost of the first advertisement of

Rs.5,86,457/- was paid in cash and the cost of the subsequent advertisements was paid by issuing cheques. The said cheques were dishonoured. Apart from stating those facts, witness No.4 stated that the 4th accused Muraleedharan Nair was also present along with the others. In that respect, the statement of the 4th witness stands contradictory to the statement of others.

10. As held in the aforesaid decisions, what is required is that the materials produced by the prosecution on its face should disclose the existence of the ingredients of the offence

alleged. At that stage, the court is expected to proceed on the assumption that the materials brought on record by the prosecution is true. If the statement of the aforesaid witnesses is acted upon, that will certainly would establish

that only on account of the fraudulent and dishonest inducement by the 1st accused to which accused Nos.2 and 3, at any rate, connived the 2nd respondent, had published the advertisements of M/s Sonerge Pharma Pvt.Ltd. But the cost of it remained unpaid owing to the dishonourment of the cheques issued by the 1st accused. The proposed evidence is sufficient to prove the ingredients of an

offence of cheating as defined in Section 415 of the IPC, which reads:

415. Cheating.- Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

11. As regards the 4th accused, the statements of the

witnesses are totally contradictory and the same is insufficient to create a grave suspicion against him. Therefore, it can only be said that the materials produced by the prosecution is insufficient to proceed against him. The order of the court below, therefore, is incorrect to the extent of dismissing C.M.P.No.2561 of 2017 as regards the 4th accused.

Hence, this revision petition is allowed in part. The impugned order concerning the 1st petitioner/3rd accused is confirmed and concerning the 2nd petitioner/4th accused is set aside. The plea of the 2nd petitioner/4th accused for a discharge is allowed. He is discharged. Sd/- P.G. AJITHKUMAR, JUDGE dkr

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