

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

FRIDAY, THE 22ND DAY OF MAY 2015/1ST JYAISHTA, 1937

Cr1.Rev.Pet.No. 3185 of 2006 ()

AGAINST THE JUDGMENT IN CRA 448/2004 of ADDL.SESIONS COURT (ADHOC)
FAST TRACK COURT NO.II, MANJERI

DATED 31-05-2006

AGAINST THE JUDGMENT IN CC 428/1999 of J.M.F.C., PARAPPANANGADI
DATED 12-08-2004

REVISION PETITIONER(S) /APPELLANT/ACCUSED:

DEVADAS, S/O.KUMARAN,
KONIKKAL HOUSE, ULLANAM AMSOM, DESOM
MUNDIYANKAVU, MALAPPURAM DISTRICT.

BY ADV. SRI.BABU S. NAIR

RESPONDENT (S) /RESPONDENT/STATE:

THE STATE OF KERALA, REPRESENTED BY
THE CIRCLE INSPECTOR OF POLICE, TANUR, PARAPPANANGADI
THROUGH THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM, KOCHI-31.

PUBLIC PROSECUTOR, ADV. SRI. GITHESH.R

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 22-05-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

acd

P.D. RAJAN, J.

Crl.R.P.No.3185 of 2006

Dated this the 22nd day of May, 2015

ORDER

This Criminal Revision Petition arises out of the judgment in Crl.Appeal No.448/2004 of the Session Court, Manjeri for offence punishable u/s.420 IPC. The above appeal was preferred against the conviction and sentence in C.C.No.428/1999 of Judicial First Class Magistrate Court, Parappanangadi which was charge sheeted by Parappanangadi Police.

2. The facts necessary for the indictment were that on 25.5.1998, the revision petitioner promised to arrange visa to PW1 for getting employment abroad as Welder. On the basis of that promise, PW1 gave ₹1 lakh and entrusted his

passport to the revision petitioner, at that time, he agreed to arrange visa within 10 months from the date of payment of money and passport. Subsequently, he failed to arrange visa, thereby he committed the offence punishable u/s.420 IPC and Crime No.100/1999 was registered by the Parappanangadi Police.

3. To prove the allegation, prosecution examined PWs 1 to 5 and marked Exts.P1 to P3 as documentary evidence. The incriminating circumstances brought out in evidence were denied by the revision petitioner while questioning u/s.313 Cr.P.C. He admitted that he borrowed ₹15,000/- from PW1 and gave a blank stamp paper to that effect and misusing that blank stamp paper, falsely created a false case against him. The trial Court after sifting and weighing the evidence on record, convicted the revision petitioner.

4. The learned counsel appearing for the revision petitioner contended that there is material contradiction in the oral testimony of PW1 with regard to payment of money. In the complaint, it is alleged that the payment was made in the house of PW1. But, in the Court below, he deposed that he paid the amount in the house of the revision petitioner. This material contradiction was not considered by the trial Court and the first appellate Court. Ext.P2 is concocted document and the revision petitioner is entitled to get the benefit of doubt.

5. In order to attract the offence u/s.420 IPC, the prosecution has to prove that the revision petitioner has deceived the defacto complainant fraudulently or dishonestly and induced him to deliver any property to the revision petitioner, which would cause damage or harm to the complainant. A person is said to have done anything

dishonestly, if he does the act with intention to cause wrongful gain to one person or wrongful loss to another person. The allegation is that the revision petitioner obtained wrongful gain, which resulted in wrongful loss to PW1 by unlawful means. The allegation of PW1 was that on 25.5.1998, his friend one E.V. Muhammedali introduced him to the revision petitioner, to whom PW1 expressed his desire to go abroad for employment. The said Muhammedali promised him to arrange a visa through his friend, who is the revision petitioner. Accordingly, the revision petitioner agreed to arrange visa and PW1 paid ₹1 lakh and his passport on condition that he will arrange visa within a period of ten months. He arranged the money by selling some gold ornaments of his relatives. After ten months, the revision petitioner failed to arrange visa, then PW1 demanded to return money and passport. At that

time, the revision petitioner told PW1 that he will acknowledge the receipt of passport and money on the reverse side of the agreement and promised to arrange money after one week. When there was no payment as agreed he approached the Police. This evidence of PW1 was supported by PW2. PW3 also supported the case of PW1. From the oral testimony of PWs 1 to 3, the trial Court and the appellate Court was of the view that there is nothing to discredit them. The witnesses' knowledge of facts and disinterestedness show their evidence as trustworthy. The questions put to the witnesses in cross examination expose their knowledge and ability to speak about the transaction.

6. The investigating Officer PW5 questioned the witnesses, collected the details and verified veracity of Ext.P2. PW4 registered Ext.P3 FIR. In this backdrops, I

have verified the defence contention put forward by the revision petitioner when he was questioned u.s.313 Cr.P.C. He admitted that he borrowed only ₹15,000/- and at the time of borrowal, he gave a blank stamp paper to PW1 and misusing that stamp paper, he foisted a false case. Even though such a contention was raised, it was not supported by any other evidence, hence courts below rejected that contention.

7. The learned Public Prosecutor contended that the execution of Ext.P2 was proved by PW1 in the trial Court. Payment of money at the house of the revision petitioner was admitted by PW1 before Court. That minor contradiction will not affect the credibility of the prosecution case and no materials were placed before the trial Court to disbelieve the oral testimony of PW1 and therefore, no interference is necessary in the finding of

the courts below.

8. A close scrutiny of the evidence of PW1 shows that the revision petitioner has a dishonest intention to obtain money from PW1 by making a false promise. This dishonest intention constitutes mens rea, which is a basis for inducing money from PW1, attracting the offence u/s.420 IPC to constitute mental element. It may not be possible to get direct evidence or any positive evidence contrary to prove the alleged mental elements. The existence of such mental elements at the time of giving such promise would only infer from the facts and circumstance of each case. A promise made by the revision petitioner to the complainant and further act and agreement made by the revision petitioner constitute the actus rea to attract the offence u/s.420 IPC. Therefore, the intention to deceive PW1 was found to be present at

the very inception of the transaction, which was convinced by the trial Court. Therefore, the conviction passed by the trial Court is only to be confirmed.

9. The question of appropriate sentence is always complex and difficult one for which several factors are to be considered. The learned counsel appearing for the revision petitioner submitted that the sentence imposed by the trial Court was too harsh and therefore, a lenient view may be shown in sentence. Apex Court in Modi Ram and another v. State of Madhyapradesh [AIR 1972 SC 2438] held that the sentence should bring home to the guilty the consciousness that the offence committed by him was against his own interest as also against the interests of the Society of which he happens to be a member. The modern approach of penology says sentence should bear humanitarian consideration. Apex Court in Suresh and

another v. State of Haryana [(2015) 2 SCC (Crl) 45] held that the victims of the crime are entitled to get compensation. Therefore, the sentence should neither be too lenient nor disproportionate to the offence committed. For that, the Court has to consider the nature and gravity of the offence and all relevant circumstances leading to the offence. Here, no previous criminal antecedents were alleged or proved against the revision petitioner. Hence, the sentence imposed by the Court below is modified as follows:

i) The revision petitioner is sentenced to rigorous imprisonment for three months u/s.420 IPC;

ii) He is also liable to pay a sum of ₹1 lakh as compensation u/s.357Cr.P.C., to PW1 , in default of payment of compensation, simple imprisonment for three months.

iii) If the compensation amount is realised, it shall be disbursed to PW1. Revision petitioner is directed to surrender before trial Court on 20.7.2015 for receiving sentence. Bail bonds stand cancelled.

Crl.R.P. is partly allowed.

P.D. RAJAN, JUDGE.

acd

