

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

FRIDAY, THE 25TH DAY OF SEPTEMBER 2015/3RD ASWINA, 1937

Cr1.Rev.Pet.No. 1838 of 2006 ()

AGAINST THE JUDGMENT IN CC 854/2000 of J.M.F.C.-
III, THIRUVANANTHAPURAM DATED 10-03-2006

REVISION PETITIONER(S)/DEFACTO COMPLAINANT::

S. MANU, S/O. SASIDHARAN,
BINDHU BHAVAN, IRUMBA, ARUVIKKARA (P.O)
THIRUVANANTHAPURAM.

BY ADVS.SRI.BECHU KURIAN THOMAS
SRI.ROSHEN.D.ALEXANDER

RESPONDENT(S)/ACCUSED::

-
1. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA.
 2. VIJAYA KUMAR, S/O.S.ARAVINDAKSHAN NAIR,
ASWATHY, T.C.NO.9/240, JAWAHAR NAGAR
KAWADIYAR WARD, SASTHAMANGALAM, THIRUVANANTHAPURAM.
PRESENTLY RESIDING AT M-39, R.P.LANE, KOWADIAR VILLAGE
THIRUVANANTHAPURAM.

R1, BY PUBLIC PROSECUTOR SRI. DHANESH MATHEW MANJOORAN

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 25-09-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

acd

P.D. RAJAN, J.

Crl.R.P.No.1838 of 2006

Dated this the 25th day of September, 2015

ORDER

Revision petitioner is the complainant in C.C.No.854/2000 on the file of Judicial First Class Magistrate-III, Thiruvananthapuram for offence punishable u/s.420 I.P.C. His case is that on 1.1.2000 at 11 a.m. with the intention to cheat the defacto complainant, the accused agreeing to arrange a visa for an employment in Dubai as driver, at Palayam in Vanchiyoor Village at the shop owned by the accused in Malankara building and received ₹75,000/-. Subsequently, the accused failed to give employment in Gulf to the defacto complainant and thereafter, he did not return the amount, thereby cheated the complainant. In the circumstances, he filed C.M.P.No.3562/2000, which was

forwarded to the SHO, Cantonment Police Station for investigation u/s.156(3) Cr.P.C. On the basis of the said complaint, registered a crime and after completing investigation, laid charge before Court. Subsequently, C.I. of Police, Cantonment Police filed a report before Court praying for permission to conduct further investigation. Permission was granted by the Court and all further proceeding in this case was stayed until further orders. Thereafter, the investigating officer filed further investigation report stating that no evidence was collected by him and hence the case may be treated as 'UN'. In the circumstances, the trial Court examined the complainant and his witnesses.

2. PW1 to PW3 were examined on the side of the prosecution. Exts.P1 to P3 were marked as documentary evidence. The incriminating circumstances brought out in evidence were denied by the accused, while questioning

him. The accused submitted that he had financial transaction with one S.R. Dileep and he had issued signed blank cheque and stamp papers as security. Even after payment of the entire amount, the cheque leaves and documents were not returned to him. He demanded more interest from the accused and thus the said Dileep filed a complaint before Chief Judicial Magistrate Court. According to the accused, PW1 and PW2 are the employees of S.R. Dileep. He marked Ext.D1. The trial Court, after analysing the evidence, acquitted the accused. Being aggrieved by that, the defacto complainant approached this Court with this revision petition.

3. The power of the revisional jurisdiction of the High Court in criminal cases is narrower and limited than its appellate power, which is discretionary and it cannot be invoked as of right as in the case of appellate jurisdiction. The object of conferring revisional power is only for a

general supervision in order to correct grave failure of justice arising from defective orders. While exercising this power, it is justified only to set right grave failure of justice and not merely to rectify every error. The fact that the lower court has taken a wrong view of law is not a reason to interfere unless it has resulted in grave injustice.

4. For ascertaining the illegality committed by the Court below, I have gone through the judgment of the Court below. The defacto complainant was examined as PW1. PW2 is the witness cited by the complainant to prove the transaction. The trial Court examined Ext.D1 UN report. The investigating officer verified the relevant documents in the custody of the complainant. PW1 is the driver of the travels run by S.R. Dileep. Therefore, Ext.D1 report is relevant with regard to the transaction. PW1 deposed that while he was making payment to the accused

there was nobody in the shop. PW2 never witnessed the payment of the amount. The original receipt issued by the accused was not produced by the investigating officer. He deposed that the witnesses had not stated anything about the connection between the accused and PW1. No evidence has been adduced by the complainant to prove that the accused was conducting such business. Trial Court analysed the oral evidence of PW1 and PW2 and documentary evidence of Exts.P1 to P3. Prima facie no materials were produced in the trial Court to prove the offence. In the circumstances, the accused was acquitted u/s.248(1) Cr.P.C. I do not find any illegality in the above judgment. Therefore, there is no merit in this revision and it is dismissed accordingly.

P.D. RAJAN, JUDGE.

acd

