

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

FRIDAY, THE 27TH DAY OF MARCH 2015/6TH CHAITHRA, 1937

Crl.Rev.Pet.No. 3357 of 2003 ()

AGAINST THE JUDGMENT IN CRA 659/2001 of ADDL.SESIONS JUDGE, NORTH
PARAVUR DATED 07-10-2003

AGAINST THE JUDGMENT IN CC 751/1997 of J.M.F.C.-I, ALUVA
DATED 06-09-2001

REVISION PETITIONER(S):

DAVID, S/O. THOMAS,
AGED 46 YEARS,
KANAMKUDAM VEETIL,
KIZHAKKE POTTA,
CHALAKUDY VILLAGE.

BY ADV. SRI.B.N.SHIVSANKAR

RESPONDENT(S):

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1. STATE OF KERALA REPRESENTED BY THE
S.I. OF POLICE, NORTH PARAVUR.
 2. STATE OF KEARLA REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

PUBLIC PROSECUTOR ADV. SMT. MADHUBEN.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 27-03-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

acd

P.D. RAJAN, J.

Crl.R.P.No. 3357 of 2003

Dated this the 27th day of March, 2015

ORDER

The revision petitioner is the 2nd accused in C.C.No.751/1997 of the Judicial First Class Magistrate Court-I, Aluva, which was charge sheeted by the Sub Inspector of Police, North Parur for offence punishable u/s.420 r/w.34 IPC.

2. The prosecution allegation is that in furtherance of the common intention, the accused 1 and 2 dishonestly induced PWs 1 to 5 and 7 and promised to arrange a Visa for jobs in Muscat and as per the inducement, they paid a sum of ₹21,000/- to the accused, but, they failed to arrange Visa and thereby cheated them. On the basis of information, North Paravur Police registered Crime No. 148/83 and after

investigation, laid charge before the Judicial First Class Magistrate Court-I, Aluva.

3. To prove the case, prosecution examined PWs 1 to 8 and admitted Exts.P1 and P2 in evidence. The incriminating circumstances brought out in evidence were denied by the accused while questioning him u/s.313 Cr.P.C. The trial Court convicted the 2nd accused u/s.420 IPC and sentenced to undergo rigorous imprisonment for 3 years and to pay a fine of ₹5,000/- , in default of payment of fine, simple imprisonment for one month. Against that, he preferred Crl.Appeal No.659/2001 before Additional Sessions Court, N. Paravur, which was dismissed.

4. The learned counsel for the revision petitioner contended that there is no evidence in this case to convict the revision petitioner. A wrong appreciation was made by the Courts below invoking S.34 of the IPC and convicted

him. The petitioner is now aged 58 years and the sole bread winner of the family and therefore, the illegality is to be rectified by invoking revisional jurisdiction.

5. The learned Public Prosecutor contended that there is no illegality in the findings of the Court below. Pws1 to 3 were not cross examined by the revision petitioner in the trial Court. In the absence of any illegality, no interference is necessary.

6. In order to ascertain the legality and propriety of the findings, I have perused the records for satisfying the correctness of the argument. PW1 gave Ext.P1 statement in which he alleged that A1 approached him by promising that he will arrange a job Visa to Muscat. As per the promise, he paid ₹8,000/- to A1, but he demanded total ₹13,000/-. PW1 informed this matter to PWs 2 to 5 and they also paid advance amount. When A1 failed to

arrange Visa, he filed Ext.P1 at North Paravur Police. Pws2 and 3 stated that they paid ₹3000/- and ₹2500/- respectively to A1. The revision petitioner was also present at the time of payment of the above amount. This direct oral testimony of PWs 1 to 3 was not challenged in evidence by cross examination of those witnesses. No reasons are found to disbelieve that version.

7. PW5 also supported the case, but, she was declared as hostile. But, PWs 6 and 7 categorically admitted that they were present at the time of payment of money. According to them, A1 received the amount, the revision petitioner (A2) counted the amount in their presence. The investigation Officer properly conducted the investigation and laid final report before Court.

8. The Apex Court in **Hari Om v. State of Uttar Pradesh** [(1993) 1 Crimes 294 (SC)] held that in order to

bring a case under section 34, it is not necessary that there must be a prior conspiracy or pre-meditation, the common intention can be formed in the course of occurrence. Here, A1 collected the amount by believing that he will arrange Visa to the victims PWs 1 to 5. That money was entrusted to A1 in the presence of the 2nd accused, which was counted by him and kept in the custody. It shows the common intention shared by them. In State of Punjab v. Fauja Singh (1997) 3 Crimes 170 held that if some act is done by the accused person in furtherance of common intention of his co-accused, he is equally liable like his co-accused. Therefore, the evidence of PWs 1 to 3 and 6 and 7 is sufficient to attract Section 34 IPC. Therefore, the conviction passed by the trial Court u/s.420 r/w.34 IPC is only to be confirmed.

9. The learned counsel for the revision petitioner

submitted that the trial Court imposed a harsh sentence which was confirmed by the Appellate Court. When an offence is punishable with imprisonment, the trial Court has an adequate discretion in awarding suitable punishment proportionate to the crime. In exercise of this discretion, the Court has to take into consideration several factors such as gravity of the offence, the motive of the offender, the harm caused to the victim, the circumstances under which the offence was committed and the age, character and antecedents of the offender. Here, no previous criminal antecedents were proved against the revision petitioner. In Ram Narain v. State of UP [(1973) 2 SCC 86] Apex Court held that "the sentence to be appropriate, should, therefore, be neither too harsh nor too lenient." Considering the age and nature and gravity of the offence, I am of the view that the revision

petitioner is entitled to get a leniency in sentence.

10. The revision petitioner is sentenced to undergo simple imprisonment for six months u/s.420 IPC r/w 34 IPC and to pay a fine of ₹5,000/-, in default of payment of fine, he shall undergo another simple imprisonment for two months.

This revision petition is partly allowed.

P.D. RAJAN, JUDGE.

acd

