IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

TUESDAY, THE 2ND DAY OF JUNE 2015/12TH JYAISHTA, 1937

Crl.Rev.Pet.No. 2113 of 2006 ( )

AGAINST THE JUDGMENT IN CRA 55/2005 of SESIONS COURT, WAYANAD, KALPETTA DATED 12-05-2006

AGAINST THE JUDGMENT IN CC 30/2003 of J.M.F.C-1, MANANTHAVADY DATED 22-01-2005

REVISION PETITIONER/APPELLANT/ACCUSED:

N.RAMAN, S/O. NAMBAR NAMBIAR,
PADINJARAVEEDU, P.O.VARAYAL,
THALAPPUZHA.

BY ADVS.SRI.P.VIJAYA BHANU (Sr.)
SRI.PRASUN.S

RESPONDENT(S)/RESPONDENT/COMPLAINANT/STATE:
---

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

2. **M.K.SUKUMARAN, S/O. KESAVAN,**
MATTATHIL VEEDU, KAPPATTUMALA P.O.,
THALAPUZHA,
MANANTHAVADY.

R1 BY PUBLIC PROSECUTOR SRI.GITHESH R.
R2 BY ADV. SRI.K.A.SALIL NARAYANAN

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 02-06-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

STK

P.D. RAJAN, J.

Crl. R.P. No.2113 of 2006

--

Dated this the 2nd day of June, 2015

<u>ORDER</u>

This Criminal Revision Petition arises out of the judgment in Criminal Appeal No.55/2005 of the Sessions Judge, Wayanad for offences punishable under Section 420 IPC. The petitioner was the accused in C.C.No.30/03 of the Judicial First Class Magistrate-I, Mananthavady. He was convicted under Section 420 IPC and sentenced to undergo imprisonment fro three months and to pay fine of Rs.1000/- in default imprisonment for two months.

2. The prosecution allegation was that on 05.07.2002 at 6.00 pm the revision petitioner approached the second respondent and borrowed a sum of Rs.1,20,000/- from the second respondent, for that he issued a cheque drawn on North Malabar Gramin Bank, Thavinjal Branch. When the cheque was presented for encashment, it was dishonoured for the reason of 'signature different'. This matter was informed to the revision petitioner, he told the second respondent to

present the cheque again. Accordingly for the second time also the cheque was dishonoured for the same reason 'signature differs'. In the circumstance, the second respondent filed the complaint in the trial court.

3. To prove the offence, second respondent examined PW1 to PW5 and marked Ext.P1 to P12. While cross examination of prosecution witness Ext.D1 was marked. The incriminating circumstances brought out in evidence were denied by the revision petitioner while questioning him. The trial court after analysing the evidence, convicted the revision petitioner.

4. The learned counsel appearing for the revision petitioner contended that the execution of the cheque was not proved in the trial court. When issuance of Ext.P1 was not proved, it is presumed that no act of inducement was made by the revision petitioner. There was also no consideration in the alleged transaction and the oral evidence of PW1 itself is not sufficient for a conviction.

5. While exercising revisional jurisdiction, I have examined the records of the court below for the purpose

of satisfying itself to the correctness, legality or propriety of the finding. For satisfying the correctness of the allegation, first of all I considered what are the essential ingredients to attract offence of cheating. For an offence punishable under Section 420 IPC, it must be proved that the complainant parted with his property acting on a representation which was false to the knowledge of the accused and that the accused had a dishonest intension from the outset. Therefore there must be a deception and accused must have deceived some one. Secondly, he must induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable property. Thirdly the accused did so dishonestly. The simple cheating is explained under Section 417 of the Indian Penal Code. When there is delivery or destruction of any property or alteration or destruction of any valuable security, resulting from the act of any person deceiving, the Section, 420 of the IPC comes into play.

6. The second respondent was examined as PW1 in the trial court to prove the allegation. His evidence shows that on 05.07.2002, the revision petitioner visited his house and borrowed a sum of Rs.1,20,000/- and entrusted him a cheque drawn on North Malabar Gramin Bank, Thavinjal branch. Ext. P1 is the dishonoured cheque marked by the trial court. Ext.P2 is the dishonour memo issued from North Malabar Gramin Bank. Ext.P3 is the memo issued from Canara Bank after dishonour of the cheque. Ext.P4 is the copy of the lawyer notice. Ext.P5 is the postal receipt and Ext.P6 is the reply notice. After the dishonour of the cheque second respondent again intimated the revision petitioner and he admitted that there was sufficient fund in his account and directed to re-present the cheque. On the basis of the second re-presentation, the Ext.P1 was dishonoured. PW1 was cross-examined by the defence counsel, nothing has been brought out to discredit his oral or documentary evidence. He admitted in his sworn statement that the revision

petitioner signed the cheque in his presence. He stated that after writing the name he put his signature.

7. The defence contention was that his son took a vehicle KLZ667, at that time he entrusted two cheques to the financier at Sulthan Batherty and second respondent obtained one of the cheque leaves and misappropriated and falsely foisted a case which was denied by PW1. PW2 supported the evidence of PW1. PW3 is the son of PW1 who accompanied PW1 at the time of issuance of Ext.P1 cheque. The evidence of PW1 to 3 is believable. No reason to discredit their evidence.

8. The learned counsel appearing for the second respondent contended that the petitioner was maintaining two accounts in the same Bank in two different names. This act was with dishonest intention to make valuable security. He put different signatures in a fictitious name and entrusted the same to the second respondent and the deception itself was proved.

9. PW4 admitted that revision petitioner was maintaining an account in his bank. The revision

petitioner's photograph was obtained at the time of issuance of Bank Account No. Ext.P7 is the application form and P8 is the certified copy of the ledger extract. Petitioner is maintaining two accounts that is 5548 and 5667. Therefore, after perusing the photo and the application form PW4 identified the revision petitioner. He admitted that P1 cheque was received in his bank two times. Ext.P9 will convince the time of presentation. Analyzing the evidence of PW1 to 4, it is found that the alleged offence of cheating was properly proved. A person said to have done a thing dishonestly, if he does so with the intension causing wrongful gain to one person or wrongful loss to another person. Wrongful loss is the loss by unlawful means of property to which a person is entitled while wrongful gain to a person means gain by him by unlawful means of property to which the person gaining is not legally entitled. The dishonest intention of the revision petitioner by giving the Ext.P1 cheque constitute the *mens rea* which is the basis for the fraudulent inducement made by him for attracting the mental element.

10. Four Judge Bench of the Apex Court in T**ulsi Ram V. State of Uttar Pradesh (AIR 1963 SC 666),** it was held that;

> "Four a person to be convicted under S.420, I.P.C. it has to be established not only that he has cheated someone but also that by doing so he has dishonestly induced the person who was cheated to deliver any property etc. A person can be said to have done a thing dishonestly if he does so with the intention of causing wrongful gain to one person or wrongful loss to another person. Wrongful loss is the loss by unlawful means of property to which a person is entitled while wrongful gain to a person means a gain to him by unlawful means of property to which the person gaining is not legally entitled. These are the two facets of the definition of dishonesty and it is enough to establish the existence of one of them. The law does not require that both should be established. AIR 1932 Bom 545 and ILR 28 mad 90(FB), Dist."

In certain occasions it is difficult to get direct proof of the mental elements by positive evidence. Therefore, in such situation, it is to grasp the mental element from the available records furnished by the complainant and the facts proved through the context. The revision petitioner induced the second respondent to pay Rs.1,20,000/- which is a substantial sum on assurance that he would pay the same within short time and subsequently he gave a cheque with a different signature which dishonours complete the offence under Section 420 IPC.

11. The trial courts appreciate the legal position and convicted the revision petitioner and sentenced him thereunder, which was approved by the appellant court.

I find no illegality in the concurrent findings of the courts below, there is no merit in this revision petition and it is dismissed accordingly.

P.D. RAJAN,
JUDGE

STK