

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

FRIDAY, THE 6TH DAY OF NOVEMBER 2015/15TH KARTHIKA, 1937

Crl.Rev.Pet.No. 676 of 2007 ()

**AGAINST THE JUDGMENT IN CRL.APPEAL 175/2005 of ADDL.SESIONS COURT
(ADHOC)-II, PATHANAMTHITTA**

AGAINST THE JUDGMENT IN CC 401/2000 of C.J.M.PATHANAMTHITTA

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

**J.RADHAKRISHNA VADHYAR
S/O.JANARDANA VADHYAR, VADHYAR MADOM,
KEEZHUKARA MURI,
KOZHENCHERRY TALUK,
PATHANAMTHITTA DISTRICT.**

BY ADV. SRI.M.V.S.NAMBOOTHIRY

RESPONDENT(S)/RESPONDENT/COMPLAINANT:

**STATE OF KERALA
PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.**

BY PUBLIC PROSECUTOR SRI. N. SURESH

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 06-
11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

STK

(C.R.)

P.D. RAJAN, J.

Crl.R.P.676 of 2007

Dated this the 6th of November, 2015

ORDER

The revision petitioner was charge-sheeted in C.C.401/2000 on the file of the Chief Judicial Magistrate, Pathanamthitta for having committed offence punishable under Section 409 r/w 34 IPC. The charge against him was that, while working under Kerala State Civil Supplies Corporation as Shop Manager-in-charge of Maveli store, Thonnipuzha, he misappropriated the articles entrusted to him for sale during the period from 28.12.97 to 15.01.98. The shortage for a sum of Rs.9546.38 was detected while conducting the stock verification and the articles entrusted to the revision petitioner for sale was appropriated for his own purpose and thereby sustained a loss of Rs.11,607.41 to the Corporation and committed the offence. On the basis of verification report prepared by Junior Manager of the Corporation, crime 179/98 was

registered against three persons under Section 409, 465, 468 and 471 r/w 34 IPC. After completing investigation, three cases were charge-sheeted and those cases were tried jointly by the Chief Judicial Magistrate, Pathanamthitta.

2. During trial, prosecution examined PW1 to PW10 and marked Exts.P1 to P30 as documentary evidence. The trial court convicted the accused in C.C.401/2000 and 1st accused in C.C.487/2000 and 488/2000 under Section 409 IPC. The accused in C.C.401/2000 is sentenced to rigorous imprisonment for two years and fine of Rs.25,000/- with a default sentence of imprisonment for one year. The 1st Accused in C.C.487/2000 and C.C.488/2000 are sentenced to rigorous imprisonment for two years and fine of Rs.25,000/- each with a default sentence of imprisonment for one year. Against that, he preferred Crl. Appeal 175/05 before Addl. Sessions Judge (Adhoc), Fast Track-II, Pathanamthitta which was dismissed by the appellate court. Being aggrieved by

that, he preferred this revision petition.

3. Heard both sides. The learned counsel appearing for the revision petitioner contended that, *prima facie* no materials were produced to prove the alleged offence. No documentary evidence has been produced in the trial court to prove that, revision petitioner was entrusted with the property and he has dominion over the property. There was no verification of the stock at the time of taking charge and it is difficult to say about the quantity of the articles entrusted to him. When he was taking charge from Gananathan, there was shortage in the articles, which was not verified by the competent authority in control of those articles. When there is no entrustment or dominion over the property, no offence will attract against the revision petitioner.

4. The revisional jurisdiction of the High Court is a supervisory power, which can be exercised by this court for the purpose of specifying its correctness, legality or propriety of any findings or sentence or order passed by

the courts below. This supervisory jurisdiction can also be exercised to find out the illegality in the order or sentence or proceedings of the court below. Actually the Regional Manager, Kottayam Kerala Civil Supplies Corporation lodged a complaint in the Police Station, Koippuram on the basis of an inspection report prepared by the Junior Managers of the Civil Supplies Corporation. They registered a crime 179/98 against three accused persons and charge-sheeted three cases, C.C.Nos.401/2000, 487/2000 and 488/2000. The allegation against the revision petitioner is that, while he was working as Shop Manager-in-charge of Maveli store, Thonnipuzha from 28.12.97 to 15.01.98, he misappropriated the properties entrusted to him and used the sale proceeds for his own use. To prove the above allegation, prosecution examined the Regional Manager, Civil Supplies Corporation, Kottayam as PW1, who deposed that he gave Ext.P1 complaint to Circle Inspector of Police, Kozhencherry, on the basis of inspection report

submitted by PW2. As per Ext.P1, there was a shortage of stock, but he admitted that he had not conducted a thorough verification on the basis of Ext.P1. Moreover, he never conducted any physical verification with regard to the alleged misappropriation.

5. The Junior Manager who conducted inspection was examined as PW2 and his inspection report was marked as Ext.P2. According to PW2, on 23.04.98, he detected certain mistakes in the accounts. On the basis of that he prepared a report and on 5.5.98 at 9.30 am, he verified the stock. According to that physical verification, he detected the shortage and earlier stock verification was made till 27.12.97. He conducted verification of the stock from 28.12.97 to 15.01.98, but no documents were produced to show that revision petitioner was entrusted with the property and domain over property during that period. Ext.P3, P4 and P5 are the registers of trading particulars. Ext.P6, P7, P8 and P9 are the stock registers. But the stock verification report was not furnished along

with Exts.P6, P7, P8 and P9. Therefore, the contention put forward by PW2 with regard to maintaining the exact stock till that date is unsustainable in law. Ext.P10 is the remittance register. Exts.P11, P11(a), P11(b) and P11(c) are shortages marked in the registers. Shortage of each item entrusted to revision petitioner was not stated by PW2. Moreover, on the date of taking charge, the items entrusted to revision petitioner were also not mentioned. Ext.P12 series, P13 series, P14 series, P15, P16, P17, P18 and P19 were marked through PW2, that itself is not sufficient to prove the alleged entrustment of property or dominion over the property during that period.

6. In an offence under criminal breach of trust, prosecution has to prove that, whoever being any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property or dishonestly uses or disposes of that property, in violation of any direction of law, prescribing the mode in which such trust is to be

discharged or of any legal contract, express or implied which has made touching the discharge of such trust or wilful act of any person committing breach to trust the essential ingredients are firstly, accused must entrust that property or dominion over the property. Secondly, he must have dishonestly misappropriated the property or converted it to his own use or dispose it of in violation of any trust. When these two distinct parts of the commission of offence are not proved by the prosecution, it is difficult to convict an accused on the ground of criminal breach of trust. Even though, PW1 and PW2 stated that they were entrusted with property, what are the properties entrusted, is not proved by the prosecution. First of all, the fact that, he was appointed as the person with entrustment has to be proved by documentary evidence. Secondly, he has misappropriated the property while dealing with the property dishonestly, contrary to the terms of the obligation created. The specific case is that, revision petitioner was working as the office helper-

in-charge of Depot Manager. No scrap of paper has been produced by the prosecution to show that he was appointed as the charge person of the depot. Therefore, in the absence of such evidence, the conviction under Section 409 is unsustainable in law.

7. Apex court in **Mittar Pal Yadav V. State of Haryana, (1999 SC 1301)** held that;

“In view of the aforesaid positive evidence, both oral and documentary, the conclusion is irresistible and delivery of diesel oil had been given to accused-Mittar Pal Yadav, who in token thereof, had signed not only on the cash memo but also on the register itself. In the absence of any other material produced by the prosecution it is difficult for us to hold that either there was any entrustment of the diesel to accused Jiwan Dass or he had any dominion over the same.”

In another decision, **Mustafikhan V. State of Maharashtra (2007(1) SCC 623)** apex court held that;

“In order to sustain a conviction under Section 409 IPC the prosecution is required to prove that (a) the accused, a public servant was entrusted with property of which he was duty-bound to account for, and (b) the accused had misappropriated the

property.”

8. The fundamental rule in a criminal case is that one person is presumed to be innocent till he is proved as guilty. This rule actually means that a person accused of a crime is not bound to make a statement or offer any explanation about the circumstances which throws suspicion upon him. It is the duty of the prosecution to prove the guilt beyond reasonable doubt. There may be exception where the rules of presumption applies in certain cases. In such case, a statutory presumption with regard to the proved facts and circumstances may arise which will help in reaching a conclusion.

9. In the light of the above discussion, it is clear that trial court failed to appreciate the evidence in the correct perspective. In para 19 of the judgment, the trial court observed that there was no evidence to prove the entrustment of the items to the accused. Even after making such observation, trial court convicted the revision petitioner under Section 409 r/w 34 IPC. Analysing the

evidence, it is found that a wrong appreciation was made by the trial court, which is to be rectified by invoking revisional jurisdiction.

In the result, the conviction and sentence passed by the trial court under Section 409 r/w 34 IPC is set aside and the accused is set at liberty. This revision petition is allowed. If any fine amount is remitted by the revision petitioner, the trial court shall return that amount to the revision petitioner forthwith.

STK

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P.A. TO JUDGE

Sd/-
P.D. RAJAN,
JUDGE