

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

FRIDAY, THE 25TH DAY OF SEPTEMBER 2015/3RD ASWINA, 1937

Crl.Rev.Pet.No. 196 of 2008 ()

AGAINST THE JUDGMENT IN CC 554/2005 of J.M.F.C.-I, KOCHI

REVISION PETITIONER(S)/DEFACTO COMPLAINANT:

**K.K.PURUSHAN,
AGED 67, YEARS,
S/O KUNJAN, RESIDING AT KARUPADANAYIL HOUSE,
CHERAI P.O., ERNAKULAM.**

BY ADV. SRI.T.N.SURESH

RESPONDENT(S)/ACCUSED/COMPLAINANT:

**1. K.K.SUDARSHANAN,
AGED 47 YEARS,
S/O KUNJU, RESIDING AT KELAPPASSERY HOUSE,
NJARACKAL P.O., WEST SIDE, JAIHIND GROUND,
NJARACKAL.**

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

R2 BY PUBLIC PROSECUTOR SRI. DHANESH MATHEW MANJOORAN

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 25-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

STK

P.D. RAJAN, J.

Crl.R.P.196 of 2008

Dated this the 25th of September, 2015

ORDER

Revision petitioner is the defacto complainant in C.C.554/2005 on the file of Judicial First Class Magistrate-1, Kochi challenges the order of acquittal under Section 420 IPC. The complainant's case in the trial court was that accused with intent to deceive him dishonestly induced to deliver him a sum of Rs.75,000/- on condition that he will secure job in his company and accordingly, the accused received the amount. He neither gave employment nor return the amount, thereby committed the offence of cheating. For this a complaint filed in the trial court, which was forwarded to the Narakkal Police under Section 156(3) Cr.P.C., where they registered Crime No.444/02, and after completing investigation, laid charge before Judicial First. Class Magistrate-1, Kochi.

2. During trial prosecution examined PW1 to PW4 and marked Exts.P1 to P3. The incriminating

circumstances brought out in evidence were denied by the accused while questioning him. He did not adduce any defence evidence. The trial court after analyzing the evidence acquitted the accused.

3. The learned counsel appearing for the revision petitioner contended that, a wrong appreciation was made by the trial court which is erroneous and illegal. The finding that the prosecution has failed to prove the case is manifestly erred. Ext.P2 agreement executed by the accused itself is sufficient to prove the transaction and for a conviction.

4. After hearing the Public Prosecutor, I dispense the notice to first respondent. In order to prove the offence of cheating, prosecution examined PW1. The evidence of PW1 shows that, accused assured job in his firm, a well known advertising company or in a supermarket. PW1 admitted that he is a retired employee of Dock Labour Board. In the year 2001, he went to the KSEB office to remit electricity charge at that time, he met the accused. At that time accused informed that he was

conducting a super market near Madhava Pharmacy Junction, Ernakulam and assured to provide employment to PW1. Moreover, he is also conducting another firm named Krishna Priya Advertising Company. PW1 offered one lakh rupees to the accused. As a part payment, he gave Rs.40,000/- on 10.10.01 to the accused. On 12.10.2001, the accused demanded the remaining amount and PW1 gave Rs.35,000/- on 15.10.2001, thus he paid a total sum of Rs.75,000/- and the accused did not provide job as assured. When he demanded for job, accused executed Ext.P2 agreement. On enquiry, PW1 realized that, the accused is not conducting any supermarket or advertising company as stated earlier. PW2 who is the wife of PW1 supported the evidence of PW1. PW3 saw the transaction of Rs.35,000/- given to the accused. PW4 registered Ext.P4 FIR and conducted investigation. After completing investigation, he laid charge before court. The trial court analysed the oral evidence of PW1 to PW3 and Ext.P2 agreement and opined that *prima facie* no evidence for a conviction. It is

admitted by PW1 that he gave Rs.75,000/- to the accused and as per Ext.P2, accused agreed to return that amount. But the evidence of PW1 to PW3 is not sufficient for a conviction to attract the ingredients of cheating.

Revisional jurisdiction can be exercised for the purpose of satisfying itself to the correctness, legality or propriety of any findings, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court. A perusal of the evidence, it is found that no illegality or irregularity committed by the trial court. I find no illegality or irregularity in the order of the trial court. There is no merit in this revision petition and it is dismissed accordingly.

STK

Sd/-
P.D. RAJAN,
JUDGE

//TRUE COPY//

P.A. TO JUDGE