

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

MONDAY, THE 19TH DAY OF OCTOBER 2015/27TH ASWINA, 1937

Crl.Rev.Pet.No. 3782 of 2008 ()

AGAINST THE JUDGMENT IN CC 585/2002 of J.M.F.C., KOLENCHERRY
DATED 30-06-2008

REVISION PETITIONER(S)/PW11:

THOMAS, S/O. FRANCIS, KOOVAPPADY VILLAGE
KOOVAPPADY .

BY ADVS.SRI.P.VIJAYA BHANU
SRI.VIPIN NARAYAN

RESPONDENT(S)/ACCUSED AND STATE:

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1. GOVINDAN, S/O. KRISHNAN NAIR,
SATHYANILAYAM VEEDU, VENNALA KARA, EDAPPALLY.
 2. DIGI MOL KURIAN, D/O. KURIAN,
CHATHAMKUZHIYIL VEEDU, THIRUVANIYUOOR KARA
THIRUVANIYUOOR VILLAGE.
 3. STATE OF KERALA, REP. BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

R3 BY PUBLIC PROSECUTOR SRI. N. SURESH
R2 BY ADV. SRI.DINESH R.SHENOY
R2 BY ADV. SRI.SANIL JOSE

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 19-10-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

acd

P.D. RAJAN, J.

Crl.R.P.No. 3782 of 2008

Dated this the 19th day of October, 2015

ORDER

Revision petitioner challenges the judgment of acquittal in C.C.No.585/2002 on the file of Judicial First Class Magistrate Court, Kolencherry for offence punishable u/s.406, 408, 420 r/w.34 IPC. The prosecution case is that the accused being the Manager and Secretary of Paramabhattara Kendreeya Vidhyalaya situated at Vadayampadi, Vadayampaxi kara, Aikkaranad North Village, according to their common intention to cheat the employees of the above institution, promised to provide job in the institution and received the money as security and misappropriated the amount for their personal purpose,

thereby committed the offence. On the basis of information, Puthencruz Police registered the above crime and after completing investigation, laid charge before Judicial First Class Magistrate, Kolenchery.

2. To prove the offence, the prosecution examined PW1 to PW21 and marked Exts.P1 to P4. The incriminating circumstances brought out in evidence were denied by the accused, while questioning them. They examined DW1 and marked Ext.D1. The trial Court after analysing the evidence, acquitted the accused. Being aggrieved by that, they preferred this revision petition.

3. The power of the revisional jurisdiction of the High Court in criminal cases is narrower and limited than its appellate power, which is discretionary and it cannot be invoked as of right as in the case of appellate jurisdiction.

The object of conferring revisional power is to the High Court is with a jurisdiction of the general supervision in order to correct miscarriage or failure of justice arising from erroneous orders. While exercising this power, it is justified only to correct 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 cannot be a reason to interfere unless it has resulted in grave injustice.

4. The learned counsel for the revision petitioner contended that the judgment of the trial Court acquitting the accused is illegal and without analysing the oral and documentary evidence. The trial Court has not appreciated the evidence, which resulted in grave miscarriage of justice.

5. The learned Public Prosecutor submits that no interference is necessary in the finding of the trial Court, since prima facie case is not made out for a conviction.

6. The specific case of the revision petitioner is that PW1 to PW4 approached the accused for a job as Teacher in the Paramabhattara Kendreeya Vidhyalaya and entrusted ₹25,000/- to the accused. The 1st accused was the Secretary and the 2nd accused was the Manager. The oral evidence of PW1 shows that he joined in the Paramabhattara Kendreeya Vidhyalaya as a Teacher, at the time of joining in the School as a Teacher, he entrusted ₹25,000/- to A1. PW2 and PW3 also joined in the above institution and deposited ₹25,000/- each and PW4 also joined in the school and he deposited ₹10,000/- as security. On a close analysis of evidence of PW1 to PW4,

it is clear that they have paid certain sum of amount as security in the institution at the time of joining duty. There was an agreement with the accused, which was marked as Ext.P1.

7. In this context, I have considered the oral testimony of PW5. His evidence shows that in 1996, he had deposited ₹5,000/- in the institution and A1 and A2 who were the former Secretary and Manager of the institution, assured employment to his daughter. PW6 also entrusted ₹5,000/- in the year 1999 for getting an admission in the school towards building fund. PW7 deposited ₹25,000/- for getting job for his daughter in the year 1999. PW8 also deposited ₹25,000/- in the year 1996 for getting job for his daughter. PW9 also deposited ₹25,000/- on 23.6.1997 as security for getting a job.

She had worked in the institution for a short time. She was terminated from the office in the year 2000. The amount given to the institution was not returned to PW9. A perusal of oral testimony of PW1 to PW9 shows that they had given certain sum of money towards the security at the time when they had joined in the institution for employment.

8. PW10 deposed that he entered into an agreement with the Secretary of the School for sale of a school bus. PW11 entered into an agreement with the first accused for levelling of the property of the school. As per the agreement, a sum of ₹60,000/- has been paid. When there was a complaint against the levelling work, the accused terminated the agreement, but not reimbursed any amount accepted by the Secretary. PW12 had no

knowledge with regard to the deposit given by the employees of the school. PW13 was the Secretary of Vadayampadi Asramam. The Asramam had taken the management of the school in the year 2000. At the time of taking the management of the school, the accused accepted amount from the employees of the institution and had given receipts of the Viswa Hindu Parishath, Ernakulam District Committee. The prosecution also examined PW14 to PW17 to prove the allegation. Even though they were examined, no scrap of paper has been produced to prove the allegation. The case was investigated by PW20 and PW21. The accused denied the above allegation and contended that there was no such misappropriation.

9. To substantiate the contention raised by the defence, DW1 was examined and Ext.D1 was marked. DW1

contended that the 1st accused is working under him in the Shipyard, Kochi. He issued Ext.D1 Employment Certificate in the name of the 1st accused. He is a permanent employee of Shipyard from 4.3.1980 onwards. Even though these witnesses alleged misappropriation of money by the accused, no documents were produced in the trial Court to show that they entrusted money to the accused as alleged. It is the primary responsibility of the prosecution to prove the case beyond reasonable doubt. Considering the legal infirmity in connection with the entrustment of money and misappropriation of money, the trial Court acquitted the accused. I do not find any illegality in the findings. Therefore, there is no merit in this revision petition and it is dismissed accordingly.

P.D. RAJAN, JUDGE.

acd

