

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

THURSDAY, THE 12TH DAY OF FEBRUARY 2015/23RD MAGHA, 1936

Crl.Rev.Pet.No. 1851 of 2003 ()

**AGAINST THE ORDER/JUDGMENT IN CRA 136/1999 of ADDITIONAL SESSIONS COURT
(FAST TRCK COURT-I), TRIVANDRUM DATED 30-06-2003**

**AGAINST THE ORDER/JUDGMENT IN CC 304/1996 OF JUDICIAL FIRST CLASS
MAGISTRATE COURT-II, ATTINGAL DATED 23-03-1999**

REVISION PETITIONER(S)/APPELLANTS/ACCUSED:

1. THULASEEDHARAN NAIR,
S/O.RAMAKRISHNA PILLAI
KAVIL KUNNUMPURATHU VEEDU
CHINTHRANALLOOR, PEROOR,
PONGANADU DESOM, KILIMANNOOR VILLAGE.
2. SUMATHY, W/O.THULASEEDHARAN NAIR,
KAVIL KUNNUMPURATHU VEEDU
CHINTHRANALLOOR, PEROOR,
PONGANADU DESOM, KILIMANNOOR VILLAGE.

BY ADV. SRI.S.RAJEEV

RESPONDENT(S)/COMPLAINANT:

**STATE OF KERALA-REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM (CRIME NO.298 OF 1995 OF KILIMANNOOR POLICE STATION)**

R1 BY ADV. SMT.V.A.JASMINE, PUBLIC PROSECUTOR

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
12-02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

R.AV

K.RAMAKRISHNAN, J

CRL.R.P.NO.1851 OF 2003

dated this the 12th day of February, 2015

O R D E R

Accused Nos. 1 and 2, in CC.No.304/1996 on the file of the Judicial First Class Magistrate Court-II, Attingal are the revision petitioners herein.

2. The revision petitioners were charge sheeted by the Circle Inspector of Police, Kilimanoor police station in Crime No.298/1995 of Kilimanoor police station, alleging offence under section 420 read with section 34 of Indian Penal Code.

3. The case of the prosecution in nutshell was that the accused persons in furtherance of their common intention of cheating the defacto complainant by making false representation with a dishonest intention to cheat him made into part with Rs.34,000/- on the promise of obtaining a visa for PW2, but later they did not fulfil the promise and did not return the amount and thereby they have committed the offence punishable under section 420 read with section 34 of Indian Penal Code. After investigation, final report was filed, and the case was taken on file as CC.No.304/1996 on the file of Judicial First Class Magistrate Court-II, Attingal.

4. When the revision petitioners appeared before the court below, after hearing both sides, charge under section 420

read with section 34 of Indian Penal Code was framed and the same was read over and explained to them and they pleaded not guilty. In order to prove the case of the prosecution, PWs 1 to 20 were examined and Exts.P1 and P2 were marked on the side of the prosecution. After closure of the prosecution evidence, the revision petitioners were questioned under section 313 of the Code of Criminal Procedure, and they denied all the circumstances brought against them in the prosecution's evidence. They further stated that they have not committed any offence and they are innocent of the same and they have been falsely implicated in the case. No defence evidence was adduced on their side. After considering the evidence on record, the trial court found the revision petitioners guilty under section 420 read with section 34 of Indian Penal Code, and convicted them thereunder and sentenced them to undergo simple imprisonment for two years and also to pay a fine of Rs.1000/- each in default to undergo simple imprisonment for three months each. Aggrieved by the same, they filed Crl.Appeal No.136/1999 before the Sessions Court, Thiruvananthapuram, which was made over to Additional Sessions Court (Adhoc-I), Thiruvananthapuram, for disposal and the learned Additional Sessions Judge, by the impugned judgment dismissed the appeal, confirming the order of

conviction and sentenced passed by the court below. Aggrieved by the same, the present revision has been filed by the revision petitioners accused before the court below.

5. The counsel for the revision petitioners submitted that the first revision petitioner is no more and the second revision petitioner is a lady, aged now 65 years. Since, death of the first revision petitioner will not end abatement of revision, the matter has to be heard and disposed of on merit. So, the matter is heard and disposed of on merit.

6. Heard the counsel for the revision petitioners and the learned Public Prosecutor.

7. The counsel for the revision petitioners submitted that there is no evidence to prove that there was parting of money as contended by the prosecution and except the oral evidence of witnesses there is no evidence to show that the amount was handed over. In the absence of such evidence, it cannot be said that the prosecution has proved the parting of money. Further, there is no evidence to show that he got the intention to cheat even at the time when the transaction had taken place. So, under the circumstances, courts below were not justified in convicting the revision petitioners for the offence alleged. The counsel for the revision petitioner also submitted that if for any reason this court is not inclined to interfere with

the conviction, he prayed for a leniency as first revision petitioner is no more and the second revision petitioner is the widow and aged 65 years.

8. On the other hand, the learned Public Prosecutor supported the concurrent findings of the courts below on this aspect.

9. The case of the prosecution in nutshell was that the second revision petitioner was known to PW3 the wife of PW1, and she had told that her husband was able to procure a visa for his son PW2, and on that promise they approached the first revision petitioner and he had promised to procure a visa for PW2 and on that condition, on 07.09.1994, at 9.a.m, he gave Rs.20,000/- from his house and again on 22.11.1994 at 9.a.m another amount of Rs.14,000/- was given to the first revision petitioner and an amount of Rs.20,000/- earlier to the second revision petitioner and passport was also handed over and thereafter they did not arrange the visa nor had they returned the money or passport. So, PW1 gave ext.P1 complaint, to Director General of Police, which was forwarded to the Station House Officer through proper channel and on receipt of the same, PW9 registered Ext.P2 First Information report as Crime No.298/95 of Kilimanoor police station against both the accused under section 420 read with section 34 of Indian Penal Code.

Thereafter, the investigation was conducted by PW10, the Circle Inspector of Police. He questioned the witnesses and recorded their statement, completed the investigation and submitted the final report.

10. The prosecution relies on the evidence on PWs 1, 2, 3 and 4 to prove the payment and PWs 6 to 8, to prove the source for payment of the amount. PW1 had categorically stated that the second revision petitioner, who is known to PW3 his wife, had told that her husband who is the first revision petitioner was having visa and if they wanted he could arrange the same for PW2, the son of PW1 and accordingly they met revision petitioners 1 and 2 and at that time they promised that if they pay Rs.34000/- they would be able to give the visa . PW1 had stated that they have raised the money by selling the property and also by borrowing amounts. The evidence of PWs 6 to 8 will go to show that PWs 1 and 3 have borrowed some amount from them for the purpose of getting visa and they came to understand that the visa could not be obtained. Though, they were cross-examined at length, nothing was brought out to discredit their evidence on this aspect. Further, the evidence of PWs 4 and 5 who are the brothers of PW3, will go to show that they came to the house of PW1 as requested by PW3 when they wanted to give the amount to the revision

petitioners. It was on that basis they came there. The suggestion given to these witnesses was that there was some enmity for Vasudevan, one of the brothers of PW3 and the first accused and on account of that enmity they have been falsely implicated in this case which was denied by them. Further, the evidence of PWs 1 and 3, will go to show that it was on the basis of the inducement made by revision petitioners 1 and 2, they have parted with Rs.20,000/- to the second revision petitioner on the earlier occasion and Rs.14,000/- to the first revision petitioner on the second occasion and this was supported by the evidence of PW2 on whose behalf these arrangements were made. They further stated that they believed the words of revision petitioners 1 and 2, and that was a reason for payment of the amount. The conduct of the revision petitioners will go to show that they have no intention to procure the visa and they did not have got any visa with them as well and they had even denied the receipt of the amount. So, that shows the deception intention of the revision petitioners that they have no intention to procure the visa when they obtained the amount and they knew that they may not be able to procure the same as well. So, under the circumstances, the courts below were perfectly justified in coming to the conclusion that revision petitioners 1 and 2 have

in furtherance of their common intention of cheating PW2 induced him to part with Rs.34,000/- on the promise of getting a visa and thereafter they did not pay the amount nor had they procured the visa as they promised and thereby they have committed the offence punishable under section 420 read with section 34 of Indian Penal Code and I don't find any reason to interfere with the concurrent findings of the court below on this aspect on the basis of evidence.

11. As regards the sentence is concerned, both the revision petitioners were sentenced by the trial court to undergo simple imprisonment for two years and also to pay a fine of Rs.1000/- each in default to undergo simple imprisonment for three months each which is confirmed by the appellate court. The first revision petitioner is no more according to the counsel for the revision petitioner, the second revision petitioner is the wife of the first revision petitioner who had made to believe the second revision petitioner that he may able to procure the visa and it was on that basis, she made the promise to PW3 and on that basis the amounts were paid. Second revision petitioner is a widow and aged 65 years now. So, considering the circumstances, this court feels that some leniency can be shown as regards the second accused, who is the second revision petitioner in the sentence to be imposed and making to pay the

compensation to make good the loss sustained by the defacto complainant along with some substantive sentence will be sufficient and that will meet the ends of justice.

12. As regards the first revision petitioner is concerned, this court is not inclined to interfere with the sentence as he is the main person responsible for the commission of the offence. So, sentence imposed by the court below as against the second revision petitioner alone is set aside and modified as follows:

The second revision petitioner is sentenced to undergo till rising of court and also to pay a compensation of Rs.50,000/- to PW1 in default to undergo simple imprisonment for three months. But this court confirmed the conviction and sentence as against the first revision petitioner and he was no more and the fine can be realised, if any available with his legal representatives.

With the above modification of the sentence alone as against the second revision petitioner, the revision is allowed in part and disposed of accordingly. Office is directed to communicate this order to the concerned court immediately.

sd/-

K.RAMAKRISHNAN, JUDGE

R.AV

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PA TO JUDGE