IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

THURSDAY, THE 29TH DAY OF OCTOBER 2015/7TH KARTHIKA, 1937

Crl.Rev.Pet.No. 1383 of 2009 ( )

AGAINST THE ORDER/JUDGMENT IN CRA 93/2007 of ADDL. DIST. COURT (ADHOC)-II, KALPETTA DATED 27-12-2008 AGAINST THE ORDER/JUDGMENT IN CC 376/2004 of J.M.F.C.-II, MANANTHAVADY DATED 29-03-2007)

REVISION PETITIONER(S)/APPELLANT/ACCUSED.:

T.K.RAJAN, S/O. KELAPPAN,
AGED 38 YEARS, AASHRIKOLLY, THANIYATTU VEEDU,
KUNJOME, MANANTHAVADY TALUK, WAYANAD DISTRICT.

BY ADV. SRI.SUNNY MATHEW

RESPONDENT(S)/RESPONDENT/COMPLAINANT.:

STATE OF KERALA,
THROUGH THE SUB INSPECTOR OF POLICE,
MANANTHAVADY POLICE STATION, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM

R, BY ADV. PUBLIC PROSECUTOR S.HYMA

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 2-09-2015, THE COURT ON 29/10/2015 PASSED THE FOLLOWING:

SUNIL THOMAS, J.

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Crl.R.P. No. 1383 of 2009

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Dated this the 29th day of October , 2015

O R D E R

The sole accused in C.C.No.376/2004, who was convicted by the Judicial First Class Magistrate -II, Mananthavadi for offences punishable under Sections 417,419 and 420 IPC and confirmed by the Additional Sessions Judge (Adhoc) II, Kalpetta in Criminal Appeal No.93/2007 to the extent of the conviction under Sections 419 and 420 IPC, is the revision petitioner herein.

2. The allegation of the complainant bank was that, PW7, who was an A class member of the above society came to the bank on 3/10/2003 along with the accused herein, introduced him as one K.R.Shiju S/o Radhakrishanan and pledged a necklace having 37.300 grams for loan of Rs.13,000/- re-payable within a period of three months. Since the amount was not repaid, a registered letter was issued by the bank, which was returned on the ground that there was no such addressee. Enquiry with PW7 revealed that, in fact, he know

only the person and did not know that he had availed loan by representing a fake name. The investigation revealed that the person who pledged was one Rajan, S/o.Kelappan. Ext.P1 complaint was lodged by the General Manager of the Bank on 13/5/2004, whereupon Ext.P6 FIS was recorded and crime was registered. After investigation, charge sheet was filed against the accused before the Magistrate Court for offences punishable under Sections 417,419 and 420 IPC. The learned Magistrate, after evaluating the oral testimony of PWs 1 to 9, Exts.P1 to P10 and Mos 1 to 3, found the accused guilty, convicted and sentenced him to undergo imprisonment for various periods. This was carried in appeal by the accused. The learned Sessions Judge, on an evaluation and re-appraisal of all the inputs, concurred with the factual findings of the court below. However, regarding the conviction, the lower appellate court held that since the accused stood convicted under Section 419 IPC, no separate punishment under Section 417 IPC was liable to be awarded and hence, the conviction under Section 417 IPC was set aside.

3. Contending that the Courts below committed grave and

manifest irregularity in the appreciation of the evidence and arrived at wrong conclusions, the accused has preferred this appeal. Heard and examined the records.

4. The prosecution essentially relied on the oral testimony of PWs 2,4,5,6 and 7 to prove the guilt of the accused. PW1 was the General Manager who laid the letter before the police on the strength of a letter submitted to him by PW2, the Branch Manager. It is not in dispute that PW7 was an A class member of the bank and was known to PW1 and PW2. It has also come in evidence that he had been closely interacting with the Co-operative Bank in its various activities and used to visit the bank frequently. It is also on record that PW7 on 3/10/2003 brought a person to the bank for the purpose of pledging a necklace. He was not a member of the bank. Since as per the rules, gold loans were advanced only to the members of the bank, he was enrolled as a member on the same day, after making necessary entries in the various registers and records, as introduced by PW7, Gangadharan. A loan of Rs.13,000/- for a period of three months was sanctioned, received by that person and it was thereafter not repaid. It is also not in dispute that the

registered letter sent in the address of that person was returned, unserved on the ground that the addressee was not known. Ext.P5 is the returned registered letter.

5. The contention of the complainant bank was that the accused herein misrepresented himself as K.R.Shiju and pledged the gold ornaments which was later found to be gold coated spurious item. The allegation of the bank is that, he thereby cheated the bank. To establish the identity of the person and to convince the court that the accused himself misrepresented as K.R.Shiju and availed loan after executing necessary documents, the prosecution heavily relied on the oral testimony of PW2 and PW4 to PW7.

6. PW2 in his evidence deposed about the entire transaction, including the introduction of the accused to him by PW7 and regarding the availing of the loan. Exts.P3 and P4 are the membership register and ledger which contains entries allegedly executed by the accused. Ext.P9 is a voucher allegedly signed by the accused in token of having received 13,000/-. The membership register was countersigned by PW7. However, even according to the prosecution, the signatures shown in Exts.P3

and P4 and P9 were falsely and wrongly signed by the accused, as if it was executed by one K.R.Shiju.

7. PW4 was the Assistant Manager of the bank, who also deposed in tune with the version of PW2. PW4 had got the register of the members signed. He verified the gold ornaments, satisfied himself to be genuine and thereafter recommended for granting a loan of Rs.13,000/-. PW5 was a clerk of the bank, who also identified the accused as a person who came on the relevant day and entered into the transaction. There was a trained appraiser in the bank. He was satisfied that the necklace was gold coated and not a golden one. PW6 was a peon of the bank. He deposed that the accused had come to the bank on that day and availed the loan. The most crucial witness is PW7 who, himself being a member of the bank, introduced the accused to the bank and deposed consistently about the availing of the loan after executing the necessary documents. However, the stand taken by PW7 was that he only introduced the accused by person and not by his name. According to him, the accused had approached him and sought assistance to avail a loan. He knew his family members, though, according to the witness did not

know that he had given the name as K.R.Shiju, with a wrong address.

8. Evidently, it is on record that the MO1 was not a genuine gold ornament and was only a gold coated one. PW8, an appraiser, had also deposed that it was a gold coated one. Relying on the versions of Pws.2 and 4 to 7, the courts below concluded that the accused had committed offence.

9. The specific defence set up by the accused, as seen revealed in the course of his cross examination and also in reply to Section 313Cr.P.C. questioning, was that he was innocent and had not availed any loan from the bank. According to him, it appears to be a shady transaction of PW7 with certain officials of the bank and he has been made a scapegoat. Essentially, it is a question of the identity of the person who came to the bank and pledged the gold ornament. The learned counsel for the accused, who vehemently marshalled all available inputs in his favour, contended that the prosecution case suffered from several contradictions and infirmities, which cast serious cloud in the conduct of PW7 and that the bank officials. It was specifically contended that even though the person, who

allegedly cheated the bank, was introduced by PW7 and thereby facilitated the commission of offence, PW7 was not made an accused. It was further contended that there was long delay in lodging the complaint, that the original complaint submitted by PW2 to PW1 which would have thrown light on the genesis of the case was purposefully suppressed, that in spite of the trained appraiser being available in the bank, PW4 ,who was not a competent person, claimed to have appraised the gold and that the handwritings in Exts.P3, P4 and P9 were not subjected to a handwritings expert's opinion, were all circumstances, which according to the learned counsel for the accused that cast serious doubt on the prosecution case. The learned counsel further contended that without appreciating the available evidence in the background of the above contentions, both the courts arrived at wrong conclusion. According to the learned counsel, had the evidence been appreciated by both the courts in the light of this serious infirmities, the conviction would not have been possible.

10. The lower appellate court, on an evaluation of the available materials, had held that the entire incident happened

due to the absolute laches on the part of the bank employees. It is evident that PW7 was a person who was freely moving in the bank and had access to the officers of the bank. He took the person, whom he admittedly did not knew by name, to the bank, introduced him to the bank manager, PW4, the assistant manager and facilitated the availing of a loan. The bank officials completely relied on PW7 and did not conduct any serious enquiry about his identification. Further, according to the witnesses, PW7 signed Ext.P3 membership register first and thereafter left leaving completely to the duty of the assistant manager, to get the documents signed from the stranger. The court below has held that though PW8, a trained appraiser was there, PW4 apprised the pledged necklace. However, this finding, I am not inclined to accept, since PW4 was the assistant manager, who himself appraised it and recommended the amount. He had stated that he is trained in appraising the gold, Though PW5 was the trained appraiser, even according to that witness, during that month he was not involved in the gold loan transaction. However, lethargy from the part of the bank officials and the casual manner in which the transaction was dealt, is evident.

11. It is pertinent to note that a series of questions were put to PWs1 and 2, regarding the original complaint submitted by PW2. It is admitted that PW1 had written a letter to PW2 in May 2004. On the basis of that letter, PW1 submitted Ext.P1 complaint to the police. PW1 in his evidence deposed that he did not produce the original complaint, since it was addressed to himself. I find nothing against the prosecution since the genesis of the investigation was from Ext.P1 complaint only. Even though the incident was unearthed in January 2004, the complaint was laid only on 13/5/2003. Evidently, thereafter notice was sent, which was returned unserved and thereafter it seems that the bank officials, who were attempting to settle it. In the light of the fact that the case being essentially of documentary in nature, I feel that delay cannot be considered as one casting doubt on the prosecution case.

12. It was strongly contended by the learned counsel for the accused that PW7 was not made an accused purposefully. It is true that PW1 and PW2 were known to PW7. However, the available materials indicate that specific contention of PW7 was

that he knew the accused, though he did not knew him by name. Evidently, he could not have knowingly brought a wrong person and thereby being a party to a criminal act, since that would have exposed him to a criminal conspiracy, since he himself was known to the bank persons and he himself had signed Ext.P3 ledger. Hence, the culpability of PW7 in the entire incident is only to be ruled out. However, there is one factor to be taken into consideration in this regard. It appears that the loan was repaid by PW7, after lodging the complaint. If he was not liable, there was no reason to repay the amount. However, this also does not assume much significance since it appears that he along with the bank officials wanted to avoid a litigation. It is also on record that thereafter, PW7 had initiated the legal proceedings against the accused for recovery of the money.

13. As mentioned earlier, a serious contention was raised by the accused that even though a trained appraiser was available in the bank, on that day,he was not involved in the appraising of the necklace. PW1 also admitted that there was an appraiser in the bank and without he certifying, the gold cannot be accepted and the loan issued. He further deposed

that PW4 was the appraiser who was in the bank on that day. PW2 in his evidence, on the other hand, took up the contention that there was no appraiser during that period and PW 4 Sanal Kumar used to appraise the gold. He used to prepare the registers on that day. This seems to be correct since the available records indicates that at the relevant time, PW5 was not involved in the gold loan transaction. Further, in the absence of anything to show that other persons are involved in the conspiracy or commission of offence, appraisal by PW4 alone cannot be doubted. It is further to be noted that PW7 directly went to PW4 introducing the person accompanying him and offered the gold for loan. Necessarily, it was pursued by PW4. It was also contended that even though the signatures of the person who availed the loan were available on Exts.P3, P4 and P9, they were not subjected to a verification by a handwriting expert. I am not impressed by this contention, since, even according to the prosecution, wrong name and wrong signatures were given by the person who availed the loan and it appears that the signatures in the documents are substantially different. Hence, examination by an expert would not have helped the investigation much. Hence, I am not inclined to accept the above contention also.

14. Appraisal of the available materials show that the court below has relied on the oral testimony of PWs2, 4, 5, 6 and 7 who uniformly asserted that it was the accused himself who came to the bank on that day and entered into the loan transaction. There is absolutely no reason to doubt that version. The courts below do not appear to have committed any illegality or manifest irregularity to hold that both the courts arrived at wrong conclusions. A conclusion arrived at by proper appreciation of the evidence, by both the courts cannot be interfered in this revision. Hence, conviction is only to be sustained.

15. The learned counsel for the accused alternatively pleaded for lenient view, if ultimately his conviction is found sustainable. It is pertinent to note that this incident could have happened only after sufficient preparation. The evidence shows that it was a gold coated ornament. The accused had gone to PW7, induced him to introduce him to the bank, gave a wrong address, falsely signed the documents and received the

money. It is also on record that after the incident was unearthed, the bank officials had even attempted to settle the matter by asking him to pay the money. However, the incident happened in the year 2004. The matter has been pending since long. There is nothing to show that accused is involved in any other case. Hence,I find some reason to interfere with the sentence which appears to be excessive, in this circumstance.

In the result, the revision is allowed in part confirming the conviction but modifying the sentence imposed by the court below for offences punishable under Sections 419 and 420 IPC. Under Section 419, SI for six months and a fine of Rs.2,000/- (Rupees Two Thousand only) in default to undergo SI for one month and RI for six months and a fine of Rs.3,000/-(Rupees Three Thousand), in default SI for one month for offence punishable under Section 420 IPC are imposed. Set off is allowed. Both sentences shall run concurrently.

Sd/-
SUNIL THOMAS
Judge

dpk

/true copy/ PS to Judge.