



2023/KER/66603

"C.R."

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR

THURSDAY, THE 26<sup>TH</sup> DAY OF OCTOBER 2023 / 4TH KARTHIKA, 1945

CRL.REV.PETITION NO. 839 OF 2023

AGAINST THE ORDER DATED 16.06.2023 IN CMP 609/2023 OF THE  
JUDICIAL MAGISTRATE OF FIRST CLASS-I, KANJIRAPPALLY  
REVISION PETITIONER/COMPLAINANT:

BALAMURALY G. ,

BY ADV SUMA G.

RESPONDENTS/ACCUSED & STATE:

1 VINOD T R

2 STATE OF KERALA,  
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF  
KERALA, PIN - 682031.

R1 BY ADV AJIVASS V.A.

R2 BY SMT. SEENS C., PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR  
ADMISSION ON 26.10.2023, THE COURT ON THE SAME DAY  
DELIVERED THE FOLLOWING:

**"C.R."****P.G. AJITHKUMAR, J.****Crl.Rev.Petition No.839 of 2023****Dated this the 26<sup>th</sup> day of October, 2023****ORDER**

This Revision Petition under Section 397 read with 401 of the Code of Criminal Procedure, 1973 is filed by the complainant in C.M.P.No.609 of 2023 on the files of the Judicial Magistrate of the First Class-I, Kanjirappally. As per the order dated 16.06.2023, the said complaint was dismissed under Section 203 of the Code. The petitioner challenges the said order in this revision petition.

2. Notice was duly served on the 1<sup>st</sup> respondent. He did not choose to appear before this Court.

3. Heard the learned counsel appearing for the petitioner and the learned Public Prosecutor.

4. The petitioner filed complaint alleging offences punishable under Sections 405, 406, 418 and 420 of the Indian Penal Code, 1860. The allegations in the complaint are that in terms of the agreement dated 29.11.2021, which was



entered into between the petitioner and the 1<sup>st</sup> respondent for the construction of a commercial building at Pallikkathodu, the petitioner performed his part of the contract, but the 1<sup>st</sup> respondent even after receiving Rs.9,50,000/- in advance, abandoned the construction work midway. The 1<sup>st</sup> respondent, having dishonestly induced the petitioner to make payment, deceived the petitioner by omitting to perform his part of the contract.

5. The learned Magistrate, after taking cognizance of the offence recorded the statement on oath of the petitioner. After considering the averments in the complaint and the materials on record, dismissed the complaint under Section 203 of the Code stating as follows:

“Heard and perused the complaint and statement of witness recorded and documents produced as part of enquiry u/s.202 Cr.P.C. What is alleged is breach of contract and consequent compensation. It could be seen that even as per the averments in the complaint, major part of the agreed work was completed by the accused. Therefore, from the materials placed before the court, it cannot be said that the accused had the illegal intention to cheat the complainant as alleged. It is manifestly



Crl.Rev.Petition No.839 of 2023

evident that the facts averred and acts alleged constitute a cause of action for civil suit, but not sufficient ground for action under the penal law as alleged.

Therefore, I am of the considered view that there is no sufficient material to proceed with the complaint against the accused.

In the result, the complaint is dismissed u/s.203 of Cr.P.C.”

6. True, section 397 of the Code confers concurrent jurisdiction to the High Court as well as the Sessions Court to call for and examine the records of any proceedings before an inferior criminal court situated within its local jurisdiction for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order rendered in such proceedings. When the power of revision is concurrent, it may not be illegal for a person to approach the High Court instead of the Sessions Court with a prayer for revision of an order. A Full Bench of this Court considered in **Sivan Pillai v. Rajamohan and others [1978 KLT 223]** the question whether a revision, where it is maintainable in view of the provisions of Section 397(1) of the Code, in the High Court as



well as a Sessions Court, should be pinned down to the Sessions Court. The view taken by the majority is that the salutary principle that where concurrent jurisdiction is conferred on two fora, the lower forum should be exhausted first has to be given a go by in view of the specific provision conferring jurisdiction by Section 397(1) of the Code both on the High Court and the Sessions Courts. That is the law. But propriety demands the aggrieved, as far as possible, to first invoke the jurisdiction of the Sessions Court. It is apposite to approach the Sessions Court first for another reason also. That, the parties might be located in the Sessions Division concerned. In a revision petition any order, which causes prejudice to the accused, can be passed, in view of Section 401(2) of the Code, only after giving notice to him. Where the accused resides in a far away Sessions Division he has to be drawn to the High Court as though the matter can be heard and decided by the Sessions Court concerned without causing such an inconvenience. Therefore, it is just and appropriate for a party to invoke the jurisdiction of the Court of Sessions



first, where the revision is possible by both the High Court and the Sessions Court, albeit there is no bar for the High Court to entertain the revision filed without exhaustion of the lower forum.

7. This revision petition has been entertained and is in its final stage. The 1<sup>st</sup> respondent is already given notice. Hence, it may be inappropriate now to direct the petitioner to approach the Sessions Court. In order to avoid the delay and further inconvenience, I proceed to decide this revision petition on merits.

8. The learned Magistrate taking cognizance is bound to record the statement on oath of the complainant and the witnesses present, if any. An enquiry under Section 202 of the Code is circumscribed by the provisions therein. If the Magistrate conducts an enquiry under Section 202 of the Code and collects materials, he has to consider the averments in the complaint along with the statements recorded under section 200 and the materials collected during the enquiry under section 202 of the Code before taking a decision either



Crl.Rev.Petition No.839 of 2023

to dismiss the complaint under Section 203 of the Code or to issue process under Section 204. If the order is one of dismissal, it shall be supported by reasons.

9. In **Breen v. Amalgamated Engineering Union [1971 (1) All. E.R. 1148]** Lord Denning, M.R. Observed that the giving of reasons is one of the fundamentals of good administration. In **Alexander Machinery (Dudley) Ltd. v. Crabtree [1974 ICR 120]** it was observed that failure to give reasons amounts to denial of justice. Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at.

10. The Apex Court in **Chairman and Managing Director, United Commercial Bank v. P.C. Kakkar [(2003) 4 SCC 364]** held that reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the 'inscrutable face of the sphinx', it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of



judicial review in adjudging the validity of the decision. The right to reason is an indispensable part of a sound judicial system. Another rationale is that the affected party can know why the decision has gone against him.

11. The object underlying the rules of natural justice is to prevent miscarriage of justice and secure fair play in action. The impugned order, which is referred to above does not even refer to the statement of the petitioner recorded under Section 200 of the Code. Without assigning any reason, much less sufficient reason, the learned Magistrate proceeded to dismiss the complaint. The purpose of giving reasons, as stated, is to inform the parties concerned as to what had impelled the author to take such a decision. An order dismissing a complaint should contain the reasons sufficient to inform the complainant that there was no sufficient ground for proceedings against the accused named in the complaint. The impugned order lacks such consideration and reasons, and therefore the same is unsustainable in law.





12. In the circumstances, I am of the view that the impugned order is liable to be set aside. The learned Magistrate may conduct a fresh enquiry under Section 202 of the Code, if required. The learned Magistrate, whether or not conducts fresh enquiry, shall decide the matter afresh bearing in mind the aforementioned observations. I make it clear that I have not made any observation on the merits of the case. This Revision Petition is allowed accordingly.

13. The petitioner is directed to appear before the Judicial Magistrate of the First Class, Kanjirappally on 22.11.2023.

Sd/-

**P.G. AJITHKUMAR, JUDGE**

dkr