

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE K. BABU

WEDNESDAY, THE 23RD DAY OF AUGUST 2023 / 1ST BHADRA, 1945

CRL.REV.PET NO. 922 OF 2019

(AGAINST THE ORDER DTD.29.10.2014 IN CMP 4069/2013 OF THE

COURT OF ADDITIONAL CHIEF JUDICIAL MAGISTRATE,

THIRUVANANTHAPURAM)

REVISION PETITIONER/COMPLAINANT:

LALITHA, D/O.KUNJUPILLAI

RESPONDENTS:

- 1 KRISHNA PILLAI
- 2 MINI S.K.
- 3 STATE OF KERALA
THROUGH THE PUBLIC PROSECUTOR, HIGH COURT OF
KERALA.

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR
ADMISSION ON 23.08.2023, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

"C.R."

ORDER

The challenge in this Criminal Revision Petition is to the order dated 29.10.2014 in CMP.No.4069/2013 on the file of the Additional Chief Judicial Magistrate Court, Thiruvananthapuram. The revision petitioner filed a complaint against respondent Nos.1 and 2 alleging offences punishable under Sections 120(b), 420, 465, 468 & 471 r/w Section 34 of IPC before the Court below.

2. In the complaint, the revision petitioner alleged the following:-

Respondent No.2, a lawyer, and respondent No.1, the petitioner's husband, entered into a criminal conspiracy, and in furtherance of their common intention, respondent No.2 filed a claim petition as E.P.No.347/1994 before the Subordinate Judges Court, Thiruvananthapuram on 2.11.2004. The claim petition was filed in the name of the revision petitioner. The signature of the revision petitioner

was forged in the vakalath and the claim petition. The revision petitioner never instructed anybody to appear for and on behalf of her in the Execution Petition. The forged claim petition was filed with the intent to take illegal possession of 2 cents of property that belonged to the revision petitioner. She lost 2 cents of land due to the acts of respondent Nos.1 and 2. The revision petitioner came to know about this only on 16.7.2007.

3. The revision petitioner filed a complaint before the Chief Judicial Magistrate Court, Thiruvananthapuram. Her statement under oath was taken. No other witnesses were examined. After appreciating the materials placed before the Court, the learned Chief Judicial Magistrate found that no prima facie case was made out against respondent Nos.1 and 2 and there was no sufficient ground for proceeding against respondent Nos.1 and 2. Therefore, the complaint was dismissed under Section 203 of Cr.P.C.

4. Heard Sri.Manoj.T.N., the learned counsel for the petitioner, Sri.Biju Balakrishnan, the learned counsel for respondent No.2 and the learned Public Prosecutor.

5. The learned counsel for the petitioner Sri.Manoj.T.N.

submitted that the complaint disclosed the commission of the alleged offences and the Court is not expected to weigh the evidence to see that there was no sufficient ground for conviction. The Court is only expected to find out whether a prima facie case is made out or not.

6. The learned counsel for respondent No.2 Sri.Biju Balakrishnan supported the impugned order. The learned counsel contended that the learned Chief Judicial Magistrate considered the inherent improbabilities appearing on the face of the complaint and in the evidence led by the complainant in support of the allegations. The lack of credibility of the complainant, the sole witness, persuaded the Court below to hold that no prima facie case was made out against the respondents. Sri.Biju Balakrishnan further submitted that the lack of credibility of the complainant was considered by the District Court in A.S.No.160/2011 filed by the revision petitioner, which arose from the Execution Proceedings under consideration.

7. Under Section 203 Cr.P.C., a Magistrate may summarily dismiss a complaint if, after considering the statements on oath of the complainant and of the witnesses and the result of the investigation under Section 202, he is of the opinion that there is no sufficient ground

for proceeding. The words "sufficient ground" used in Section 203 Cr.P.C. means the satisfaction that a prima facie case is made out against the accused from the evidence of witnesses entitled to a reasonable degree of credit, and not that there is sufficient ground for conviction. The sufficient ground contemplated in the section relates to the facts which the complainant placed before the Court and such facts showing a prima facie case against the accused. The Magistrate can take into consider inherent improbabilities appearing on the face of the complaint or in the evidence led by the complainant in support of the allegations.

8. A Magistrate may dismiss a complaint under Section 203 Cr.P.C. on any one of the following three grounds:-

- (1) in the first place, under Section 203 if the Magistrate, upon the statement made by the complainant, reduced to writing under Section 200, finds that no offence has been committed ;
- (2) in the second place, if he distrusts the statement made by the complainant he may dismiss the complaint;
- (3) and in the third place, if he distrusts the complainant's statement, but his distrust is not sufficiently strong to warrant him to act upon it, he may direct a further inquiry as provided in Section 202 and he may either conduct this inquiry himself or depute a subordinate officer to conduct it.

These are the three cases in which a Magistrate has the power to

dismiss a complaint under Section 203 Cr.P.C. and refuse the issue of process.

9. The relevant portion of the impugned order is extracted below:-

“Except the allegations in the complaint and the statement of the complainant as CW1 before court, the complainant was not able to produce any reliable material to show that her signatures were forged in the Vakalath and the Claim Petition filed before Sub Court in LP 347/1994. It is to be noted that the case of the complainant herself is that it was on 02/11/2004 the accused alleged to have filed the fabricated Vakalath and Claim Petition before Sub Court and as early as on 16/07/2007 the complainant came to know about the alleged fabrication of documents, forgery etc. But the present complaint is seen filed by the complainant only on 15/07/2013. If the complainant had any bonafides in disputing her signatures in the above Vakalath and Claim Petition, the complainant might have filed the criminal complaint immediately when she came to know about the same. But it is seen that it is after about 6 years the petitioner has filed the present complaint. That itself creates genuine doubts in the intention of the complainant in filing the present complaint.

Apart from that the complainant has not taken any steps to prove that the signatures in the above said Vakalath and Claim Petition are not her signatures. It is true that this is only at enquiry stage. But since the allegation of the complainant is that her forged Vakalath and Claim Petition were filed before a court of law in 2004, it appears that the allegations in the complaint and her statement before court alone is not sufficient to prima facie show that A2 who is an Advocate in furtherance of common intention with other accused and her diseased husband, has fabricated and forged Vakalath and Claim Petition and produced the same in the proceedings before Sub Court, Thiruvananthapuram.”

10. The statement of the complainant as CW1 regarding the

allegations in the complaint has inherent improbabilities. She pleaded that she came to know about the manipulated claim petition on 16.7.2007, but she preferred the complaint only on 15.7.2013, after a long lapse of six years. In the judgment passed by the District Court, Thiruvananthapuram, in A.S.No.160/2011, a copy of which was made available to the Court by the counsel for respondent No.2, the complainant had raised a contention that the subject claim petition was a manipulated one. The learned counsel for respondent No.2 brought to my notice that the contention of the complainant was repelled by the District Court on the ground that there were no sufficient pleadings in the suit and that the revision petitioner approached the Court with unclean hands. The material relied on by the learned counsel for respondent No.2 may not have much relevance as the same was not a piece of material considered by the Magistrate's Court. However, the said finding of the District Court also points to the lack of credibility of the complainant.

11. The learned Magistrate found that the revision petitioner failed to produce any reliable material to show that her signatures were forged in the vakalath and the claim petition. The revision petitioner

was given enough opportunity to lead evidence supporting her allegations.

12. I have gone through the proceedings in the Court below. The sworn statement of the revision petitioner was recorded on 27.7.2013. Thereafter, the learned Magistrate granted not less than five postings to lead further evidence. The revision petitioner failed to take any steps to establish that her signatures were forged in the vakalath and claim petition. This Court finds nothing to show that the decision impugned is perverse or untenable in law. In the case before me, the learned Magistrate went through the entire records of the case and passed a reasoned order holding that there is no sufficient ground to proceed against respondent No.2.

13. Unless the order passed by the Magistrate is perverse or the view taken by the court is wholly unreasonable or there is non-consideration of any relevant material or there is palpable misreading of records, the Revisional Court is not justified in setting aside the order, merely because another view is possible. The Revisional Court is not meant to act as an appellate court. The whole purpose of the revisional jurisdiction is to preserve the power in the court to do justice in

accordance with the principles of criminal jurisprudence. The revisional power of the court under Sections 397 to 401 CrPC is not to be equated with that of an appeal. Unless the finding of the court, whose decision is sought to be revised, is shown to be perverse or untenable in law or is grossly erroneous or glaringly unreasonable or where the decision is based on no material or where the material facts are wholly ignored or where the judicial discretion is exercised arbitrarily or capriciously, the courts may not interfere with decision in exercise of their revisional jurisdiction. (vide: **Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke [(2015) 3 SCC 123]**).

All the challenges in this revision petition therefore fail. This Court fails to find that the impugned order is untenable in law or grossly erroneous or unreasonable. The revision petition stands dismissed.

Sd/-
K.BABU
Judge

TKS