

(2012) 11 KL CK 0140

High Court Of Kerala

Case No: Criminal Rev. Petition No. 759 of 2004

Narayanan and Deepalayam
Veettil @ Puthra

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision: Nov. 28, 2012

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Evidence Act, 1872 - Section 67, 73
- Penal Code, 1860 (IPC) - Section 465, 468, 471

Citation: (2013) 1 ILR (Ker) 377 : (2013) 1 KLJ 15

Hon'ble Judges: P.S. Gopinathan, J

Bench: Single Bench

Advocate: Varghese C. Kuriakose, Sri Jacob Sebastian, Sri Praveen K. Joy and Sri M.A. Rashid, for the Appellant; Sareena George, Public Prosecutor, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Justice P.S. Gopinathan

1. The Sub Inspector of Police, Moovattupuzha police station in Crime No. 595/2002 prosecuted the revision petitioner before the Judicial Magistrate of the First Class, Kolenchery accusing offences under Sections 465, 468 and 471 IPC. The learned Magistrate, after trial, found the revision petitioner guilty for offence u/s 468 IPC. Consequently, he was convicted and sentenced to rigorous imprisonment for three years while acquitting him for the other offences. Aggrieved by the above conviction and sentence, he preferred CrI.A.No. 485/2003 before the Sessions Judge, Ernakulam. The Additional Sessions Judge (Adhoc-I), by the impugned judgment dated 31.1.2004, while confirming the conviction and sentence, dismissed the

appeal. Assailing the legality, correctness and propriety of the above conviction and sentence, as confirmed in appeal, this revision petition is preferred.

2. The prosecution case is that the revision petitioner was working as a Peon attached to the office of the Judicial Magistrate of the First Class-I,, wherein PW1 was the Presiding Officer. PW1 got Ext.P3 letter from the Manager, Kerala State Financial Enterprise, Mattanchery, who was examined as PW7, requesting verification of the salary certificate of the revision petitioner said to have been produced before PW7 offering the revision petitioner as a surety for a kuri in which one Kamarudeen was the subscriber. On verification, it was found that no such salary certificate was issued from the office to the revision petitioner. So request was made to PW7 to forward the salary certificate produced before PW7. Accordingly, PW7 forwarded Ext.P2 salary certificate to PW1. On verification, it was found that Ext.P2 was purporting to be a salary certificate issued by PW1 under his signature and seal of the court. Though the seal of the court and his designation seal affixed on Ext.P2 are that of originals, the signature of PW1 was found forged. Ext.P2 also contains the signature of the revision petitioner. The salary particulars recorded in Ext.P2 were found not true. Though PW1 made an attempt to get clarification from the revision petitioner, he was found absconding from the office. Therefore, PW1 sent Ext.P1 complaint to the Station House Officer, Moovattupuzha Police Station. PW9, a Head Constable, who was in charge of the police station, on getting Ext.P1, registered the case for which Ext.P6 First Information Report was prepared. PW6, the Sub Inspector, took over the investigation. After completing the investigation, charge sheet was submitted before the Judicial Magistrate of the First Class, Moovattupuzha. Under orders of the Chief Judicial Magistrate, Ernakulam, the case was transferred to the file of the Judicial Magistrate of the First Class-I, Kolenchery.

3. Responding to the process issued, the revision petitioner entered appearance. After hearing either side, charge for the above said offences was framed, read over and explained to which the revision petitioner pleaded not guilty. Therefore, the revision petitioner was sent for trial. On the side of the prosecution, PWs 1 to 9 were examined and Exts.P1 to P6 were marked. After closing the evidence for the prosecution, the revision petitioner was questioned u/s 313 of the Code of Criminal Procedure. He denied the incriminating evidence and advanced a plea of total innocence. He further stated that he did"nt know to write English and that he had no connection with Ext.P2 and that he was falsely implicated. Though he was called upon to enter his defence, no defence evidence was adduced. On appraisal of the evidence, the learned Magistrate arrived at a conclusion of guilty. Accordingly, he was convicted and sentenced as above.

4. I have heard Adv. Sri. Varghese Kuriakose, the Learned Counsel appearing for the revision petitioner and Smt. Sareena George, the learned Government Pleader. The Learned Counsel for the revision petitioner took me through the judgment impugned as well the evidence on record.

5. PW1 had given evidence in support of the prosecution case. According to PW1, Ext.P2 salary certificate as that of PW1 was not issued from his office. The signature contained in Ext.P2 as that of PW1 is a forged one. The salary particulars recorded in Ext.P2 are not correct. Ext.P2 would contain the signature of the revision petitioner to which PW1 was well acquainted. It was further deposed that the Junior Superintendent of the office, who was examined as PW2, was the custodian of the seal of the court and the designation seal of PW1. Ext.P2 bears the court seal as well as the designation seal.

6. PW2 would also depose that Ext.P2 was prepared as if issued from the office to the revision petitioner, but no such certificate was issued from the office and that the salary particulars stated in Ext.P2 are not correct. The signature contained in Ext.P2 as that of PW1 is a forged signature. The court seal and designation seal affixed are originals. PW2 is also acquainted with the signature of the revision petitioner. He would also depose that Ext.P2 contains the signature of the revision petitioner.

7. PW3, a Lower Division Clerk in the establishment section, as well as PW4, a Typist, would depose that Ext.P2 was not issued from the office and that usually draft of a salary certificate prepared in the section of PW3 and would be got type written by PW4 and that Ext.P2 was not issued from their office. Both of them are harmonious that signature contained in Ext.P2 as that of PW1 is a forged signature though the seals are genuine. PWs 3 and 4 are not in a position to ascertain that Ext.P2 contains the signature of the revision petitioner. PWs 3 and 4 are also harmonious that the particulars of salary certified in Ext.P2 as that of the revision petitioner are not correct.

8. PW7 would depose that Ext.P2 was produced before the office as if it is a genuine one issued in favour of the revision petitioner, who was offered as a surety for a kuri subscribed by one Kamarudeen, from the office of PW1 and that to ascertain the genuineness of Ext.P2, he wrote to PW1 and at the request of PW1, Ext.P2 was forwarded to PW1.

9. Though Kamarudeen was cited as a witness, he could not be examined as he was reported abroad.

10. The Learned Counsel for the revision petitioner did not dispute the prosecution case that Ext.P2 is a forged document. But the very contention is that it was not forged by the revision petitioner and he was falsely implicated. Going by Ext.P2, I find that it is styled as an employment certificate issued in a printed form supplied by the Kerala State Financial Enterprises Ltd. The salary particulars are certified under the seal of the court and signature of PW1. Below the salary particulars certified, it would contain an agreement by the revision petitioner signed by him agreeing that he is agreeable for recovery from the salary in the event the kuri instalments are defaulted. Below the agreement, there is agreement signed by PW1

with seal of the court that PW1 agrees to effect the recoveries for which the revision petitioner agreed. Reverse side of Ext.P2 is a printed application form signed by the revision petitioner offering himself as a surety. Both temporary and permanent address are also specifically stated. PWs 1 to 4 are harmonious that the signatures of PW1 in Ext.P2 are forged. On both sides, the revision petitioner had signed. The signatures are identified by PWs 1 and 2. From what is revealed out in evidence, it is crystal clear that Ext.P2 is a forged one produced as if genuine with intent to offer the revision petitioner as a surety for the kuri run by the establishment in which PW7 was the Manager and in which Kamarudeen was a subscriber. Suppose it was acted upon by PW7 as if genuine and the revision petitioner was accepted as a surety, prize money would have been parted to the subscriber. In the event of default of kuri installment, the recovery could not be effected as PW1 may not agree for any such recovery for which he has not agreed. It would result to unlawful gain to the revision petitioner and wrongful loss to the Kerala State Financial Enterprises Ltd. Forgery for the purpose of cheating is apparent.

11. To connect the revision petitioner with Ext.P2, the prosecution would rely upon his signature contained in Ext.P2. PWs 1 and 2 are harmonious that both of them are acquainted with the signature of the revision petitioner and that Ext.P2 contains the signature of the revision petitioner. They are also harmonious that the revision petitioner had very access to the seal of the court and the designation seal which were kept in the custody of PW2. The courts below found the revision petitioner guilty on assuming that since Ext.P2 contains the signature of the revision petitioner, Ext.P2 might have been forged by the revision petitioner after putting forged signature of PW1 and affixing the seal of the court and the designation seal. The evidence on record rules out the involvement of any person other than the revision petitioner for the forgery. Therefore, I find no error, illegality or impropriety committed by the courts in having such a finding.

12. The Learned Counsel for the revision petitioner would submit that to conclude that Ext.P2 contained the signature of the revision petitioner, both lower courts had compared the signature of the revision petitioner with the admitted signatures. According to the Learned Counsel, the courts below should not have resorted to such a procedure in arriving at a conclusion of guilt against the revision petitioner. In support of the argument, the Learned Counsel placed reliance on the decisions reported in [The State \(Delhi Administration\) Vs. Pali Ram](#), [O. Bharatan Vs. K. Sudhakaran and another](#), [Ajit Savant Majagavi Vs. State of Karnataka](#), [Thomas Joseph Vs. Antony Jose](#), [K.R. Aravindakshan Nair Vs. Essen Bhankers and Another](#), and [Keshav Dutt Vs. State of Haryana](#), .

13. Carefully going through the evidence on record and the precedents referred, I find that the argument is devoid of merit because the conclusion of guilt arrived at against the revision petitioner in this case is not solely basing upon the comparison of signature by the courts below. The evidence of PWs 1 and 2 which I mentioned

earlier would show that they are acquainted with the signature of the revision petitioner and they had in unambiguous terms deposed that the signature in Ext.P2 as that of the employee is that of the revision petitioner. Comparison of the signature of the revision petitioner contained in Ext.P2 with the admitted signatures contained in the vakalth, bail bond, etc was made by the courts below only to ascertain whether the evidence of PWs 1 and 2 is believable or not. In other way, the courts below compared the signature only in search of corroboration with the evidence of PWs 1 and 2. Conviction is not solely based upon such opinion formulated on comparing the signature. There is clinching evidence of PWs 1 and 2 apart from the opinion of the courts after comparing the signatures.

14. Section 67 of the Indian Evidence Act deals with the proof of signature and handwriting of person alleged to have signed or written the document produced. It reads that if a document is alleged to be signed or said to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting. Section 67 does not prescribe the mode of proof of the signature or handwriting. Section 73 deals with the comparison of signature, writing or seal with others admitted or proved. I have gone through various commentaries on the Indian Evidence Act by the reputed authors. On a combined reading of both sections, and as clarified by various courts, I find that in proving a signature or writing following modes can be adopted.

i. By calling the person who signed or wrote the document.

ii. By calling a person in whose presence the document was signed or written.

iii. By calling a handwriting expert.

iv. By calling a person acquainted with the handwriting of the person by whom the document is supposed to be signed or written.

v. By comparing in Court the disputed signature or writing with some admitted signature or writing.

vi. By proof of an admission by the person who is alleged to have signed or written the document that he signed or wrote it.

vii. By the statement of a deceased professional scribe, made in the ordinary course of business, that the signature on the document is that of a particular person.

viii. A signature is proved to have been made if it is shown to have been made at the request of a person by some other person e.g. by the scribe who signed on behalf of the executant.

ix. By other circumstantial evidence.

Here in this case, as stated above, there is clinching evidence of PWs 1 and 2, who were acquainted with the signature of the revision petitioner, that the signature of the employee in Ext.P2 is that of the revision petitioner. Comparison in court is only one of the mode of proof. Since in this case, the court compared the signature only in search of corroboration with the evidence of PWs 1 and 2, I find nothing illegal or improper in appreciating the evidence by the courts below. In *Ajit Savant Majagvai (supra)*, the Apex Court referring to earlier decision in [The State \(Delhi Administration\) Vs. Pali Ram](#), had found that the court has power to compare the disputed signature with the admitted signature as the power is clearly available u/s 73 of the Evidence Act, which reads as follows:

73. Comparison of signature, writing or seal with others admitted or proved. - In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing, or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing, or seal has not been produced or proved for any other purpose.

The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person.

This section applies also, with any necessary modifications, to finger-impressions.

The above provision would show that to compare the disputed signature or handwriting with the admitted signature or handwriting and formulating opinion are within the powers of the court. In the above circumstance, I find that the judgment impugned is not liable to be interfered for the reason that the courts below had compared the disputed signature with the admitted signatures in search of corroboration with the evidence of PWs 1 and 2 and arrived at a conclusion in favour of the prosecution. In my opinion, such a course is unavoidable while critically scrutinizing the evidence of PWs 1 and 2. There is nothing wrong in expressing opinion of such comparison. Suppose there is no similarity, court can reject the oral evidence of PWs 1 and 2. If there is similarity, it is quite appropriate to believe Pws 1 and 2. That alone was done by the courts below which according to me within the powers of the court. In my anxiety to arrive at a just conclusion, I had also compared the signatures. I find nothing to diverge with the courts below.

15. The Learned Counsel for the revision petitioner would further submit that PW6 had not properly investigated the case as he had admitted in cross examination that when he got Ext.P1 complaint, he believed that what is stated in Ext.P1 might be correct. It appears that PW6 had given such an evidence on assumption that Ext.P1 complaint was forwarded to him by PW1 after PW1 satisfying the correctness of the allegations in Ext.P1. It is true that such a notion may prejudice the investigating officer. But in this case nothing was revealed out to show that such a prejudice, if

any, had any way interfered with the fairness and impartiality in investigation.

The only omission which I could see in the investigation is that the investigating officer had not sent the disputed signature and the admitted signature for an expert opinion. Such omission is not much relevant because of the credible evidence of PWs 1 and 2, who are well acquainted with the signature of the revision petitioner, identifying the signature of the revision petitioner in Ext.P2. In the above circumstance, I find that the conviction under challenge is based upon cogent evidence and there is no room for interference.

Having due regard to the nature of the offence, I find that the sentence awarded is neither harsh nor disproportionate. Revision petitioner while working as a peon in a Magistrate's Court dared to forge the signature of the Magistrate. He doesn't deserve any leniency. Therefore, the sentence also requires no interference.

In the result, the revision petition fails. Accordingly, it is dismissed. The trial court shall see the execution of sentence and report compliance. Revision petitioner shall surrender before the trial court.