

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

MONDAY, THE 10TH DAY OF AUGUST 2015/19TH SRAVANA, 1937

Crl.Rev.Pet.No. 691 of 2015

AGAINST THE JUDGMENT IN CRL.A.NO. 263/2011 of
ADDL.DISTRICT & SESSIONS COURT - VI, THIRUVANANTHAPURAM
DATED 16-01-2015

AGAINST THE JUDGMENT IN CC 87/2008 of C.J.M., TRIVANDRUM
DATED 20-04-2011

REVISION PETITIONER(S)/APPELLANT/ACCUSED :

BABU D'CRUZ,
S/O. ROCKY, VIMALA BHAVAN, (USHA NAGAR-36),
MANGATUDESHAM, MANGATTU VILLAGE, KOLLAM DISTRICT.

BY ADVS.SRI.C.RAJENDRAN
SRI.K.R.RANJITH

RESPONDENT(S)/RESPONDENTS/COMPLAINANT:

THE STATE OF KERALA,
REPRESENTED BY THE DETECTIVE INSPECTOR, CBCID,
THIRUVANANTHAPURAM IN CRIME NO.56/CR/01,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682 031.

BY PUBLIC PROSECUTOR SRI. JUSTINE JACOB

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

K. HARILAL, J.

Crl.R.P. No. 691 of 2015

Dated this the 10th day of August, 2015

ORDER

The revision petitioner is the accused No. C.C. No.87 of 2008 on the files of the Chief Judicial Magistrate's Court, Thiruvananthapuram. He was prosecuted for the offences punishable under Secs.403 and 409 of the Indian Penal Code. After trial, the learned Magistrate found the revision petitioner guilty of the said offences, alleged against him, and convicted thereunder. He was sentenced to undergo simple imprisonment till rising of the court and also to pay a fine of Rs.5,000/- under Sec.403 of the Indian Penal Code and Rs.10,000/- under Sec.409 of the Indian Penal Code and in default of payment of fine, to undergo simple imprisonment

for 45 days under Sec.403 of the Indian Penal Code and three months imprisonment under Sec.409 of the Indian Penal Code respectively. Though, he had preferred Crl. Appeal No.263 of 2011 before the Additional District & Sessions Judge-VI, Thiruvananthapuram, the learned Sessions Judge, after re-appreciating the evidence on record, concurred with the findings of the learned Magistrate and confirmed the conviction entered and the sentence imposed on the revision petitioner, as such, without any interference. The legality and correctness of the concurrent findings of conviction and sentence are under challenge in this revision petition.

2. The prosecution case, in brief, is as follows:
The accused, while he was working as a Clerk in the Law College Hostel, Thiruvananthyapuram, from 17/12/1998 to 17/3/1999, he collected mess fees and hostel fees from the hostel inmates and for which he in lieu of receipt books in Sl.No.64 and 65, took receipt book No.69 from the hostel office and issued receipts

therefrom to the inmates and then he has not remitted the collected hostel fees and mess fees under the said receipt books, in the Treasury, and not made the corresponding entries in the relevant records and thus, the said amount was dishonestly misappropriated and thereby, made criminal breach of trust to the Government and P.W.2.

3. To prove the prosecution case, 22 witnesses were examined as P.Ws.1 to 22 and Exts.P1 to P20 were marked. The accused pleaded not guilty of the said offences and D.W.1 was examined and Ext.D1 was marked from his side. After evaluating the aforesaid evidence, the courts below concurrently found that the prosecution has succeeded in proving the charge of misappropriation and criminal breach of trust against the petitioner/accused.

4. The learned counsel for the petitioner submits that the courts below miserably failed to appreciate the facts and law in its correct perspective. The courts below failed to appreciate the evidence of P.W.2, the

person who was responsible for the day-to-day financial affairs of the hostel in its correct perspective. The courts below ought to have found that P.W.2 was the person who was accountable to the Government for the money transactions, as he is the custodian of the entire prosecution documents. But, the courts below went wrong by exonerating P.W.2 and shouldering the liability upon the accused, who is working in the lower level only. So, the prosecution case was one fabricated by P.W.2 to wriggle out of his liability and submitted Ext.P1 before the authority, which triggered the entire proceedings against the accused. The learned counsel further advanced arguments to persuade this Court to re-appreciate the entire evidence on record, once again.

5. The scope and extent of the jurisdictional power of the revisional court are very limited confining to examination of legality and propriety, regularity and correctness of the findings of the courts below. There is no scope for re-appreciation of the entire

evidence on record once again, unless it is found that the appreciation of evidence is vitiated by any kind of perversity. Even if two views are possible, on appreciation of evidence, the revisional court is not inclined to substitute its own view in the place of the concurrent findings entered by the courts below, unless the findings are so perverse and unacceptable, at any view of the matter.

6. With the above view, I have examined the judgments rendered by the courts below. P.W.1 is the Director of Collegiate Education during the relevant period, who ordered a departmental enquiry and deputed his Accounts Officer to conduct the said enquiry. He deposed that since it was revealed in the enquiry that there is some proof in the allegation levelled against the accused, and reported the matter to the Director of Anti-corruption Bureau, Secretary to Government, Higher Education, and also to the Finance Secretary to Government and recommended for an enquiry in the matter. Thus, it is seen that the

enquiry has been launched on a prima facie satisfaction of the allegations levelled against the accused. I do not find any reason to interfere with the said findings.

7. P.W.2 is the star witness of the prosecution case. He is none other than the Warden of the Thiruvananthapuram Government Law College where the accused was working as U.D. Accountant. Though, during the cross-examination, an attempt was made to shoulder the liability on him, he has satisfactorily given evidence pointing towards the guilt of the accused alone and I find no reason to interfere with the findings as regards his evidence. It was discernible from his evidence that he has not entrusted with the money which the accused has collected as hostel fees and mess fees. The Accountant, who succeeded in office after the accused, was examined, and his evidence shows that he collected fees using receipt book No.65 onwards which purposely omitted by the accused so as to commit misappropriation. P.W.4, who

conducted audit inspection, in his deposition, it is stated that the accused had not entered the amount he collected either in the cash book or in the daily fee collection register. Further, the evidence of P.Ws.2 and 3 get assurance from P.W.4. Further, the aforesaid evidence is seen supported by the evidence of P.Ws.9, 11 and 12, who are the law students and inmates of the hostel. The receipt issued by the accused showing the remittance of the hostel fees and mess fees by P.Ws.9 to 12 were marked as Exts.P3 series. Ext.P3 series did not find a place in the cash book and fee collection register. The handwriting in Ext.P3 series stands proved by Ext.P13 - FSL report. Therefore, the said evidence is sufficient to prove that the accused received amounts from the students towards hostel fees and mess fees. The specific case of the accused is that he had entrusted the said amount with P.W.2 the hostel Warden for remitting the same to the Treasury. But, he miserably failed to brought out the same either by adducing positive evidence or by

cross-examining the prosecution witnesses. On a close evaluation of the aforesaid evidence, the courts below are justified in finding that the prosecution successfully proved the charge against the accused. I do not find any reason to interfere with the aforesaid finding and conviction entered against the accused would stand confirmed.

8. Coming to the question of sentence. The learned counsel for the petitioner/accused submits that the accused has never been involved in any other offence and the offences alleged against him in this case are the only incident in his life. He has retired from service much earlier and now he is ailing due to various old age diseases and crippled by paralysis caused by a severe stroke. The sentence imposed on the revision petitioner is disproportionate with the nature and gravity of the offence. He was the sole bread winner of his family. The learned counsel prayed for taking a lenient view in the matter of sentence by applying the provisions of the Probation

of Offenders Act.

9. In the light of the above submissions, I called for a report from the Probation Officer under Sec.4 of the Probation of Offenders Act and after discreet enquiry, the Probation Officer submitted a report stating that it is a fit case for invoking the benevolent provision of the Probation of Offenders Act, 1958. In the report it is stated that now he is partially bed ridden due to multi infarct stroke brachial monoplagia (Rt) > (Lt), and with Parkinson symptoms. Now he is aged 58 years and he is the only bread winner of his family consists of wife and three children who are studying in professional colleges also.

10. Having regard to the nature and gravity of the offence, and the present family circumstances, including the fact that he is partially bed ridden and his present good character and conduct, I find that it is a fit case for invoking the Probation of Offenders Act.

The sentence imposed on the revision petitioner/accused will stand affirmed; but the learned

Magistrate is directed to release the petitioner/accused under Sec.4(1) of the Probation of Offenders Act on his entering into a bond for Rs.50,000/- (Rupees Fifty thousand only) with two solvent sureties each for the like sum to appear and receive the sentence when called upon during a period of two years and in the meantime to keep good behaviour.

Sd/-

(K. HARILAL, JUDGE)

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P.S. to Judge