

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

TUESDAY, THE 7TH DAY OF APRIL 2015/17TH CHAITHRA, 1937

Crl.Rev.Pet.No. 1805 of 2005 ()

AGAINST THE ORDER/JUDGMENT IN CRA 251/2003 of ADDL.DISTRICT COURT,
KOZHIKODE DATED 26-05-2005

AGAINST THE ORDER/JUDGMENT IN CC 276/1999 of J.F.M.C.-IV, KOZHIKODE
DATED 03-04-2003.

REVISION PETITIONER(S) /ACCUSED:

VELUTHEDATH ABU,
S/O.AHAMMEDKUTTY HAJI, MUNDUMPURATH HOUSE
MAYILADIKUNNU, POONOR, THAMARASSERY
KOZHIKODE DISTRICT.

BY ADVS.SRI.RAJIT
SRI.RANJIT BABU

RESPONDENT(S) :

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

ADDL.R2: THE BRANCH MANAGER, STATE BANK OF TRAVANCORE,
KOZHIKODE MAIN BRANCH, KOZHIKODE
(IMPLEADED AS ADDL.R2 AS PER ORDER DATED 13/3/12
IN CRL.M.A.1898/2012 IN CRL.R.P. 1805/2005.)

R, BY ADV. SRI.N. SURESH PUBLIC PROSECUTOR
R2 BY ADV. SRI.T.SETHUMADHAVAN
R2 BY ADV. SRI.PUSHPARAJAN KODOTH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 07-04-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

acd

P.D. RAJAN, J.

Crl. R.P.No.1805 of 2005

Dated this the 7th day of April, 2015

ORDER

The accused in C.C.No.276/1999 of the Judicial First Class Magistrate Court-IV, Kozhikode, for offences punishable u/s.465, 468 and 420 IPC is the revision petitioner. The prosecution allegation was that on 11.1.1988, the revision petitioner filed a false affidavit in the State Bank of Travancore, Kozhikode branch claiming that he is in possession of 75 cents of land in Survey 58/1 Re-Survey 41 of Kunjoor Desom, Kedavur Village of Kozhikode Taluk. On the basis of the above affidavit, the Bank advanced a loan of ₹2,25,000/ to one Dr. Mukundan for whom the accused stood as a guarantor and thereby committed the above offence.

2. To prove the allegation, the prosecution examined

PWs 1 to 6 and marked Exts.P1 to P8. The incriminating circumstances brought out in evidence were denied by the accused while questioning him. The trial Court convicted him u/s.420 IPC and acquitted for offence u/ss.465 and 468 IPC. Against that, he preferred Crl.Appeal No.251/2003 before the Sessions Court, Kozhikode, in which the learned Judge confirmed the conviction and dismissed the appeal.

3. The learned counsel appearing for the revision petitioner contended that prima facie, there is no evidence to prove the alleged ingredients of cheating. The amount was released on hypothecation agreement and as an abundant caution, they obtained an affidavit from the revision petitioner, in which there was a clerical mistake in entering the area of the property. Therefore, an inadvertent omission at the time of filing Ext.P6 affidavit

will not attract the dishonest intention and fraudulent transaction u/s.420 IPC. No documents were produced in the trial Court to prove the alleged transfer in the year 1986. A photocopy of the document is not admissible in evidence.

4. The learned counsel appearing for 1st respondent admitted that prosecution failed to produce primary or secondary evidence to prove the transfer of 35 cents of land in the year 1986. A photocopy of the document is not sufficient to prove the case. Even then the trial Court admitted the same and a wrong appreciation was made by it.

5. The learned counsel appearing for the additional 2nd respondent contended that production of Ext.P6 is sufficient to attract the offence. According to him, photocopy is admissible when such document was deposited

in the bank at the time of executing Ext.P6.

6. In order to attract offence u/s.420 IPC, the prosecution has to prove that whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security commits the offence of cheating. Section 420 deals with certain specified classes of cheating. Therefore, to make out an offence u/s.420 IPC, the prosecution has to prove that the revision petitioner dishonestly or with fraudulent intention induced the defacto complainant to deliver any property to any person. On the other hand, he has to make, alter or destroy the whole or any part of the valuable security or anything signed or sealed which is being converted into a valuable

security. He must also proved that there must be deception and dishonest inducement by adducing cogent and convincing evidence. Apex Court in Devender Kumar Singla v. Baldev Krishan Singla [AIR 2004 SC 3084] settled the ingredients of cheating as follows:

".....The essential ingredients to attract Section 420 are: (i) cheating (ii) dishonest inducement to deliver property or to make, alter or destroy any valuable security, and the (iii) means rea of the accused at the time of making the inducement. The making of false representation is one of the ingredients for the offence of cheating under Section 420."

7. In order to find out any illegality or the irregularity committed by the Courts below, by invoking revisional jurisdiction, I have examined the oral and documentary evidence . To prove the allegation, PW1 was examined in the trial Court. He deposed that he filed Ext.P1 complaint to the Nadakkavu Police, where they registered Ext.P8 FIR on 31.8.1998, in which it was alleged

that the revision petitioner committed criminal breach of trust at the time of availing a loan of 2,25,000/-. Even though PW1 deposed that he committed criminal breach of trust, no ingredients attracting S.420 IPC were proved. According to PW1, on 11.11.1998 an amount of 2,25,000/- was availed Dr.Mukundan, the Managing Partner of a partnership firm on hypothecation and as a security the revision petitioner mortgaged 75 cents of land in Sy.No.58/1 in Re.Sy.No.41 in Kozhikode Village. But the alleged mortgage deed was not produced before Court to show that such a mortgage was executed for and on behalf of the revision petitioner on 11.11.1998. Subsequently, the actual loanee defaulted the payment of loan amount. On verification of the details of the property, they realised that the revision petitioner transferred half of the right of 75 cents in the year 1986. Even though PW1

alleged in Ext.P1 that the revision petitioner transferred half right in the aforesaid property, no documentary evidence had been produced by him in the trial Court to substantiate that contention. Exts.P4, P5 are only photocopies.

8. The contents of a document may be proved either by primary or by secondary evidence. Primary evidence means, production of document itself before Court. When PW1 alleges that he transferred property in the year 1986, he is bound to produce either by primary evidence or by secondary evidence. The secondary evidence includes certified copies made from the original or the copies made or compared with the original, according to Section 63 of the Evidence Act. When these photocopies were marked in the trial court, it was resisted by the revision petitioner. Without overruling that objection, Exts.P4 and P5 were

marked in evidence. Analysing the documentary evidence, it is found that Exts.P4 and P5 are neither primary evidence nor secondary evidence. In the absence of legal evidence, the alleged transfer transfer of the property in the year 1986 as stated in Ext.P1 is not proved, for that, the oral evidence of PW1 is not sufficient.

9. In this context, I have considered the defence put forward by the revision petitioner. He contended that there was no equitable mortgage. At the time of releasing the loan amount, the 2nd respondent prepared an affidavit and informed the revision petitioner to sign the document. If that be the position, he contended that it was only an inadvertent omission on his part to sign such application. Ext.P6 affidavit itself is not sufficient to attract the ingredients to prove the alleged cheating. Therefore in the absence of legal evidence, the conviction passed by the

trial Court, which was upheld by the appellate Court is unsustainable. Essentially, the ingredients of cheating are not proved in this case. Means rea coupled with actus reus as stated is not found in Ext.P1, therefore, the conviction and sentence u/s.420 IPC is to be set aside.

In the result, the conviction and sentence passed by the trial Court u/s.420 is set aside and the revision petitioner is set at liberty.

P.D. RAJAN, JUDGE.

acd

