IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

TUESDAY, THE 10TH DAY OF FEBRUARY 2015/21ST MAGHA, 1936

Crl.Rev.Pet.No. 1058 of 2003 ( )
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AGAINST THE JUDGMENT IN CRL.A.NO.401/2001 of ADDL.SESSIONS COURT, NORTH PARAVUR DATED 17-01-2003

AGAINST THE JUDGMENT IN C.C.NO.465/1996 of JUDICIAL FIRST CLASS MAGISTRATE COURT-II, ALUVA DATED 11-06-2001

REVISION PETITIONER(S)/APPELLANT/ACCUSED NO.I:
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PYARILAL, S/O. VIJAYA PANICKER,
H.M.T.QUARTERS,
PALLILAM KARA
THRIKKAKARA NORTH VILLAGE.

BY ADVS.SRI.C.D.JOHNY
SRI.P.SHAIJAN JOSEPH

RESPONDENT(S)/COMPLAINANT:
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STATE OF KERALA REPRESENTED BY
PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SMT. V.H.JASMINE.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 10-02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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**K. Ramakrishnan, J.**

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**Crl.R.P.No.1058 of 2003**

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**Dated this, the 10th day of February, 2015.**

**<u>O R D E R</u>**

First accused in C.C.No.465/1996 on the file of the Judicial First Class Magistrate Court-II, Aluva is the revision petitioner herein. The revision petitioner along with second accused was charge sheeted by the Additional Sub Inspector of Police, Kalamassery in Crime No.170/1995 of Kalamassery Police Station under Sections 406 and 420 of Indian Penal Code.

2. The case of the prosecution in nutshell was that the accused two in number in furtherance of common intention of cheating several persons on the promise of getting job in a cement company at Sharjah and induced CW 1 to CW27 to part with amounts on several dates with a dishonest intention of making unlawful gain and they did not fulfill the promise and appropriated the amount and did not return the amount or provide the visa and thereby, they have committed the offence punishable under Sections 406 and 420 read with Section 34 of Indian Penal Code.

3. After investigation, final report was filed and it was

taken on file as C.C.No.465/1996 on the file of the Judicial First Class Magistrate Court-II, Aluva. Second accused did not appear and so, the learned magistrate has decided to proceed with the case against the present revision petitioner.

4. When the revision petitioner appeared before the court below, after hearing both sides, charge under Sections 406 and 420 read with Section 34 of Indian Penal Code was framed against the revision petitioner and the same was read over and explained to him and he pleaded not guilty. In order to prove the case of the prosecution, PWs 1 to 13 were examined and Exts. P1 to P4 were marked on the side of the prosecution. Since CW35 - the investigating officer was not alive, he could not be examined. The examination of other witnesses were dispensed with. After closure of the prosecution evidence, the revision petitioner was questioned under Section 313 of Code of Criminal Procedure and he denied all the incriminating circumstances brought against him in the prosecution evidence. He had further stated that, he had not committed any offence and he is innocent of the same. No defence evidence was adduced on his side. After considering the evidence on record, the court below found the revision petitioner not guilty under Sections 406 of Indian

Penal Code and acquitted him of that charge, but, found him guilty under Section 420 of Indian Penal Code and convicted him thereunder and sentenced him to undergo rigorous imprisonment for three years and also to pay a fine of Rs.5,000/- in default to undergo rigorous imprisonment for three months more. The case against the second accused was split up and refiled as C.C.No.812/2001. Aggrieved by the order of conviction and sentence passed by the court below, the revision petitioner filed Crl.Appeal No.401/2001 before the Sessions Court, Ernakulam which was made over to the Additional Sessions Court, North Paravur for disposal and the learned Additional Sessions Judge by the impugned judgment, dismissed the appeal. Aggrieved by the same, the present revision has been filed by the revision petitioner- first accused before the court below.

5. Heard the Counsel for the revision petitioner and the learned Public Prosecutor.

6. The Counsel for the revision petitioner submitted that the evidence of PWs 1 to 3 will go to show that there was no intention on the part of the first accused to cheat and in fact, he had only introduced the victims who had parted with money to the second accused on the belief that he will make

arrangements for getting visa and since he did not obtain the visa, he cannot be held responsible for non performing of any act which ought to have been done by the second accused. He has no intention to cheat anyone and whatever possible on his side has been done by him and so, no offence under Section 420 of Indian Penal Code is attracted as against him and according to the Counsel for the revision petitioner, the courts below were not justified in convicting the revision petitioner for the offence alleged.

7. On the other hand, the learned Public Prosecutor submitted that, several innocent persons who have been induced to part with the amounts on the false promise of obtaining a visa knowing that he may not be able to procure the same, that will go to show his evil mind of dishonest intention to cheat the persons and it is difficult for the witnesses to read the mind of the person at the time when they part with the amount, that will have to be considered on the basis of the evidence available. So, according to the learned Public Prosecutor, the courts below were perfectly justified in convicting the revision petitioner for the offence under Section 420 of Indian Penal Code.

8. The case of the prosecution as emerged from the

prosecution witnesses was as follows:

The first accused with the connivance of the second accused had make to believe CWs 1 to 27 that they would arrange job for them in a cement company at Sharjah and on that promise, the revision petitioner obtained Rs.54,000/- each from CWs 1 to 4 on 20.07.1995 from his house at Pallilamkara and on 20.07.1995, he obtained Rs.55,000/- each from CWs 5 to 7 and on 28.07.1995, he received Rs.52,000/- from CW8, on 11.07.1995, he obtained Rs.20,000/- from CW9, Rs.55,000/- from CW10, Rs.30,000/- from CW11, Rs.55,000/- from CW12, Rs.52,000/- each from CWs 13 and 14, Rs.45,000/- from CW15, Rs.55,000/- from CW16, Rs.52,000/- from CW17, Rs.55,000/- from CW18, Rs.52,000/- from CW19, Rs.55,000/- from CW20, Rs.52,000/- from CW21, Rs.15,300/- from CW22, on 11.07.1995, he obtained Rs.55,000/- from CW23, on 19.07.1995, he obtained Rs.55,000/- each from CWs 23 and 24, Rs.52,000/- each from CWs 25 and 26 and Rs.55,000/- from CW27 and later, he did not fulfill the promise and did not pay back the amount and absconded and thereby, he had committed the offence. On the basis of Ext.P1 statement given by PW1, Crime No.170/1995 was registered by CW 35 and during investigation, it was revealed that apart from PW1, CWs 2 to 27 were also cheated by the accused persons and it was also revealed that apart from the first accused, second accused also involved in the commission of the crime and he had seized the documents from Venad hotel at Kottayam as per Ext.P4 mahazar from the possession of the second accused in the presence of PW13 and another. CW35 questioned the witnesses and recorded their statements. PW10 had arrested the accused persons and completed the investigation and filed final report.

9. PWs 1 to 3 though admitted that the amount was paid to PW1, he had stated that he had not paid any amount to first accused, but, had paid the amount to the second accused and except introducing, first accused had no role. The same thing was reiterated by PWs 2 and 3 also. So, they were declared hostile by the prosecution. But, PWs 4, 9, 11 and 12 have deposed that it was on the basis of the inducement made by the first accused that they have parted with the amount to him and they were taken to Bombay on the promise that accused Nos. 1 and 2 will procure the job. On the next day, they absconded and though they enquired about them, they could not get their presence. Apart from them, others were also present who were also similarly cheated by the accused

persons. Thereafter, they came back to their native places after collecting amounts from others. They have also stated that it was on the basis of promise and the belief that first accused will procure the visa, they have parted with the amount. Though they were cross examined at length, nothing was brought out to discredit the evidence on this aspect. It is true that, it is very difficult for the witnesses to say that even at that time, the accused have no intention to fulfill the promise. If they have only violated the conditions of promise, the liability is only that of civil liability and not criminal liability. It is very difficult to read the mind of the person at that time. The conduct of the parties will have to be taken note of to ascertain the evil intention of the person who had induced the persons to part with the amount. It is clear from the evidence that the first accused was not a person having any licence to procure visa and he had no case that the second accused is also having such a licence and it was on that basis he had induced the innocent victims namely., CWs 1 to 27 to part with the amount. If really, the second accused was having the visa as contended by him, he would have satisfied the witnesses before making them to part with the amount. Further, no evidence was adduced on the side of the first accused to prove that he had no role in the transaction, but, he believed the second accused and introduced these witnesses to part with the amount. But, the evidence of PWs 4, 9, 11 and 12 will go to show that on the basis of promise and as induced by first accused, they went to Bombay and he introduced the second accused from there and thereafter, they promised that visa will be arranged and they will be sent to foreign country on the next day, but, they did not come. On an enquiry, it was revealed that, they absconded. So, all these things will go to show that the first accused had no intention to fulfill his promise even when he made the inducement and he had induced them with a dishonest intention to make unlawful gain and make the innocent persons to part with the amount and thereafter, fled away with second accused with the amount. So, under the circumstances, courts below were perfectly justified in coming to the conclusion that the first accused had acted in dishonest intention to cheat the innocent persons and made them to part with the amount on the promise of procuring visa with the connivance of the second accused and thereby, he had cheated them. Non examination of the investigating officer in this case is not fatal and it cannot be said to be willful because he is no more. Further, no contradictions were brought in the evidence of PWs 4, 9, 11 and 12 who had deposed in support of the case of the prosecution regarding the role played by the first accused in making the representation and inducement and make them to part with the amount. So, under the circumstances, courts below were perfectly justified in coming to the conclusion that the revision petitioner had committed the offence punishable under Section 420 of Indian Penal Code and rightly convicted him for the said offence. I don't find any reason to interfere with the concurrent findings of the courts below on this aspect.

10. As regards the sentence is concerned, the court below had sentenced him to undergo rigorous imprisonment for three years and also to pay a fine of Rs.5,000/- in default to undergo rigorous imprisonment for three months more. It is true that the amounts were entrusted to second accused, but it was on the basis of the inducement made by the first accused. There is no evidence as to how much amount the first accused had obtained from the second accused as well. However, in spite of the fact that several persons were being cheated like this and in spite of that, innocent victims are being induced by persons like the accused to part with the amount on the hope that they will get visa and thereafter, they

are made to lose their money. So, such things will have to be seriously viewed. But, considering the fact and also the role played by the first accused, this court feels that some leniency can be shown in the sentence and reducing the sentence to one year rigorous imprisonment will be sufficient and that will meet the ends of justice. So, the sentence imposed by the court below is modified as follows:

> The revision petitioner is sentenced to undergo rigorous imprisonment for one year and also to pay a fine of Rs.5,000/- in default to undergo rigorous imprisonment for three months.

With the above modification of the sentence alone, the revision petition is allowed in part and disposed of accordingly.

Office is directed to communicate this order to the concerned court immediately.

Sd/-

**K.Ramakrishnan, Judge.**

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*[True copy]*

*P.A to Judge*