

"CR"

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

MONDAY, THE 16TH DAY OF FEBRUARY 2015/27TH MAGHA, 1936

Crl.Rev.Pet.No. 2735 of 2004 (B)

AGAINST THE JUDGMENT IN CRL.A 380/1997 of SESSIONS COURT,
THALASSERY DATED 16.8.2004

AGAINST THE JUDGMENT IN CC 381/1993 of J.M.F.C., PAYYANNUR
DATED 15.11.1997

REVISION PETITIONER/APPELLANT/ACCUSED::

SEERAVEETIL MUHAMMED KUNHI,
S/O. UMMER, MATTOOL.

BY ADVS.SRI.M.SASINDRAN
SRI.M.B.PRAJITH

RESPONDENT/RESPONDENT/COMPLAINANT::

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

BY P.P.SMT.V.H. JASMINE

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
27.1.2015, THE COURT ON 16-02-2015 PASSED THE FOLLOWING:

K. RAMAKRISHNAN, J.

.....
Crl.R.P.No.2735 of 2004
.....

Dated this the 16th day of February, 2015.

“CR”

O R D E R

The first accused in C.C.No.381/1993 on the file of the Judicial First Class Magistrate Court, Payyannur is the revision petitioner herein. The revision petitioner along with the second accused were charge sheeted by the Deputy Inspector, CB.CID, Kannur in Crime No.266/CR/89 under sections 120(B), 465, 468, 471, 477(A) read with section 34 of the Indian Penal Code.

2. The case of the prosecution in nutshell was that during the period between 1.10.1986 to 30.10.1997, while the accused persons were working as clerk and Headmaster respectively of Government High School, Mattool, conspired together and with an intention to defraud and cheat the department officials and the Government to make unlawful gain, made false and forged pay bills by including the names of four temporary teachers to be left and a bogus person with name Gangadharan, who had never worked in the school for the month of June, 1987 and claimed and encashed

an excess amount of ₹5,195/- and thereby made unlawful gain to themselves and loss to the Government and committed the offences punishable under sections 120(B), 465, 468, 471 and 477(A) read with section 34 of the Indian Penal Code.

3. After investigation, final report was filed and the case was taken on file as C.C.No.38/1993 on the file of the Judicial First Class Magistrate Court, Payyannur. When the accused including the revision petitioner appeared before the court below, after hearing both sides, charge under sections 120(B), 465, 468, 471 and 477(A) read with section 34 of the Indian Penal Code was framed and the same was read over and explained to them and they pleaded not guilty.

4. In order to prove the case of the prosecution, Pws 1 to 23 were examined and Exts.P1 to P31 were marked on their side. After closure of the prosecution evidence, the accused including the revision petitioner were questioned under section 313 of the Code of Criminal Procedure and they denied all the incriminating circumstances brought against them in the prosecution evidence.

5. The revision petitioner has submitted that he was

working as clerk in the school at the relevant time and he had made entries in the disputed pay bill and collected money as per the pay bill and entrusted the same to the Headmaster and it was the Headmaster who had disbursed the amount and paid the amount to the teachers and staff as per the bill drawn and he is the custodian of the documents and money and the revision petitioner had only helped in drawing the bill and collecting the amount and he has no role in the commission of the offences.

6. The second accused has submitted that he was first appointed as the Headmaster in that school and he was there only from 12.6.1987 to 3.7.1987 and by the end of June, 1987 he got transfer order. When he was about to relieve the office, the first accused, who was working there as clerk, pleaded with him that joining of the new Headmaster would take some time and requested him to relieve only after encashing the salary for the month of June. He believed the clerk and signed the bills submitted by him and he could know that an excess amount was taken from the treasury only when the investigating officers had come for investigation. He

had met the first accused later and he confessed his folly and had requested him to forgive him. He retired from service in 1989 and the department had issued non liability certificate on his superannuation. In order to prove his case, DW1, who was the Deputy Director of Education, Kozhikode was examined and Ext.D1, file of pensionary claims of the second accused, was marked. After considering the evidence on record, the learned Magistrate found the second accused not guilty of the offences alleged and acquitted him of the charge levelled against him under section 248(1) of the Code of Criminal Procedure. The learned Magistrate found the first accused/revision petitioner not guilty for the offence under section 120(B) of the Indian Penal Code acquitted him of the charge under section 248(1) of the Code of Criminal Procedure but found him guilty for the offences under sections 465, 468, 471 and 477(A) of the Indian Penal Code and convicted him thereunder and sentenced him to undergo simple imprisonment for one year under section 465 of the Indian Penal Code and further sentenced him to undergo rigorous imprisonment for two years under section 468 of the

Indian Penal Code and further sentenced him to undergo rigorous imprisonment for one year under section 471 of the Indian Penal Code and further sentenced him to undergo rigorous imprisonment for two years under section 477(A) of the Indian Penal Code and directed the sentences run concurrently.

7. Aggrieved by the same, the revision petitioner filed Crl.A.No.380/1997 before the Sessions Court, Thalassery and the learned Sessions Judge allowed the appeal in part setting aside the order of conviction and sentence passed against the revision petitioner for the offences under sections 465, 468 and 471 of the Indian Penal Code and acquitted him of those charges but confirmed the order of conviction and sentence passed against him under section 477(A) of the Indian Penal Code. Aggrieved by the same, the present revision has been filed by the revision petitioner/first accused before the court below.

8. Heard the counsel for the revision petitioner and the learned Public Prosecutor.

9. The counsel for the revision petitioner submitted that

he was only a clerk in the school and the drawing officer and the custodian of the document was the Headmaster, who was the second accused in the case and he was acquitted by the court below. Further, he was only preparing the bill and there was a duty cast on the second accused to verify the same before subscribing the signature to the bills and it was the drawing officer, who was drawing the amount from the treasury and disbursing the amount to the staff and teachers. He had no role in the same. Further, the acquittance register during the relevant period has not been produced. Unless it is produced, it cannot be said that amounts were paid to the persons who were not working there or to the fictitious person mentioned in the charge. Further, the excess amount was in the custody of the Headmaster and the subsequent Headmaster also stated that at the time when he took charge, the entire documents of the school were entrusted to him and if that be the case, he has been in possession of the acquittance roll, which will throw light on this aspect, which has not been produced. Further the disputed pay bill also was not produced and there is no convincing evidence to show that he was in charge of the

account section and it was his responsibility to prepare the pay bill and he had intentionally and with dishonest intention prepared a false bill by making false entries so as to attract the offence under section 477 (A) of the Indian Penal Code. Having acquitted for the offences under sections 465, 468 and 471 of the Indian Penal Code, there is no dishonest intention established and thereby no offence under section 477(A) is attracted as merely making some false entry alone is not sufficient to attract the said offence. He had relied on the decisions reported in **Kandipalli Madhavarao v. State of A.P.** (2007 KHC 6768), **S. Harnam Singh v. The State (Delhi Admn.)** [AIR 1976 SC 2140] and **Sharad Birdhichand Sarda v. State of Maharashtra** (AIR 1984 SC 1622) in support of his case.

10. On the other hand, the learned Public Prosecutor appearing for the respondent/State argued that the courts below have concurrently, on the basis of the evidence and appreciating facts, came to the conclusion that the revision petitioner was the clerk, who prepared the bill and encashed the amount and he disbursed the amount also. Further, the

evidence will go to show that he was working there and he was conversant with the things transpiring in the school and the second accused was a Headmaster only for a short period and misusing that opportunity, he had prepared a false bill and withdrawn the amount. Further, for an offence under section 477(A) of the Indian Penal Code, it is only to be proved that false entries were made in preparing a document with an intention to draw the amount and if it is materialized, whether he has misappropriated or not is irrelevant and in this case, the evidence will go to show that it was he who prepared the bill and presented the bill for encashment and withdrew the amount and disbursed the amount to some extent and thereby the prosecution has proved beyond reasonable doubt that he had committed the offence and the appellate court was perfectly justified in convicting him for the said offence. The learned Public Prosecutor relied on a decision reported in **Madhavan v. State** (1973 KLT 689) in support of their case.

11. The case of the prosecution as emerged from the prosecution witnesses was as follows:

The revision petitioner was working as clerk in

Government High School, Mattool and the second accused in the case was working as Headmaster during the relevant period during which the alleged offence was committed. PW2, who was working as Section Officer in AG's Office, Thrissur along with his audit party conducted audit in the school and during that time, it was revealed that excess amount was drawn in the salary bill for the month of June, 1987 by showing the names of persons as teachers, who were not working at that time and one person's name who had not worked in the institution at all and an amount of ₹4014.30 was not seen disbursed and the acquittance register for the period was not produced for inspection and noting these aspects, he sent Ext.P1 audit report and during the relevant time, the revision petitioner was working as clerk and he was in charge of that section and it was he who had prepared the bill and presented and encashed the amount and disbursed a portion of the amount. On getting Ext.P1 report, Accountant General had sent a request to Kannur Crime Branch for conducting preliminary investigation regarding misappropriation found in the audit in the school and accordingly PW1, the Detective

Officer of Kannur Crime Branch was entrusted with the same by the Superintendent of Police, Thiruvananthapuram, which was routed to him through the D.G.P, Thiruvananthapuram. He conducted a preliminary investigation and submitted Ext.P2 report. He collected Exts. P4 to P7 attendance registers of the teaching and non teaching staffs for the year 1986-87 as produced by the then Headmistress Smt.P.C. Thankamma (PW19) as per Ext.P3 seizure mahazer. On the basis of Ext.P2 report which was forwarded to PW21, the Detective Inspector, Crime Branch CBCID, PW21 registered Ext.P28 First Information Report as Crime No.266/CR/89 of Crime Branch against the revision petitioner and the second accused and this was done on the basis of Ext.P27 letter No.2096/89/CB C sent from the Crime Branch CID headquarters administration. Thereafter, the investigation was conducted by PW22 from 17.3.1992 to 10.2.1994 and he seized Ext.P16 service book as produced by PW6 as per Ext.P17 seizure mahazer. Ext.P9 cashbook and Ext.P10 treasury bill book were produced by PW4, which were seized as per Ext.P8 mahazer by the investigating officer. He had also produced Ext.P21 series

application for granting leave, joining report, leave application of first accused, Ext.P18 series, Ext.P24 pay bill and salary bill for June, 1987 and leave registers Exts.P25 and P26 before the investigating officer. PW5 had produced treasury book containing the entries Exts.P11(a) to (c) and Exts.P12 and P13 which contain the entires Ext.P13(a) to (c) and Ext.P14 (a) to (c)during the relevant period for the encashment of the amount which was seized by the investigating officer asper Ext.P15 seizure mahazer. Certain documents were also seized as per Exts.P17, P19 and P20 seizure mahazers as produced and prepared in the presence of Pws 6, 8 and 9 respectively. Ext.P22 was seized as per Ext.P23 mahazer in the presence of PW13. The specimen handwriting of the revision petitioner and second accused and their admitted handwriting and signatures were obtained and that was sent for expert opinion and Ext.P29 expert opinion received which will go to show that handwritings in the disputed documents were that of the revision petitioner and signature was that of the second accused. Some portion of the investigation was conducted by PW23, who seized Ext.P24(a)

to (c) permanent pay bill and temporary pay bill as produced by PW20 as per mahazer. He questioned the witnesses and recorded the statement. He had seized Ext.P21 series leave applications and covering letters containing the handwriting of second accused with his signature which were marked as Ext.P18(a) to (k) as per Ext.P19. He completed the investigation and filed final report before court.

12. Before coming into the facts of the case, let me consider the penal section and precedents on this aspect.

Section 477 A of the Indian Penal Code reads as follows:

477A. Falsification of accounts:- Whoever, being a clerk, officer or servant, or employed or acting in the capacity of a clerk, officer or servant, wilfully, and with intent to defraud, destroys, alters, mutilates or falsifies any book, electronic record, paper, writing, valuable security or account which belongs to or is in the possession or his employer, or has been received by him for or on behalf of his employer, or wilfully, and with intent to defraud, makes or abets the making of any false entry in, or omits or alters or abets the omission or alteration of any material particular from or in, any such book, electronic record, paper writing, valuable security or account, shall be punished with

imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

13. In order to prove the offences, the following ingredients have to be proved by the prosecution:

1. The person coming with its purview must be a clerk, officer or servant, or employed or acting in the capacity of a clerk, officer or servant.

2. He must wilfully and with intent to defraud (a) destroy, alter, mutilate or falsify any book, electronic record, paper, writing valuable security or account which belongs to or is in the possession of his employer, or has been received by him for or on behalf of his employer. (b) make or abet the making of any false entry in, or omits or alters or abets the omission or alteration of any material particular from or in, any such book, electronic record, paper, writing valuable security or account.

14. The evidence must be produced by the prosecution to establish that:

(i) at the relevant time the accused was a clerk, officer or servant

(ii) acting in that capacity he destroyed, altered, mutilated or falsified any book, electronic record, paper or writing, valuable security or account which belongs to or is in the possession of his employer, or has been received by him for or on behalf of his employer.

(iii) that he did so with an intend to defraud.

15. So in order to bring the accused within the ambit of section 477A of the Indian Penal Code, it must be proved by the prosecution that he was working as a clerk or officer and in that capacity he had made false entry etc and that he had done with an intention to defraud his employer.

16. In the decision reported in **In re Doraiswami Reddiar & another v. State of Tamil Nadu**(AIR 1951 Madras 894), the Madras High Court has held that :

“S.477 A only requires the falsification of accounts with intent to defraud. It does not require any deprivation of property. Where therefore the President and clerk of a co-operative society prepare false and bogus

bills regarding sales of certain goods and enter them in the accounts of the society, their act is done with an intent to defraud & is fraudulent within S.477 A, I.P.C, even though, nobody is actually deprived of any property”.

17. This was followed in the decision reported in **Madhavan v. State** (1973 KLT 689), where it has been observed that:

“S.477 A, IPC requires the falsification of accounts with intent to defraud. It does not require any deprivation of property. Fraud means making a person believe what is not true with intent to cause some injury of some kind in property or reputation to him or to suppress some previous fraudulent transaction. The deprivation of property, actual or intended, is not a necessary ingredients to defraud”.

18. In the decision reported in **S. Harnam Singh v. The State (Delhi Admn.)** (AIR 1976 SC 2140), the Hon'ble Supreme Court has held that:

“Wilfully” as used in S.477-A means “intentionally” or “deliberately”. But from the mere fact that certain entries were made “wilfully” by an accused, does not necessarily follow that he did so “with intent to defraud” within the meaning of section 477-A, Penal Code. The Code does not

contain any precise and specific definition of the words "intent to defraud." However, the expression "intent to defraud" contains two elements viz., deceit and injury. A person is said to deceive another when by practicing "suggestio falsi" or "suppressio veri" or both he intentionally induces another to believe a thing to be true, which he knows to be false or does not believe to be true. 'Injury' has been defined in Section 44 of the Code as denoting "any harm whatever illegally caused to any person, in body, mind reputation or property."

19. In the decision reported in **Kandipalli Madhavarao v. State of A.P** (2007 KHC 6768), it has been observed that:

"Fact that accused was acquitted of offences under S.420 and S.471 IPC by trial Court would mean that it was not an act of deceit. Conviction of accused under S.477 A is liable to be set aside"

20. In the decision reported in **Sharad Birdhichand Sarda v. State of Maharashtra** (AIR 1984 SC 1622), it has been observed that:

"It is well settled that where on the evidence two possibilities are available or open, one which goes in favour of the prosecution and the other which benefits an

accused, the accused is undoubtedly entitled to the benefit of doubt”.

In the same decision it has been observed that:

“It is well settled that the prosecution must stand or fall on its own legs and it cannot derive any strength from the weakness of the defence. Where various links in a chain are in themselves complete, then a false plea or a false defence may be called into aid only to lend assurance to the Court. In other words, before using the additional link it must be proved that all the links in the chain are complete and do not suffer from any infirmity. It is not the law that where there is any infirmity or lacuna in the prosecution case, the same could be cured or supplied by a false defence or a plea which is not accepted by a Court.

Before a false explanation can be used as additional link, the following essential conditions must be satisfied:

(1) various links in the chain of evidence led by the prosecution have been satisfactorily proved.

(2) the said circumstances point to the guilt of the accused with reasonable definiteness, and

(3) the circumstance is in proximity to the time and situation.

If these conditions are fulfilled only when a Court can use a false explanation or a false defence as an

additional link to lend an assurance to the Court and not otherwise”.

21. In the decision reported in **Ram Narayan Poply v. Central Bureau of Investigation** (2003 (3) SCC 641), the Hon'ble Supreme Court held “the expression 'intend to defraud' implies conduct coupled with intention to deceive or thereby cause injury”

With this principle in mind, the case in hand has to be considered.

22. In this case it is an admitted fact that the revision petitioner was working as a clerk in Government High School, Mattool at the relevant time. It is also an admitted fact that during the relevant time the second accused in the case was the Headmaster. It is also in a way admitted by the revision petitioner also that during the relevant time he had prepared the disputed bill and presented before the second accused for getting his signature and on that basis the amount mentioned in the bill was encashed. Even if he had made an entry, it is the duty of the Headmaster to correct the mistake and it is on the basis of the authorization given by the Headmaster, the

amount is withdrawn and according to him, Headmaster is the custodian of the documents and he is the custodian of the cash and it was he who disbursed the amount and as such, he has no liability at all. It is true that there is no document produced by the prosecution to prove that the revision petitioner was entrusted with the documents by the Headmaster for preparing pay bills of the teaching and non teaching staff of the school. But, it was brought out in evidence that it was the clerk, who used to prepare the bill and as authorized by the Headmaster, used to collect the amount from the treasury and it was not the practice that the Headmaster used to go and collect the amount from the treasury. It is also brought out in evidence that after getting amount from the treasury, it will be entered in the cash book and disbursement will be made by the clerk, who is in charge of that section. The evidence in this case will go to show that the revision petitioner was in charge of preparation of the bills and disbursement of the amount after the amount was encashed on the basis of the bill from the treasury. It was an admitted fact that the disputed bill for the month of June, 1987 was prepared in the handwriting

of the revision petitioner and it contains certain names of the persons, who were not entitled to draw salary for that month as some of them had already left the service and they were not working in the school at that time and there was one fictitious name namely Gangadharan, who had not worked in the school at all.

23. It was also brought out from the evidence of PW2, the officer who conducted Ext.P1 audit report, that excess amount was drawn as per that particular pay bill and it was encashed and entered in the cash book and excess amount was not remitted in the treasury. It is also mentioned in the evidence of PW2 that persons shown in the bill include names of some of the persons, who had not worked at that time, were entered in the bill and the amount was encashed and entered in the cash book and some amount encashed as per the bill was disbursed also. This fact was not denied by the revision petitioner. Further, it is also brought out in evidence of the staff, who were examined namely PWs 3, 4, 6, 17, 19 and 20, that it was the revision petitioner, who used to prepare the pay bill and collect the amount from the treasury as authorized by the

Headmaster and used to enter the same in the cash book and used to disburse the amount. Further, it was brought out in evidence of these witnesses that though the Headmaster is supposed to be the de jure custodian of the documents, in fact, the documents were actually in the custody of the revision petitioner during that time.

24. PW3 also deposed that though he had obtained acquittance register of the relevant period when he took charge from the second accused, it was in the custody of the revision petitioner as the clerk in charge of that section and though a memo was issued by PW2 to produce the acquittance register during the relevant period, it could not be traced out and produced for verification. This was in a way supported by the evidence of other witnesses examined as well. Further, the expert opinion, Ext.P29, proved through PW22 will go to show that the handwriting in the disputed document and the signature in the disputed document who was authorized to receive the amount in the disputed bill were that of the revision petitioner. Further, explanation given by the second accused regarding the circumstances under which he happened

to sign the bill coupled with the evidence of DW1 and Exts.D1 and D1(a) will go to show that he had worked in the school nearly for a month alone and he believed the revision petitioner and signed the disputed pay bill, on the basis of which the amount was encashed and excess amount was found during audit appears to be more probable and that has got some relevancy in this case.

25. There is no evidence to show that on a previous occasion the revision petitioner had done these things. So, it is clear from his conduct that he had exploited the opportunity of the presence of a Headmaster, who was on the orders of transfer to get the pay bill signed and encashed the amount as authorized by him show that he has got some intention to cheat his employer, the school, which is a government school and cause loss to the government. Once it is proved by the prosecution that the revision petitioner had prepared the bill showing some fictitious entries or showing the names of persons, who are not entitled to draw the amount wilfully and the amounts were encashed and some amount was disbursed, then it is for him to explain as to how this mistake has crept in.

26. In the decision relied on by the learned counsel for the revision petitioner namely **S. Harnam Singh's case** (cited supra), the clerk had an explanation for the same and there were certain circumstances brought out to doubt the genuineness of the prosecution case projected against that accused and that benefit was given to the accused and he was acquitted. That was not the case here.

27. In this case, the revision petitioner had no explanation as to how the mistake had crept in and what happened to the amount and whether he had brought these facts to the notice of the Headmaster and made him to redeposit the amount, if it was wrongly or by mistake withdrawn but that was not done in this case. On the other hand, he wants to place the blame on the Headmaster and get himself exonerated from the folly committed by him in preparing the bill. That shows the ill motive on the part of the revision petitioner in preparing the bill. So once prosecution has proved the circumstance that this was done with an intention to defraud, especially when it was admitted that certain wrong entries were made in the bill by the revision petitioner and the amount

was encashed, then the burden shifts to the revision petitioner to prove that it was a bonafide mistake and not wilfull or dishonest act on his part. Such an evidence is lacking in this case. So under the circumstances, the dictum laid down by the counsel for the revision petitioner is not applicable to the facts of this case.

28. The dictum laid down in the decision reported in **Kandipalli Madhavarao's case** (cited supra) is also not applicable to the facts of this case as in that case it was come out in evidence that when the excess amount withdrawn was noted, the accused had remitted the amount. Further, charge under section 477 A was not there originally and it was framed only subsequently after the examination of the accused under section 313 of the Code and not much opportunity was given to the accused to explain the same as well. So under the circumstances, that court has come to the conclusion that having acquitted the accused for the offences under sections 420 and 471 of the Indian Penal Code, conviction under section 477 A is not legal considering the circumstances of that case.

29. So considering the over all circumstances in this case

and also the evidence adduced and in view of the discussions made above, it cannot be said that the courts below have committed any illegality in convicting the revision petitioner for the offences under section 477 A of the Indian Penal Code, which warrants interference at the hands of this Court.

30. As regards the sentence is concerned, the lower court had sentenced him to undergo rigorous imprisonment for two years for the offence under section 477 A of the Indian Penal Code and this was confirmed by the appellate court. Considering the fact that the revision petitioner had no previous history of making any false entry and appropriating any amount and also considering the amount involved, this Court feels that sentence of two years imprisonment imposed by the court below appears to be little harsh and reducing the same to six months simple imprisonment and also imposing fine amount of ₹5,000/- with default sentence of two months simple imprisonment will be sufficient and that will meet the ends of justice. So the sentence imposed by the court below for the offence under section 477 A of the Indian Penal Code as confirmed by the appellate court is set aside and the same is

modified as follows:

The revision petitioner is sentenced to undergo simple imprisonment for six months and also to pay fine of ₹5,000/-, in default to undergo simple imprisonment for two months more. Set off is allowed for the period of detention, if any, undergone by him under section 428 of the Code of Criminal Procedure.

With the above modification of the sentence alone, the revision petition is allowed in part and disposed of accordingly.

Office is directed to communicate this order to the concerned court immediately.

Sd/-
K. RAMAKRISHNAN, JUDGE.

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/true copy/

P.S to Judge

