

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

FRIDAY, THE 13TH DAY OF MARCH 2015/22ND PHALGUNA, 1936

Crl.Rev.Pet.No. 85 of 2015 ()

AGAINST THE JUDGMENT IN CRA 989/2008 of THE COURT OF ADDITIONAL
DISTRICT & SESSIONS JUDGE - IV, THIRUVANANTHAPURAM DATED 30.10.2014

AGAINST THE JUDGMENT IN ST NOS.4911/2006, 4662/2007, 4592/2007 OF THE
COURT OF JUDICIAL FIRST CLASS MAGISTRATE-IV (MOBILE COURT),
THIRUVANANTHAPURAM DATED 22.11.2008

REVISION PETITIONER/APPELLANT/ACCUSED:-

VINCENT PERERA,
S/O.KUNJACHAN, A.C.MECHANIC, ELECTRICAL AND A/C WING
SOUTHERN RAILWAY, THIRUVANANTHAPURAM.

BY ADV. SRI.SHAJIN S.HAMEED

RESPONDENTS/RESPONDENTS/STATE & COMPLAINANT:-

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1. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.
 2. SHAJI WILFRED,
S/O.WILFRED, KINATTUVILAKAM VEEDU, VALIYATHURA
VALLAKADAVU, THIRUVANANTHAPURAM, PIN - 695 008
REPRESENTED BY HIS POWER OF ATTORNEY HOLDER
MRS.PILOMINA RAJU.

R2 BY ADV. SRI.M.FATHAHUDEEN
R2 BY ADV. SRI.LATHEESH SEBASTIAN
R1 BY PUBLIC PROSECUTOR SMT.SEENA RAMAKRISHNAN

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 13-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

“C.R.”

C.T.RAVIKUMAR, J.

Crl.R.P.No.85 of 2015

Dated 13th March, 2015

ORDER

This revision petition raises certain crucial questions of law in the following factual background. The revisionist was the accused in S.T.Nos.4911 of 2006, 4662 of 2007 and 4592 of 2007, on the files of the Court of Judicial First Class Magistrate-IV, Thiruvananthapuram. In all those cases he was tried for the offence punishable under Section 138 of the Negotiable Instruments Act. The complainant in all those cases was also one and the same person. Those three cases were jointly tried and disposed of by a common judgment. Evidently, as per the said common judgment dated 22.11.2008 the revision petitioner was found guilty in all the three cases and he was convicted and imposed with similar but, separate sentence in all those cases. In fact, he was sentenced to undergo imprisonment till the rising of the court and to pay fine of ₹ 50,000/- and in default of payment of fine to undergo simple imprisonment for a period of three months in each of those cases. On realisation of the amount of fine it was directed to be paid to the complainant as compensation under Section 357(1) Cr.P.C.

2. The revision petitioner filed a common appeal against the said order of conviction though there is no enabling provision for doing so. In other words, the revision petitioner was to file three separate appeals for challenging the conviction entered against him and the sentence imposed on him in the aforementioned three cases despite their joint trial and disposal by a common judgment. However, he has chosen only to file a common appeal. The said appeal was numbered as Crl.A.No.989 of 2008 and for suspending the sentence the revision petitioner moved Crl.M.P.No.4076 of 2008 in the said appeal. The sentence was suspended and he was enlarged on bail as per order dated 17.12.2008. Subsequently, the matter came up for final hearing and it was finally heard on 17.10.2014. It is evident from the impugned judgment itself that after finally hearing the matter on 17.10.2014 the impugned judgment was pronounced on 30.10.2014. Evidently, taking note of the objection raised by the respondent- complainant with respect to the maintainability of the single appeal filed against the common order of conviction instead of filing three separate appeals against the aforesaid three cases disposed of by the common judgment, the appellate court framed the following point for consideration:-

“Whether the appeal is maintainable?”

In fact, that point alone was considered as per the impugned judgment. The parties were permitted to address on that point on 17.10.2014 and the appellate court found that in the absence of any specific provision for filing a joint appeal Crl.A.No.989 of 2008 filed against the common judgment in S.T.Nos.4911 of 2006, 4662 of 2007 and 4592 of 2007 could not be maintained and in that view of the matter the appeal was held not maintainable and it was dismissed. This revision petition is filed in the said circumstances.

3. I have heard the learned counsel for the revision petitioner, the learned counsel for the second respondent and also the learned Public Prosecutor.

4. In the light of the indisputable and undisputed facts expatiated earlier the question to be considered is whether the dismissal of the appeal in the manner it was done, is sustainable and if not what would have been the course open to the appellate court ? Evidently, S.T.Nos.4911 of 2006, 4662 of 2007 and 4592 of 2007 were jointly tried and a common judgment was delivered by the trial court in all those cases, on 22.11.2008. The revision petitioner sought to assail the said common judgment and only a joint appeal viz., Crl.A.No.989 of 2008 was

filed under Section 374(3) Cr.P.C. to challenge the said common judgment, in fact, the order of conviction. True that, there is no specific provision enabling the revision petitioner to file a joint appeal against the conviction and sentence in three separate cases though those cases were jointly tried and disposed of by a common judgment. Though there is no specific provision regulating the same in the Code of Criminal Procedure Rule 98 of the Criminal Rules of Practice would throw light in the said action regarding the proper position. Going by the same, if several persons, who are accused in the same case, were convicted and sentenced they may jointly file a common appeal. But, at the same time, if sentences were entered against the same or different persons in different cases separate appeals have to be preferred against each conviction and sentence. Rule 98 of the Criminal Rules of Practice provides as follows:-

"98. Separate or joint appeals to be preferred.- Where several accused persons are convicted in a single trial, each of them may prefer an appeal against his conviction either separately or jointly with one or more of the other accused. But when one accused has been convicted at different trials, he shall prefer separate appeal in each case."

The mere fact that the same or different persons were tried jointly in

different cases cannot be a reason for filing a joint appeal against the common judgment. In other words, in the light of Rule 98 of Criminal Rules of Practice a common appeal could not have been filed and therefore, it could not have been entertained. But then, in this case, an appeal was filed against the common judgment in S.T.Nos.4911 of 2006, 4662 of 2007 and 4592 of 2007 and it was registered as Crl.A.No.989 of 2008 and the appellate court admitted the same. The sentence imposed against the petitioner was suspended and he was enlarged on bail. This factual position is not in dispute. The contention of the learned counsel for the revision petitioner is that in such circumstances, having admitted the appeal and posted the matter for final hearing, the appellate court was bound to dispose of the matter in terms of the provisions under Section 385 Cr.P.C. in exercise of the powers under Section 386, Cr.P.C. Section 384, Cr.P.C. deals with the provision for summary dismissal of appeal. In view of the facts obtained as above, in this case, it could not be said that the appeal was summarily dismissed, it is contended. There can be no doubt that when an appeal was not dismissed summarily Section 385 Cr.P.C. enjoins issuance of notice to the appellant or his pleader indicating the time and place at which the appeal is scheduled to be heard. In the contextual situation it is relevant to note the specific pleadings taken in this revision which were endorsed fully by the

respondents. In paragraph 7 of this Memorandum of Criminal revision petition it is stated thus:-

"7. The accused challenging the conviction and sentence in all three cases filed Criminal Appeal No.989/2008 before the Sessions Court, Thiruvananthapuram on 15/12/2008. The Honourable Sessions Court, Thiruvananthapuram admitted the appeal on 17/12/2008, issued notice to 2nd respondent and suspended the sentences of the court below. The appeal was then made over to The Additional District and Sessions Judge-IV, Thiruvananthapuram. On 30/10/2014, when the appeal came up for hearing, the appellate court dismissed the appeal holding that a single appeal is not maintainable against the conviction and sentence in three different cases."

Since this position is not disputed by the respondents herein and, moreover, endorsed by them, there is no need to call for the records and therefore, I think it only appropriate to consider the correctness, legality and propriety of the impugned judgment in the light of the legal provisions and authorities.

5. The indisputable position obtained from paragraph 7 extracted above would undoubtedly reveal that in the case on hand the appeal had crossed the stage of summary dismissal and it was admitted on 17.12.2008 and on getting notice in the appeal the 2nd respondent

herein, the complainant entered appearance. Evidently, in exercise of the power under Section 389, Cr.P.C. the sentence was also suspended. In such circumstances, the appellate court was bound to peruse the records of evidence and to render a judgment on merits in the light of the decisions of the Hon'ble Apex Court in **Shyam Deo Pandey and others v. The State of Bihar (AIR 1971 SC 1606 = ((1971) 1 SCC 855)** and in **Surya Baksh Singh v. State of Uttar Pradesh ((2015) 1 SCC (Cri) 313)**. A joint reading of Sections 385 and 387 Cr.P.C. would reveal that after hearing the appeal finally a judgment on merits alone could be rendered by the subordinate appellate courts. In the light of the decision in **Shyam Deo Pandey's** case (supra) the records of the lower courts must be available with the appellate court if the condition of "perusal" is to stand complied with. In this case, a perusal of the impugned judgment would reveal that the criminal appeal was finally heard on 17.10.2014 and the records on evidence of the lower court were perused by the appellate court. In the light of the decision in **Shyam Deo Pandey's** case (supra) the mere recital that the records were perused would not satisfy the legal requirement in the judgment and in fact, the act of such perusal. There cannot be any doubt with respect to the position that the first appellate court is legally bound to cross check the reasoning and finding of the trial court based on the

evidence. In such circumstances, to satisfy the legal requirement of perusing the records and in the light of the decision in **Shyam Deo Pandey's** case (supra) in an appeal where it was not summarily dismissed and taken up for final hearing a judgment 'on merits' has to be passed. The learned counsel would submit that in such circumstances, after admitting the appeal and perusing the records at the final hearing the appellate court was not justified in reverting back to the question of maintainability of the appeal and dismissing the appeal summarily on the question of maintainability. True that, going by the settled position as regards consideration of an appeal in terms of the provisions under Section 385 Cr.P.C. as also the decisions referred supra such a dismissal, considering the stage of appeal, cannot be sustained. But, at the same time, in this case, there are some additional circumstances. As noticed hereinbefore, the revision petitioner was jointly tried in three cases and a common judgment was passed in S.T.Nos.4911 of 2006, 4662 of 2007 and 4592 of 2007 by the trial court. The common judgment of the trial court would reveal that in three separate cases the appellant was convicted under Section 138 of N.I. Act and separate sentences in each of the cases were imposed against him. In such circumstances, Rule 98 of Criminal Rules of Practice would assume relevance. In this case, though S.T.Nos.4911 of 2006,

4662 of 2007 and 4592 of 2007 were tried jointly that by itself was no reason for the revision petitioner to file a joint appeal as he was convicted and sentenced separately in S.T.Nos.4911 of 2006, 4662 of 2007 and 4592 of 2007. Indisputably, the appellant was found guilty for the offence punishable under Section 138, N.I. Act in all the three cases separately and upon convicting him thereunder, he was sentenced separately in all the three cases. In the light of the provisions under Section 385 Cr.P.C. the finding of the appellate court that the petitioner ought to have or could have preferred three appeals, though the aforementioned cases were jointly tried and disposed of by a common judgment, should not have been assigned as a reason for dismissing the appeal on the ground of maintainability after admitting Crl.A.No.989 of 2008 and calling for the records. But, the question is having admitted the appeal preferred by the petitioner and taken up the matter for final hearing, after perusal of the records, whether the court could have confined only to the question of maintainability of the appeal ? In the light of the provisions mentioned hereinbefore as also the decisions referred supra once the stage of summary dismissal of an appeal under Section 384 Cr.P.C. is crossed the appeal could have been and should have been disposed of only in the manner contemplated under Section 385 Cr.P.C. Needless to say that for disposal of the appeal powers of the

appellate court available under Section 386 Cr.P.C. have to be exercised. As noticed hereinbefore, in this case, there was only one appeal though the petitioner was convicted and sentenced in three cases by a common judgment. In such circumstances, what would have been the course to be adopted and open to the court ? In fact, that question was considered by this Court in Crl.R.P.No.2072 of 2009. The learned Judge opined that in such circumstances the proper course open to this Court is to remit the matter back to the court below so as to enable the revision petitioner to exercise the option to confine the appeal already filed to any one of the cases. It was also observed therein that in such circumstances it would be open to the convict to prefer separate appeals against the other cases which were disposed of by the common judgment in question subject, of course, to the period of limitation for filing appeals and certainly, in case of filing of such appeals such matters have to be considered by the appellate court, in accordance with law. In this case, evidently, the appellate court did not dismiss the appeal preferred by the revision petitioner under Section 384 Cr.P.C. In other words, there was no summary dismissal of the case. Obviously, the case was admitted. The sentence imposed against the revision petitioner was suspended and he was enlarged on bail. In such circumstances, in the light of the decisions referred supra, I have no hesitation to hold that the appellate

court should have permitted the revision petitioner to opt to confine the appeal to any one of the cases which were disposed of by the common judgment and left the revision petitioner at liberty to file separate appeals against the other cases which were disposed of by the common judgment, in accordance with law. In the light of the discussion as above, this revision petition is allowed. The judgment of the Additional District and Sessions Judge-IV, Thiruvananthapuram in Crl.A.No.989 of 2008 is set aside and the appeal is remitted back to the court below for fresh consideration in accordance with law. It is made clear that it would be open to the revision petitioner, if so advised, to confine Crl.A.No.989 of 2008 to any one of the cases disposed of by the common judgment viz. S.T.Nos.4911 of 2006, 4662 of 2007 and 4592 of 2007 and to prefer appeals in respect of the other cases subject to the period of limitation for filing appeal. Needless to say that if petitions for condoning the delay in filing the appeals, are filing they will have to be considered in accordance with law. Execution of the warrant, if any, against the revision petitioner shall be kept in abeyance for a period of one month from the date of receipt of copy of this order and the copy of this order shall be produced by the revision petitioner within the period of two weeks of its receipt before the learned Sessions Judge. Thereupon, the learned Sessions Judge shall pass appropriate orders in the appeal in

accordance with law, after affording the appellant the option mentioned hereinbefore, to be exercised within the time to be stipulated by the learned Sessions Judge.

Sd/-
C.T.RAVIKUMAR
Judge

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