



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN

WEDNESDAY, THE 9TH DAY OF OCTOBER 2024 / 17TH ASWINA, 1946

CRA(V) NO. 53 OF 2024

AGAINST THE JUDGMENT DATED 24.01.2024 IN CC NO.20 OF 2011 OF
SPE/CBI COURT, THIRUVANANTHAPURAM

APPELLANT/VICTIM:

1 DR. JACOB MANI
AGED 72 YEARS
S/O. CHALLIYIL MANI, T.C. NO. 13/1757, MAKAYIRAM,
ELANJIMOODU LANE, MEDICAL COLLEGE POST, THIRUVANANTHAPURAM,
NOW RESIDING AT CHALLIYIL HOUSE, WILSON STREET,
CHANTHAKADVAU, KOTTAYAM, PIN - 695001

BY ADVS.
JOSE PALLATTUKARAN
SIDHARTH MURALI

RESPONDENTS/STATE & ACCUSED/COMPLAINANT:

1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, PIN - 682031

2 I.N. SURESH KUMAR
AGED 60 YEARS, S/O. C.I. NARAYANAN, FLAT NO. A7,
JM APARTMENTS, FREEDOM, ROAD KALOOR,
ERNAKULAM, PIN - 682017

3 M.T. SIVA KUMAR
AGED 69 YEARS, S/O. M.T.N. EZHUTHACHAN,
M.T. HOUSE, AYIKKADU, EDAPPAL,
MALAPPURAM, PIN - 679576

4 PHILIP THOMAS
AGED 50 YEARS, S/O. THOMAS PHILIP,
VARAMBATH HOUSE, TOWER VIEW LANE, BHAGATH SINGH NAGAR,
NALANCHIRA, THIRUVANANTHAPURAM, PIN - 695581



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5 CENTRAL BUREAU OF INVESTIGATION
THIRUVANANTHAPURAM
REPRESENTED BY THE SPECIAL PUBLIC PROSECUTOR,
CBI, HIGH COURT OF KERALA, ERNAKULAM, PIN - 682031

BY ADVS.
R. BINDU (SASTHAMANGALAM) - R2
K.RAJESH KANNAN - R3
GEORGE MATHEW KARAMAYIL - R4
G.RAJAGOPAL (KUMMANAM) (K/3520/1999)
MANUEL THOMAS (K/176/1978)
SUNIL KUMAR A.G (K/000741/2003)
MATHEW K.T. (K/001047/2018)
GEORGE K.V. (K/000060/2019)

THIS CRL.A BY DEFACTO COMPLAINANT/VICTIM HAVING BEEN FINALLY
HEARD ON 09.10.2024, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



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"C.R."

C. JAYACHANDRAN, J.**C.R.A.(V.) No.53 of 2024****Dated this the 09th day of October, 2024****JUDGMENT**

This appeal is preferred under the proviso to Section 413 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS, for short) by the appellant, who claims to be a victim, challenging the judgment of the Special Court, CBI, Thiruvananthapuram dated 24.01.2024 in C.C. No.20 of 2011.

2. When this appeal was moved, notice was issued to the respondents, who were the accused persons before the Special Court. On behalf of the second respondent/A1, Sri.R.Bindu Sasthamangalam appeared and opposed the very maintainability of this appeal, on the premise that the appellant cannot be considered as a victim, in terms of its definition under the BNSS. In the circumstances, the maintainability was heard as a preliminary question.



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3. Heard the learned counsel for the appellant, learned counsel for the second respondent/A1 and the learned Special Public Prosecutor for the 5th respondent/CBI.

4. Learned counsel for the appellant would submit that the judgment of acquittal in the above referred Calendar Case is completely against the weight of evidence and law, which necessitates the appeal. Learned counsel would essentially point out that the appellant is a victim, who is entitled to file an appeal in terms of the proviso to Section 413 of the BNSS. According to the learned counsel, a person who suffers physical injury, mental trauma and who had suffered economic disadvantage, all will fit into the category of a victim, thus entitling him to the benefit of the proviso to Section 413. On facts, it was submitted that, it was the appellant who first intimated the anomalies to the then Bank Manager of the State Bank of India, based upon which he preferred a complaint to the CBI, leading to the registration of the instant crime. Thus, according to the learned counsel, though the Manager concerned is the *de facto* complainant in the legal parlance, appellant is the



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one who triggered such complaint and hence, he can claim the status of a victim. It was submitted that the appellant was a Professor and the third accused is a business man, who was his student. The third accused approached the appellant for financial assistance, specifically for offering a property for availing a loan from the State Bank of India. The third accused had other debts as well. In order to help the third accused, the appellant offered one of his properties towards security for a loan in favour of the third accused. However, the appellant was cheated and the loan was obtained in the name of the appellant, portraying him as the principal borrower, as against the understanding that he will only be a surety. It is the further contention of the learned counsel for the appellant that accused nos.1, 2 and 3 colluded and the third accused designedly chose not to repay the loan, with an ulterior motive that the appellant's property will be proceeded against. Accordingly, the appellant's property was proceeded against and in that sense of the matter, he suffered serious economic loss/disadvantage, which qualifies him to claim the status



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of a victim. A person who has suffered financial loss or economic disadvantage is the victim of a crime, Therefore, the present appeal is quite maintainable, is the submission made by the learned counsel.

5. Learned Special Public Prosecutor (CBI) would submit that the appellant was only a witness and he cannot claim the status of a victim. The appeal is therefore not maintainable. It was also pointed out that the complaint by the then Bank Manager before the CBI was not triggered at the instance of the appellant. According to the learned Special Public Prosecutor, the appellant has to settle his issue with the third accused otherwise, and not by filing the instant appeal.

6. Sri.R.Bindu Sasthamangalam, learned counsel for the second respondent/A1 would first invite the attention of this Court to the definition of 'victim', as defined in Section 2(wa) of the Code of Criminal Procedure, 1973 and also to Section 2(y) of the BNSS, to point out a subtle distinction, whereby the requirement of an act or omission, for which the accused person has been charged,



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going by the old definition, does not find a place in the new one under the BNSS. In a way, the new definition under the BNSS would expand the scope of the term 'victim' to some extent, by obliterating the requirement of an act or omission for which the accused person has been charged, by the expression 'act or omission of the accused person'. However, the learned counsel would submit that, even by virtue of the expanded connotation given to the definition of the term 'victim', the instant facts would not qualify the appellant to claim that status. On merits, it was pointed out that the case espoused by the appellant before this Court to prefer the instant appeal was not at all reflected in the prosecution case, which was tried by the Special Judge in the impugned judgment. Learned counsel would invite the attention of this Court to paragraph no.4 of the judgment, to point out that the core of the allegation against the accused persons was that they entered into a criminal conspiracy to cheat the Bank. Allegations are to the effect that A1/the Chief Manger agreed to discount cheque facilities in favour of A3, even beyond the limit. The limit



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was later increased upto Rs.20 lakhs per day, without obtaining sanction from the appropriate higher authority. The allegation goes on to state that accused nos. 1 and 2, by abusing their official position, discounted as many as 300 cheques presented by A3, besides allowing A3 to withdraw cash beyond the powers of accused nos. 1 and 2 and without any valid sanction. Further allegation is leveled to the effect that accused nos.1 and 2 sanctioned loans to ineligible persons to cover up the liability that arose due to return of discounted cheques. In short, there is no allegation, as espoused by the appellant, in the prosecution case, wherefore his present grievance cannot enable him to claim the status of the victim, is the argument advanced. Learned counsel then invited the attention of this Court to paragraph no.64 of the judgment, wherein the allegation is that accused nos.1 and 2 had shown undue haste to grant loan to the present appellant, along with another, by disbursing the money on the same day itself. In respect of the loan advanced to the appellant, an Original Petition was preferred before the DRT which was allowed, against which,



the present appellant had preferred an appeal before the Appellate Forum. As regards the present appellant's claim that the instant crime was registered pursuant to a request made by the present appellant to the Bank Manager concerned, learned counsel would point out that no such case was spoken to by the appellant, when examined as PW10 before the trial court. Another aspect pointed out by the learned counsel is that the present appellant, during cross examination, had not denied the suggestion that the loan was taken in his own name and his answer was that he was not remembering the same. The learned counsel would thus canvass for dismissal of the appeal, since the appellant cannot claim the status of a victim.

7. Having heard the learned counsel appearing for the respective parties, this Court finds that the instant appeal is not maintainable. It is true that the definition of victim had undergone change in the new Sanhita and the learned counsel for the second respondent/A1 is correct in his submission that the scope of the concept of victim has been expanded by the new definition. Section 2(wa) of the



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Code of Criminal Procedure defines a victim thus:

“ "victim" means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression "victim" includes his or her guardian or legal heir. ”

Section 2(y) of the BNSS defines a victim thus:

“ "victim" means a person who has suffered any loss or injury caused by reason of the act or omission of the accused person and includes the guardian or legal heir of such victim. “

It could thus be seen that the requirement of an act or omission for which the accused person has been charged is obliterated in the new definition. Instead, a loss of injury has to be sustained to a person by the act or omission of the accused person, so as to claim the status of victim as per the Sanhita. However, as rightly pointed out by the second respondent/A1, the question is whether the instant facts would enable the present appellant to claim the status of the victim.

8. The case espoused is more or less in the nature



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of cheating, whereby the appellant would canvass that he had only agreed to be a surety to a loan availed by the third accused. However, he has been shown and made the principal borrower and pursuant to default being committed by the third accused, who had undertaken to repay the loan, appellant's property was proceeded against, thus entailing financial loss and disadvantage, so as to claim the status of a victim.

9. The first aspect to be noticed is that even assuming that the appellant stood only as a surety, still he could not have avoided the consequence of his property being proceeded against for the default on the part of the third accused, even if he was the principal borrower. Therefore, the loss alleged to have been sustained by the appellant is not a direct consequence of the crime in question.

10. The second aspect to be noticed is that present case espoused by the appellant does not find a place in the prosecution case, which led to the instant crime and



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Calendar Case concerned. As already pointed out, in paragraph no.4 of the impugned judgment, the prosecution case is depicted, which does not contain a whisper with respect to the present cause espoused by the appellant, to claim the status of a victim. It is concerned with a conspiracy alleged to have been made by and between accused nos.1 to 3, whereby certain pecuniary advantage has been obtained by A3 on account of the acts of accused nos.1 and 2 by abusing the official position. Going by the prosecution allegation as contained in paragraph no.64 of the judgment, the allegation is that the accused nos. 1 and 2 had shown undue haste in granting loans to the present appellant and another, where also the present case espoused by the appellant does not find a place.

11. The third aspect to be noticed is that the present appellant was only a witness, who was examined as PW10. There also, in the cross examination, he was not in a position to deny the suggestion that the loan was applied for and obtained fully knowing that the same was



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secured for he, himself.

12. When the damage/loss claimed to have been suffered by the appellant is not the direct consequence of the accusations constituting the crime in question, such a person cannot be treated as a victim in law, for the purpose of the remedy contemplated in the proviso to Section 413 of the BNSS. It cannot be lost sight of the doctrine that every crime is deemed to have been committed against the State, which explains the conferment of the power to prefer an appeal, on the State in cases of acquittal; and in cases instituted upon complaint, on the complainant, upon obtaining special leave. The victim gets a right only as per the proviso to Section 413, wherefore he should squarely fall within the definition of Section 2(y). The loss or damage claimed to have been suffered is too remote a cause, when the allegations constituting the crime is taken into account.

13. In the light of the above discussion, this Court finds that the instant appeal is not maintainable and the



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same would therefore stand dismissed.

14. Although the learned counsel for the appellant pointed out that he had preferred a representation before the CBI to prefer an appeal, which is being considered favourably, the same cannot affect the above decision taken by this Court, as regards the appellant's entitlement to claim the status of a victim and to maintain the appeal, on that strength.

In the circumstances, the appeal will stand dismissed, as not maintainable.

Sd/-

C. JAYACHANDRAN

JUDGE

SKP/09-10