

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

FRIDAY, THE 6TH DAY OF NOVEMBER 2015/15TH KARTHIKA, 1937

Crl.Rev.Pet.No. 188 of 2015 ()

AGAINST THE JUDGMENT IN CRA 885/2007 of ADDL.SESIONS JUDGE FAST
TRACK (ADHOC)-IV, THIRUVANANTHAPURAM DATED 23-09-2010

AGAINST THE JUDGMENT IN CC 527/2001 of J.M.F.C.-I, NEYYATTINKARA DATED
26-09-2007

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

VISWANATHAN
S/O. SUBBAYYAN, THUNDUTHATTU PUTHEN VEEDU
PLAVARATHALA, KAVALAKULAM, KADAVATTARAM DESOM
NEYYATTINKARA, THIRUVANANTHAPURAM.

BY ADV. SRI.SHAJIN S.HAMEED

RESPONDENT(S)/RESPONDENT/STATE:

STATE OF KERALA
REPRESENTED BY THE SUB INSPECTOR OF POLICE
NEYYATTINKARA POLICE STATION
REPRESENTED THROUGH THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.P.P.PADMALAYAN

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON
06-11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.T. RAVIKUMAR, J.

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Crl.R.P.No.188 OF 2015

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Dated this the 6th day of November, 2015

ORDER

This revision petition is directed against the judgment in Crl.A.No.885 of 2007 passed by the Additional Sessions Judge, Fast Track Court-IV, Thiruvananthapuram confirming the conviction but modifying the sentence passed by the Court of Judicial First Class Magistrate-I, Neyyattinkara in C.C.No.527 of 2001. The revision petitioner-accused was tried for an offence punishable under section 420, IPC. On being found guilty, the trial court convicted and sentenced him to undergo simple imprisonment for one year and to pay a fine of ₹1,000/- and in default of payment of fine, he was ordered to undergo simple imprisonment for a further period of two months. Aggrieved by the order of conviction, the petitioner preferred Crl.A.No.885/2007. The learned Sessions Judge found that the

appellant-accused has failed to make out a case warranting interference with the order of conviction passed by the trial court and consequently, confirmed the conviction. However, the appellate court found that the sentence imposed on the appellant-accused was excessive and therefore, interfered with and modified the sentence to one to undergo simple imprisonment for three months. The sentence to pay fine and default clause were maintained. This revision petition has been filed in the said circumstances.

2.The case of the prosecution is that CW1 was working as Principal Munsiff, Neyyattinkara. The revision petitioner/accused was the defendant in O.S.No.592 of 1997 on the files of the Court of Principal Munsiff, Neyyattinkara. His property comprised in Sy.No.275/1 of Neyyattinkara village measuring 13 cents including a building thereon, was attached by the Munsiff Court and the said attachment was later, lifted on production of a fixed deposit for ₹41600/- by the accused effected in SBT, Neyyattinkara Branch on

7.8.1997. Thereafter, suppressing the said facts, the revision petitioner filed an application before the Bank Manager stating that he lost the said fixed deposit receipt and obtained a duplicate certificate and then availed a loan of ₹20,000/- from the fixed deposit on 6.1.1998. Subsequently, he defaulted in repayment towards the said loan and thereafter, he withdrew the entire balance amount due to him before the maturity period. It is in the said circumstances that he was tried for the said offence in C.C.No.527 of 2001.

3.On appearance of the accused, after preliminary hearing, charge under section 420, IPC was framed against him. It was read over and explained to him and he pleaded not guilty. To prove the charge against the accused, PWs 1 to 5 were examined and Ext.P1 to P11 were marked. After the closure of the evidence of the prosecution, the appellant-accused was questioned under section 313, Cr.P.C and he denied all the incriminating circumstances put to him. On being asked to enter on defence the accused got marked Ext.D1 as

defence evidence but, did not adduce any oral evidence. After appreciating the evidence and considering the arguments advanced, the trial court arrived at the conclusion that the prosecution has succeeded in establishing the guilt of the accused for the offence under section 420, IPC.

4.I have heard the learned counsel for the revision petitioner and also the learned Public Prosecutor.

5.Apart from the grievance of improper, rather, perverse appreciation of evidence on record, the revision petitioner did not have a case that the evidence on record was incorrectly adverted to.

6.PW1 is the Clerk-cum-Cashier in SBT, Neyyattinkara Branch and PW2 is the then Manager of the said bank. PW4 is the Sub Inspector of Police, Neyyattinkara who registered the case and prepared Ext.P7 FIR based on Ext.P6 written complaint forwarded by

CW1. After conducting the investigation, PW4 seized Exts.P1 to P4 documents under Ext.P5 mahazar and he has also recorded the statements of the witnesses. PW1 deposed to the effect that the accused was having a special term deposit with the said bank bearing No.488-480/243/97 for an amount of ₹41600/-. She further deposed that the revision petitioner submitted Ext.P1 application for issuance of a duplicate certificate stating that the original certificate was lost. The same was marked through PW1. Based on Ext.P1 application, a duplicate certificate was issued on 5.1.1998 and that the accused had also executed Ext.P2 indemnity bond, the original of the same was marked as Ext.P11. PW1 further deposed that she had prepared the indemnity bond for issuing a duplicate certificate in respect of the said action as the said fact was enforced in Ext.P1 application. PW2, the then Manager of SBT would depose that the accused was having a fixed deposit for an amount of ₹41600/- with the said bank and later, on 27.12.1997 the accused applied for issuance of a duplicate certificate stating that its original was lost. He

deposed further that in the said circumstances based on his application a duplicate certificate was issued after getting him executed an indemnity bond. He deposed further that later, from the Court of Principal Munsiff, Neyyattinkara, he got an intimation for renewal of the fixed deposit and consequently, he verified the records and by that time, the appellant-accused had withdrawn the entire amount by producing the duplicate fixed deposit receipt. He further deposed that the duplicate receipt was issued to the accused on 5.1.1998 and on the strength of the same, he availed a loan of ₹20,000/- from the fixed deposit. PW2 further deposed that the accused had, later, withdrawn the entire amount from the said fixed deposit and closed the account. PW3 is the Assistant Manager of SBT, Neyyattinkara Branch during the relevant point of time. He would depose that the investigating officer seized Exts.P1 to P4 under Ext.P5 mahazar and that he is an attesting witness to the same. PW4 is the Sub Inspector of Neyyattinkara Police Station who conducted the investigation and PW5 has filed the charge sheet on culmination of the investigation.

Though the accused-revision petitioner had cross examined PWs 1 to 5 at length, nothing could be elicited from them to discredit their version. It is in the said circumstances that the trial court found that the evidence of PWs 1 to 5 are reliable. The indisputable and in fact, undisputed position is that the accused who got lifted attachment order by producing the fixed deposit receipt for ₹41600/- before the Court of Principal Munsiff, Neyyattinkara and later, applied to the bank and obtained a duplicate certificate assigning the reason that the original receipt relating the said fixed deposit was lost. After obtaining the duplicate certificate, he availed a loan from the said deposit and thereafter withdrawn the entire amount before maturity of the term deposit. It was after appreciating the evidence on record consisting of the oral testimonies of PWs 1 to 5 and Exts.P1 to P11 that the trial court found the revision petitioner guilty of the offences punishable under section 420, IPC. The appellate court on careful analysis of the evidence on record found no reason to interfere with the conviction entered against the appellant-accused.

7.I have carefully gone through impugned judgment and the grounds raised in this revision petition. As noticed hereinbefore, the revision petitioner did not have a case that the courts below have incorrectly adverted to the evidence on record though he got a case that the evidence on record were not properly appreciated. Having gone through the judgments I do not find any reason to hold that the evidence were not appreciated properly by the courts below, in view of the undisputed and indisputable position obtained based on the evidence discussed by the courts below. The fact that the property belonged to the petitioner comprised in Sy.No.275/1 of Neyyattinkara Village measuring 13 cents together with the building thereon, was attached by the Court of Principal Munsiff, Neyyattinkara and that later, it was lifted only on production of a fixed deposit for ₹41600/- are not at all disputed before me. The evidence of PW1 and PW2 discussed in the judgments, would undoubtedly reveal that the petitioner has applied for a duplicate certificate relating the aforesaid fixed deposit assigning the reason that it was lost and thereafter, he

obtained the duplicate certificate and ultimately, withdrew the entire amount before the period of maturity. In fact, prior to the withdrawal he had also managed to obtain a loan of ₹20,000/- from the said deposit. When the evidence of PW1 and PW2 remain uncontroverted the revision petitioner cannot be heard to contend that the findings of the courts below are without any basis, as evidently, the discussion of the documentary evidence would also reveal that they lend support to the oral versions of PWs 1 and 2. Most importantly, the revision petitioner got no case that he adduced evidence to show that he had not applied to the bank for issuance of a duplicate certificate relating the fixed deposit in question and also that he had not closed the said account. The said actions on the part of the revision petitioner were in suppression of the fact that the order of attachment was lifted only on production of the certificate relating the fixed deposit in question and that fact is proved by the evidence of PWs 1 and 2. The revision petitioner who did not dispute such factual aspects cannot legally attribute any perversity or illegality in the findings of the courts

below. In short, the revision petitioner has failed to bring out any ground to compel this Court to exercise the revisional jurisdiction. In such circumstances, I do not find any reason to overturn the concurrent findings of the courts below to the effect that the revision petitioner has committed offence punishable under section 420, IPC. In such circumstances, the conviction entered against the revision petitioner for offence punishable under section 420, IPC is liable to be confirmed and accordingly, it is confirmed. For the conviction under section 420, IPC the trial court sentenced the revision petitioner to undergo simple imprisonment for one year and to pay a fine of ₹1000/- with a default sentence. On considering the entire aspects the appellate court found that the substantive sentence was excessive and accordingly modified the sentence. The sentence to undergo simple imprisonment for one year was reduced to three months. The appellate court maintained the sentence to pay the fine and default sentence. Having regard to the gravity of the offence committed, I am of the considered view that sufficient indulgence has been shown by

the appellate court. There is no reason for interfering with the sentence imposed on the revision petitioner-accused for the conviction under section 420, IPC. This revision petition is liable to fail and accordingly, it is dismissed.

Sd/-

**C.T. RAVIKUMAR
(JUDGE)**

spc/

C.T. RAVIKUMAR, J.

JUDGMENT

September, 2010

