

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

WEDNESDAY, THE 2ND DAY OF DECEMBER 2015/11TH AGRAHAYANA, 1937

Crl.Rev.Pet.No. 312 of 2008 ()

AGAINST THE JUDGMENT IN CRL.APPEAL NO.370/2004 of ADDL.SESIONS
COURT-I,MAVELIKKARA DATED 22.6.2006.

AGAINST THE JUDGMENT IN CC 311/2001 of JUDICIAL FIRST CLASS
MAGISTRATE-I, CHENGANNUR DATED 05.06.2204

REVISION PETITIONER(S)/APPELLANT/ACCUSED::

K.MURALIDHARAN, S/O.RAGHAVAN,
VALIYAPARAMBIL, THITAMEL, CHENGANNUR.

BY ADV. SRI.VINCENT JOSEPH

RESPONDENT(S)/RESPONDENTS/STATE AND COMPLAINANT;;

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1. R.RAMAKRISHNA PILLA, VADAKUMTHARAYIL
VEEDU, PENNUKKARA, VADAKKUMMURI ALA, CHENGANNUR.
 2. THE STATE OF KERALA, REPRESENTED BY ITS
PUBLIC PROSECUTOR.

R2 BY PUBLIC PROSECUTOR SRI. N. SURESH.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 02-12-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

acd

P.D. RAJAN, J.

Crl.R.P.No.312 of 2008

Dated this the 2nd day of December, 2015

ORDER

The revision petitioner was charge sheeted in C.C.No.311/2001 before Judicial First Class Magistrate-I, Chengannur for having committed the offence punishable u/s.420, 468 and 471 r/w.34 IPC. The charge is that on 8.11.1998, the 1st accused borrowed a sum of ₹50,000/- from the complainant and in discharge of that debt, he issued Ext.P1 cheque. When it was presented for encashment, it was dishonoured for the reason of funds insufficient. The complainant demanded the amount by giving a lawyer notice to the accused. Even after, there was no payment. Hence, the complaint was filed in the trial Court. During enquiry, it is

revealed that Ext.P1 was issued from the account of A2, and they issued Ext.P1 cheque in order to cheat the complainant. In the circumstance, the trial Court took cognizance of the offence u/s.420, 465, 468 and 471 r/w.109 IPC.

2. However during trial, prosecution examined three witnesses and marked Exts.P1 to P9 as documentary evidence. The learned Magistrate convicted A1 and A2 u/s.417 IPC and sentenced to simple imprisonment for four months u/s.417 IPC, but they were acquitted for offence u/s.471 and 468 IPC. Against that, both accused preferred Crl.Appeal No.370/2004, before Additional Sessions Judge, Mavelikkara where the conviction and sentence against the revision petitioner was confirmed and the conviction against the 2nd accused u/s.417 r/w.34 IPC was set aside and acquitted him. Being aggrieved by that, the

1st accused preferred this revision petition.

3. Heard both sides and perused the oral and documentary evidence in this case. The learned counsel appearing for the revision petitioner contended that the sentence imposed by the trial Court is too harsh and some lenience may be shown in sentence. He contended that the cheque was not issued by the revision petitioner. The evidence in support of the transaction was not proved by PW1 and PW2.

4. The learned Public Prosecutor contended that there is no misreading of evidence and both courts below rightly appreciated the facts and convicted the accused. The relevant facts were considered by the courts below, which shows no interference is necessary by invoking the revisional jurisdiction.

5. For ascertaining the illegality, I have examined

the oral and documentary evidence of PW1, who is the defacto complainant in this case. The evidence of PW1 shows that A2 is the account holder and Ext.P1 was issued in discharge of a debt of ₹50,000/- and it was dishonoured for the reason of funds insufficient. Exts.P2 and P3 are dishonour memos. PW1 demanded the amount by sending Ext.P4 lawyer notice. Ext.P5 is the postal receipt. Ext.P6 is the copy of cheque returned register. Ext.P7 is the copy of account opening form. Ext.P8 is the copy of cheque issue register. Ext.P9 is the copy of statement of account. PW2 deposed that coloumns in cheque leaf were filled up by A1 and the second accused put his signature in his presence. PW3 is the Bank Manager, who deposed that the second accused is the account holder and he never received any intimation about the loss of Ext.P1. Ext.P1 was dishonoured for the reason of funds insufficient and

not for the reason of "drawer's signature differs", which was admitted by PW3. Nothing has been brought out to discredit their oral evidence. The defence contention was that A2 lost one cheque leaf and he was not aware about the entrustment of Ext.P1 cheque to PW1. In the light of the above contention, the trial Court acquitted A2. On a close scrutiny of the evidence, it is found that the revision petitioner never maintained an account for issuing Ext.P1. He entrusted Ext.P1 to the 1st respondent under the impression that he has maintained an account in the bank and induced the 1st respondent to give money. He entrusted the cheque leaf in order to deceive the 1st respondent, which itself is sufficient to attract and offence u/s.417 IPC. What is clear from the evidence of PW1 to PW3 is that an earnest attempt was made by the revision petitioner to cheat the 1st respondent. The trial

Court considered the fundamental rules of appreciation of evidence and opined that the charge against the revision petitioner was proved beyond reasonable doubt and convicted u/s.417 IPC, which does not warrant any interference.

6. The fundamental rule in a criminal case is that one person is presumed as innocent till he is proved to be guilty. This rule actually means that a person accused of a crime is not bound to make a statement or offer any explanation about the circumstances which throws suspicion upon him. It is the duty of the prosecution to prove the guilt beyond reasonable doubt. There may be exception where the rules of presumption applies in certain cases. In such case, presumption with regard to the proved facts and circumstances may arise which will help in reaching a conclusion. In a case of cheating,

prosecution has to prove that whoever by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person or to consent that any person shall retain any property or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act of omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property is said to cheat. Explanation says that a dishonest concealment of facts is a deception within the meaning of this section. Therefore, it must be proved that the revision petitioner cheated PW1 and he was responsible for such cheating. Here, the evidence shows that revision petitioner had the direct nexus with the transaction and proved the offence beyond reasonable doubt. Therefore, the conviction of the revision petitioner

u/s.417 IPC is confirmed.

7. The trial Court sentenced the accused to undergo simple imprisonment for four months u/s.417 IPC. The revision petitioner had already undergone 45 days' imprisonment. He was a Police Constable terminated from service and is now working as Autorickshaw driver. He is the only breadwinner of his family. The learned counsel appearing for the revision petitioner contended that the sentence imposed by the trial Court is too harsh. In the circumstance, the sentence is modified as follows:

8. The revision petitioner is sentenced to simple imprisonment for three months u/s.417 IPC and to pay fine of ₹5,000/- (Rupees five thousand only), in default of payment of fine, simple imprisonment for another one month. Revision petitioner is directed to surrender in the Judicial First Class Magistrate-I, Chengannur forthwith to

undergo the modified sentence, failing which the learned Magistrate shall issue non bailable warrant against the revision petitioner.

P.D. RAJAN, JUDGE.

acd