

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

TUESDAY, THE 13TH DAY OF JANUARY 2015/23RD POUSHA, 1936

Crl.Rev.Pet.No. 912 of 2004 ()

**AGAINST THE JUDGMENT IN CRA 148/2000 OF ADDITIONAL SESSIONS COURT (FAST
TRACK COURT NO.I), PALAKKAD DATED 16.12.2003**

**AGAINST THE JUDGMENT IN CC 133/1997 OF JUDICIAL FIRST CLASS MAGISTRATE
COURT-III,PALAKKAD DATED 22.7.2000**

REVISION PETITIONER/APPELLANT/ACCUSED:

**ABDUL KAREEM, S/O.MUHAMMED KUTTY,
43 YEARS, H.NO.222/97, CHUNGAM
MUNDUR PANCHAYATH, C/O. MUNTHUAL HOTEL, MUNDUR
PALAKKAD.**

**BY ADVS.SRI.A.R.GANGADAS
SRI.M.T.SURESHKUMAR**

RESPONDENT/RESPONDENT/RESPONDENT:

**STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA.**

BY PUBLIC PROSECUTOR SRI. K.K. RAJEEV

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
13-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

Shg/

K.RAMAKRISHNAN, J

Crl.R.P.No.912 OF 2004

Dated this the 13th day of January, 2015

O R D E R

Accused in CC.133/1997 on the file of the Judicial First Class Magistrate Court-III, Palakkad is the revision petitioner herein.

2. The revision petitioner was charge sheeted by the Circle Inspector of Police, Hemambika Nagar police station of Palakkad district in Crime No.113/1996 of Malampuzha police station under section 420 of Indian Penal Code.

3. The case of the prosecution in nutshell was that on 03.01.1996, at about 11.a.m, the accused dishonestly induced CW1, to part with Rs.55,000/- on the promise that he will obtain a visa for him and obtained money and passport from him and he did not arrange the visa nor had he returned the passport nor the money and thereby he had committed the offence punishable under section 420 of the Indian Penal Code. After investigation, final report was filed and the case was taken on file as CC.133/1997 on the file of Judicial First Class Magistrate Court-III, Palakkad.

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

of the Indian Penal Code was framed 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 8 were examined and Exts.P1 to P9 were marked on their side. After closure of the prosecution evidence, the revision petitioner was questioned under section 313 of the Code of Criminal Procedure and he denied all the incriminating circumstances brought against him in the prosecution's evidence. He had further stated that he had not committed any offence and he had no transaction with the revision petitioner. No defence was adduced on this side in defence. After considering the evidence on record, the trial court found the revision petitioner guilty under section 420 of the 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.5000/- in default to undergo simple imprisonment for six months. It is further ordered that if the fine amount is realised, the same be paid to the defacto complainant as compensation under section 357(1) (b) of the Code of the Criminal Procedure. Aggrieved by the same, the revision petitioner filed Crl.Appeal 148/2000 before the Sessions Court, Palakkad, which was made over to the Additional Sessions Court, (Fast track-I) Palakkad for disposal. The learned Additional Sessions Judge by the impugned judgment allowed

the appeal in part, confirming the order of conviction, but modified the sentence to undergo simple imprisonment for one year and also to pay an amount of Rs.55,000/- as compensation to the defacto complainant in default to undergo simple imprisonment for six months under section 357(3) of the Code of Criminal Procedure. Aggrieved by the same, the present revision has been filed by the revision petitioner -accused before the court below.

5. Heard the counsel for the revision petitioner and the Public Prosecutor.

6. The counsel for the revision petitioner submitted that there is no acceptable evidence adduced on the side of the prosecution to prove that there was any inducement on the part of the revision petitioner to make the complainant to part with any amount. Further, the documents produced will not be sufficient to prove the source by which he had raised the amount. Ext.P2 was produced, which was much after the transaction and that will not be helpful to prove that he had obtained the money by selling his property for the purpose of paying the same on 03.01.1996 as claimed by him. The evidence will go to show that he had voluntarily approached the accused and paid the amount and if at all there was any act on the part of the accused it may not amount to cheating but at

the most it may amount to breach of promise and no offence under section 420 of the Indian Penal Code is attracted. The counsel had further submitted that in case this court found that the offence has been made out, he prayed for leniency as since the appellate court awarded compensation, substantive sentence of imprisonment may be avoided.

7. On the other hand, the learned Public Prosecutor submitted that the evidence adduced on the side of the prosecution proved the guilt of the revision petitioner beyond reasonable doubt and the concurrent findings of the courts below on this aspect do not call for any interference.

8. The case of the prosecution as emerged from the prosecution witnesses was as follows:

PW1, PW2 and 5 are known to each other and when PW1 came to know that the revision petitioner was having open visa for an employment in a hospital for cleaning work in Saudi Arabia, he approached him and he promised him that he will get the visa but he will have to pay Rs.55,000/-. Accordingly, he had paid Rs.55,000/- on 03.01.1996 from his house in the presence of PWs 2 and 5 and he had entrusted his passport for that purpose. As requested by him, he went to a hospital of PW5 who examined him and obtained Ext.P5 token and gave Exts.P6 and P7 application form and report. He obtained money

by selling his property and loan from by pledging his gold ornaments and from friends. As requested by the revision petitioner, he went to Bombay but he did not provide visa. So had to come back and he demanded money and passport and the revision petitioner evaded and did not return the same. So, he filed Ext.P1 private complaint before Judicial First Class Magistrate Court-III, Palakkad which was forwarded to the police for investigation under section 156 (3) of the Code of Criminal Procedure and on receipt of the complaint, a crime was registered and as entrusted by the Circle Inspector of Police, PW8 conducted the investigation and submitted the final report.

9. The prosecution relies on the evidence of PWs 1, 2 and 5, to prove the transaction. PW1 had stated that during December 1995, PW2 told him that the revision petitioner was having an open visa and accordingly they approached the revision petitioner and he had made to believe PW1 that he was having the visa and he wanted Rs.55,000/- for that purpose and also told him that he had to undergo medical test at Ernakulam at his expenses. Accordingly he had made arrangements to raise the amount by borrowing an amount of Rs.19,000/- from PW3 his friend and by pledging his gold ornaments with PW6 and also selling his property evidenced by Ext.P2. It is true that

Ext.P2 shows that the date as 13.06.1996 whereas the amount was paid on 03.01.1996. It may be mentioned here that he could have obtained the advance for the purpose of payment of the amount and the property could have been sold later. Further, no question was put to PW1, as to how the amount of Rs.27,000/- mentioned in Ext.P2 was obtained on 03.01.1996. Further, the evidence of PWs 2 and 5 will go to show that on 03.01.1996 PW1 had paid Rs.55,000/- to the revision petitioner and the passport was also entrusted to him. There is no enmity for PWs 2 and 5 to give false evidence against the revision petitioner except the suggestion that they were not present. No other circumstances brought against them for giving false evidence against the revision petitioner.

10. Unless the revision petitioner had promised to provide the visa, which PW1 would have believed he would not parted with the amount. Further, the conduct of the revision petitioner asking to go for medical examination which was done by PW5 on 10.01.1996 (though it was mentioned at the time of evidence as 11.10.1996 which only by a mistake going by the documents proved by the prosecution) and also the fact that he went to Bombay along with the revision petitioner and stayed there etc will go to show that it was on the basis of the inducement and representation made by him that he would get

the visa from the revision petitioner that he had parted with the amount. So that can be treated as inducement for the purpose of parted with the amount and nothing else. Further, the subsequent conduct of the revision petitioner not returning the passport and returning the amount also will lead to the inference that he had the intention of dishonestly making unlawful gain knowing that he may not be able to fulfill the promise of providing visa which he had undertaken to be given to PW1. So, under the circumstances, courts below were perfectly justified in coming to the conclusion that the revision petitioner had dishonestly induced PW1 on the promise of obtaining a visa and made him to part with Rs.55,000/- and passport and he did not return the same nor had he obtained the visa as well and thereby he had committed the offence punishable under section 420 of the Indian Penal Code and the concurrent findings of the courts below on this aspect do not call for any interference.

11. As regards the sentence is concerned, the trial court had sentenced him to undergo rigorous imprisonment for three years and pay a fine of Rs.5000/- in default to undergo simple imprisonment for six months. It is further ordered that if the fine amount is realised, the same be paid to the defacto complainant as compensation under section 357(1) (b) of the

Code of Criminal procedure. But the appellate court had reduced the substantive sentence to one year simple imprisonment but awarded Rs.55,000/- as compensation with default sentence six months simple imprisonment to be payable to the defacto complainant under section 357 (3) of the Code of Criminal Procedure. The prosecution has no case that except this case, he had involved any other visa transaction and cheated any other person. Further, the appellate court had awarded compensation. So, considering the circumstances, this court feels that increasing the compensation amount and reducing the imprisonment till rising of court will be sufficient and that will meet the ends of justice. So, under the circumstances, the sentence imposed by the court below and modified by the appellate court is set aside and the same is modified is as follows:-

The revision petitioner is sentenced to undergo imprisonment till rising of court and also to pay a compensation of Rs.75,000/- to PW1, in default to undergo simple imprisonment for six months under section 357 (3) of the Code of Criminal Procedure. Three months time is granted to the revision petitioner to pay the amount. Till then the execution of the sentence is directed to be kept in abeyance.

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**

R.AV

//True Copy//

PA to Judge