

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

THURSDAY, THE 8TH DAY OF OCTOBER 2015/16TH ASWINA, 1937

Crl.Rev.Pet.No. 850 of 2008 ()

AGAINST THE JUDGMENT IN CC 332/2006 of JUDICIAL FIRST CLASS
MAGISTRATE COURT-I, HARIPAD DATED 07-01-2008

REVISION PETITIONER(S)/DE-FACTO COMPLAINANT::

T.K. BALAKRISHNA KURUP,
RAMCO AGENCIES, NANGIARKULANGARA, ALAPPUZHA.

BY ADVS.SRI.R.SUNIL KUMAR
SMT.A.SALINI LAL

RESPONDENT(S) :

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1. BABU RAJ, S/O. JANARDHANAN,
CHERUVAYIKKAL @ PUTHENKANDATHILVEEDU, CHINGOLI
ALAPPUZHA.
 2. SUDHA, W/O. RAJENDRAN,
RAJESH BHAVANAM, CHINGOLI, ALAPPUZHA.
 3. STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.

R3 BY PUBLIC PROSECUTOR SRI. DHANESH MATHEW MANJOORAN

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 08-10-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

acd

P.D. RAJAN, J.

Crl. R.P.No.850 of 2008

Dated this the 8th day of October, 2015

ORDER

Revision petitioner challenges judgment in C.C.No.332/2006 on the file Judicial First Class Magistrate-I, Haripad by invoking revisional jurisdiction. The above case was charge sheeted by the Sub Inspector of Police, Haripad for offence punishable u/s.420, 465, 467, 471 and 120(b) r/w.34 IPC. The prosecution case is that on 7.9.2000, A1 purchased a television set from the shop of PW1 and paid a portion of the amount and for the balance amount of ₹6,500/- he issued a cheque. On 13.9.2000, again A1 visited his shop and borrowed ₹5500/- from him, for that, the 1st accused issued a cheque for ₹12,000/- on 15.8.2001 in his

presence. When the cheque was presented for encashment, it was dishonoured for the reason of 'signature differes'. On enquiry, it is found that the 2nd accused is the account holder and both accused committed criminal conspiracy, thereby cheated PW1. In the circumstances, he filed a complaint before Judicial First Class Magistrate Court-I, Haripad, which was sent over to the Police for investigation u/s.156(3) Cr.P.C. and after completing investigation, Haripad Police laid charge in the trial Court.

2. During trial, prosecution examined PW1 to PW6 and marked Exts.P1 to P14. The incriminating circumstances brought out in evidence were denied by the accused, while questioning them u/s.313 Cr.P.C. They did not adduce any defence evidence. The trial Court acquitted the accused. Being aggrieved by that, the

complainant has filed this revision petition.

3. The learned counsel appearing for the revision petitioner submitted that Ext.P5 was issued in discharge of a debt and the signature was put in the presence of PW2. When it was presented for encashment, it was dishonoured for the reason 'signature differs'. The 1st respondent assured that he is maintaining the account and cheque belongs to him. The above act of the 1st respondent was with the intention to cheat the revision petitioner.

4. The learned Public Prosecutor contended that the oral and documentary evidence adduced in the trial makes out a prima facie case only to prosecute the accused, but no evidence is available for a conviction. If that be the position, no meaning in remitting the matter to the trial Court for fresh consideration.

5. The object of conferring revisional power is only

a general supervision in order to correct grave miscarriage of justice arising from erroneous or defective orders. While exercising this power, it is justified only when it correct the failure of justice and not to rectify every error. The fact that the lower court has taken a wrong view of law or misapprehended the evidence on record is not a reason to interfere unless it has resulted in grave injustice. For ascertaining the illegality committed by the Court below, I have gone through the evidence of the defacto complainant. The specific case of PW2 in the trial Court was that the 1st accused issued Ext.P5 cheque in discharge of a debt of ₹12,000/-ensuring that he is maintaining the account and Ext.P5 was issued from his account. But, when Ext.P5 presented for encashment, it was dishonoured for the reason of 'signature differs'. Ext.P5 was signed by A1 in the presence of PW2. Ext.P2 is

the certified copy of dishonour memo. Ext.P7 is the another memo issued from SBT, Karthikappally branch. He issued demand notice. Ext.P8 is the postal receipt. Ext.P9 is the acknowledgment card.

6. The specific case of the complainant is that the accused made an attempt to cheat him by issuing Ext.P5 cheque. PW1 is the manager of the South Indian Bank, Nangiyar Kulangara Branch. He admitted that Ext.P2 is the dishonour memo and the cheque was dishonoured for the reason of signature differs. He identified Ext.P3 intimation. PW6, who is also the present Manager of SBT, Karthikappally, supported the case of PW1. He produced Ext.P13 copy of the cheque returned register. According to PW6, Ext.P5 was issued from the account of A2. Ext.P14 is the certified copy of the statement of account of A2. As per Ext.P14, there was no transaction in that

account, after 2001.

7. In this context, I have considered the ingredients attracting Section 420 IPC. According to Section 420 IPC, whenever the accused cheats another and thereby dishonestly induces the person deceived to delivery 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 is an offence u/s.420 IPC. Therefore, it is the duty of the prosecution to prove the dishonest intention from the very beginning, which is clear from the oral evidence of PW1. Analysing the evidence, it is clear from Ext.P5 and the oral evidence of PW6 that A2 is maintaining the account. Even though PW2 stated that A1 put his signature in Ext.P5 in his presence, no evidence has been adduced by him to prove

the signature of A1. The oral evidence of PW1 and PW2 alone is not sufficient. According to Section 45 of the Evidence Act, when the Court has to form an opinion with regard to the identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in questions as to identity of handwriting or finger impressions are relevant facts. Such attempt was not made by the revision petitioner to prove the signature of A1.

8. Apex Court in Dayal Singh v. State of Uttaranchal [AIR 2012 SC 3046] held that the purpose of an expert opinion is primarily to assist the Court in arriving at a final conclusion. In the absence of such evidence, the opinion made by PW6 is relevant that there is only a difference in the signature. Analysing the evidence, it is true that the prosecution utterly failed to prove against the accused.

Therefore it is not necessary to invoke the revisional jurisdiction to remit the matter to the trial Court for fresh consideration. There is no merit in this revision and it is dismissed accordingly.

P.D. RAJAN, JUDGE.

acd

