

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

FRIDAY, THE 18TH DAY OF DECEMBER 2015/27TH AGRAHAYANA, 1937

CRL.A.No. 1611 of 2011 ( )

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AGAINST THE ORDER IN Cr1.L.P. 697/2011 of HIGH COURT OF KERALA DATED  
08-08-2011

AGAINST THE JUDGMENT IN CC 618/2004 of JUDICIAL FIRST CLASS  
MAGISTRATE COURT, TALIPARAMBA DATED 26-03-2011

APPELLANT/PETITIONER:

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K.S.VINCENT, S/O.SUKUMARAN,  
NALLOMPUZHA, CHITTARIKKAL VILLAGE, KANNIVAYAL P.O.  
KASARAGODE DISTRICT.

BY ADVS.SRI.O.V.MANIPRASAD  
SRI.SAJU J PANICKER

RESPONDENTS/STAE & ACCUSED:

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1. THE STATE OF KERALA, REPRESENTED BY  
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA  
ERNAKULAM.

2. KUNNEL SREEDHARAN S/O.KUNHERUKKAN,  
ALAKODE AMSOM ARANGAM DESOM, VELLATTUKOLLY  
MANAKKADAVE P.O., ALAKODE (VIA), KANNUR DISTRICT-670674

R2 BY ADV. SRI.M.SASINDRAN  
BY PUBLIC PROSECUTOR: SMT M G LISHA

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 18-12-2015,  
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**SUNIL THOMAS, J.**

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**Crl.A.No.1611 of 2011**

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Dated this the 18<sup>th</sup> day of December, 2015

**JUDGMENT**

This appeal is preferred by the de facto complainant in C.C.No.618 of 2004 of Judicial First Class Magistrate Court, Taliparamba, aggrieved by the dismissal of his complaint and consequent acquittal of the accused on allegations of offences punishable under Sections 465 and 471 of the Indian Penal Code.

2. The de facto complainant is the son-in-law of the accused. The accused/father-in-law had gifted 75 cents of land in resurvey 23/1 of Arangam Desom by a gift deed No.1959/2000 of Alakode S.R.O. Subsequently, application for claiming subsidy from the Rubber Board is stated to have been filed before the Rubber Board. In the meanwhile, difference of opinion arose between the complainant and the accused and complainant shifted his residence with his wife to his native place. Accused is stated to have issued a notice cancelling the gift deed. While so, alleging that the accused had forged the signature of the complainant on nomination submitted before the Rubber Board and appropriated the subsidy allotted to the de facto complainant, complainant

issued a notice and thereafter, laid a complaint.

3. The accused stood trial before the magistrate Court. The complainant adduced oral evidence in the form of PWs.1 to 5 and Exts.P1 to P8 were marked. Exts.X1 to X3 were marked as independent exhibits. Learned magistrate, on an evaluation of the entire materials concluded that the complainant failed to prove that the accused has committed the offence and acquitted the accused. This is under challenge in this appeal.

4. Heard both sides and examined the records.

5. Learned counsel for the complainant contended that the court below did not properly appreciate the evidence and by a wrong process of appreciation of evidence and faulty application of law, entered into wrong findings. It was further contended that he had requested for forwarding the disputed and admitted documents for a comparison and for an expert opinion, which was wrongly refused by the court below. It was further contended that the available evidence clearly proved the crime committed by the accused.

6. Ext.P7 is the nomination paper form which is disputed by the de facto complainant. Ext.P1 and P1(a) are the copies of

Ext.P7 bearing the disputed signature of PW1. The prosecution essentially relied on the oral testimony of PW1, de facto complainant and his wife PW2. At the outset, it is to be stated that the evidence tendered by PW2 is thoroughly inconsistent and unsatisfactory, in so far as the ingredients of the offence is concerned. She had even gone to the extent of admitting Ext.P7 document. She stated that she cannot swear regarding the contents of Ext.P7 which is the disputed document. She also admitted that she has not confirmed from her husband as to whether Ext.P7 was signed by him.

7. The defence set up by the accused as is clear from the trend of cross examination and the reply given by him in his answer to Section 313 Cr.P.C. questioning is that he has not committed any forgery, but had received the money. According to him, nomination form was executed by PW1.

8. PW2 in her evidence admitted that the documents in relation to availing subsidy was submitted by her husband. In the light of the admission of the father that the money was received by him, the only question that arose was whether signature on the nomination paper was forged by the accused. It is an admitted fact

that the papers in relation to the subsidy were initially signed by PW1. This is evident from the lawyer notice wherein he had admitted that as requested by the accused, the complainant had given the original document and filled up the application for subsidy and entrusted it with the accused. It is pertinent to note that as per the gift deed, the property stood in the name of the complainant. That being so, it is highly doubtful as to why the complainant should execute all the documents and entrust it to the father-in-law. For this, an answer is given by PW2 in her evidence. According to her, since PW1 did not have sufficient prior experience, he had entrusted the matter with the father. This will clearly show that application for subsidy was made by PW1 himself. This is also clear from the fact that there are other admitted documents of the complainant available on record. Ext.P4 is the application submitted to the Rubber Board on 05.06.2000 for the purpose of obtaining subsidy. The complainant has no case that the signature seen on it was not executed by him. Yet another document available on record is an intimation given by the complainant dated 27.04.2003 to the Production Commissioner, Rubber Board requesting that all further

communications shall be forwarded in his address shown below. These two documents are not disputed by the de facto complainant. In other words, filing of such applications before the Rubber Board is not disputed by PW1. Even admittedly, after submission of the application to the Rubber Board, dispute arose and de facto complainant shifted his residence from the house of the accused.

9. PW1 in his evidence had asserted that he had not signed the nomination paper. However, it is pertinent to note that though he vaguely denied the signature on Ext.P7, he did not specifically refer to the document and denied that it was not his signature or that he has not affixed his signature on the above document.

10. It is pertinent to note that preceding the private complaint, a notice was sent by the de facto complainant through his lawyer. In that, he had admitted that the original documents and the application for claiming the subsidy from the Rubber Board for the newly planted rubber trees in the property were submitted by him. It clearly shows that the application was submitted in relation to the trees which were planted at that time. He had no

case that he himself had planted the rubber trees. It was also clear from the notice that the difference of opinion between the complainant and accused arose only after the submission of the application to the Rubber Bord. It also shows that thereafter he shifted his residence. The entire allegations against the father-in-law has to be seen from this background. PW1 stated that he went to the Rubber Board office and found that certain documents are filed by the father-in-law and he conveyed that he had not applied for subsidy. This is contrary to his own statement in the earlier paragraph that he had executed document for availing subsidy and had entrusted the application to the father-in-law. The most strange part of the lawyer notice is that in spite of specific allegations in the lawyer notice that the father-in-law had forged his signature and submitted an application before the statutory authority, the only relief he wanted through the lawyer notice was return of money. In other words, it was clear that he was more concerned about the money aspect rather than the alleged forgery of his own signature. This will indicate how the mind of the complainant works.

11. On the request of the complainant, the disputed signature was forwarded to the forensic science laboratory, Thiruvananthapuram along with the admitted signature. The admitted signature was Ext.X2 which was an application for gold loan, submitted by him to the Canara Bank in the year 2001. That document was summoned and produced in Court by summoning PW5, the manager. However, Ext.X3 report of the expert appears to be against the complainant. The report states that on a detailed close analysis of the admitted signature and the disputed signature, it was found that in all probability, the person who executed the admitted document himself executed the disputed document. Having found this adverse report, another application was filed for forwarding the document again to another expert. The court below rightly rejected that application stating that the complainant could establish his truth by summoning the handwriting expert and confronting him with the report. Without doing that, he wanted the report already available on record to be contradicted by a second report. Rightly this was not permitted by the court below.

12. However, the court below itself had invoked Section 73 of the Indian Evidence Act and compared the admitted signature with the disputed signature. The Court after a close evaluation concluded that both the signatures show striking similarity. I have also perused the admitted documents as well as the disputed document. It shows several features which prove that the disputed document was executed by the complainant himself. I find no reason to take a different view from that of the conclusion arrived at by the court below. It is evident that the complainant has come up with a false case with motives.

13. On an reevaluation of the available materials, I am satisfied that the court below has correctly appreciated the facts and arrived at proper conclusion. There is no reason for interfering with the finding of the court below.

In the result, the appeal fails and is dismissed.

Sd/-  
**SUNIL THOMAS**  
**Judge**

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P.A to Judge