2024/KER/11498

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE G.GIRISH

THURSDAY, THE 15TH DAY OF FEBRUARY 2024 / 26TH MAGHA, 1945

CRL.REV.PET NO. 2296 OF 2005

AGAINST THE JUDGMENT DATED 19.08.2005 IN CRA 172/2003 OF ADDITIONAL DISTRICT AND SESSIONS COURT (ADHOC)-II, THODUPUZHA

AGAINST THE JUDGMENT DATED 15.05.2003 IN CC 180/1998 OF JUDICIAL MAGISTRATE OF FIRST CLASS-II,THODUPUZHA

REVISION PETITIONER/APPELLANT/1ST ACCUSED:

JOHNY

BY ADVS. SRI.PIRAPPANCODE V.SREEDHARAN NAIR
SRI.PIRAPPANCODE V.S.SUDHIR

RESPONDENT/COMPLAINANT/STATE:

STATE OF KERALA HIGH COURT OF KERALA,

REPRESENTED BY THE PUBLIC PROSECUTOR,

OFFICE OF THE ADVOCATE GENERAL,

HIGH COURT BUILDINGS,ERNAKULAM

(CIRCLE INSPECTOR OF POLICE, THODUPUZHA)

ADV. MAYA. M.N, PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR FINAL HEARING ON 23.11.2023, THE COURT ON 15.02.2024 DELIVERED THE FOLLOWING:

"CR"

G.GIRISH, J.

Crl.R.P.No.2296 of 2005

Dated this the 15th day of February, 2024

ORDER

The revision petitioner herein was booked by the Thodupuzha police on the basis of a complaint preferred by the Sub Judge, Thodupuzha in connection with the forgery of succession certificate in O.P.No.03/1994 of the said court, and the attempt to collect the insurance amount and other benefits of the deceased wife of the revision petitioner making use of the above said forged document.

2. It is stated that the wife of the revision petitioner, who was a Captain in the Indian Army, met with unnatural death, in respect of which her mother and siblings raised complaint against the revision petitioner for having caused her death. The alleged attempt of the revision petitioner to whisk away the insurance money and other benefits of his wife by making use of forged succession certificate, was done shortly

thereafter. In the trial conducted before the Judicial First Class Magistrate-II, Thodupuzha, 32 witnesses were examined from the part of the prosecution as PW1 to PW32 and 27 documents were marked as Exts.P1 to P27. Four material objects were also identified and marked as MO1 to MO4. After an evaluation of the above evidence and hearing both sides, the learned Magistrate found the revision petitioner guilty of commission of offence under Sections 466, 467, 468, 471, 475 and 511 of 420 I.P.C and convicted him. He was sentenced to simple imprisonment for two years each and a fine of Rs.2,000/- each for the offence under Sections 466, 468, 471 and 475 I.P.C and simple imprisonment for 2½ years and fine Rs.3,000/- for the offence under Section 467 I.P.C. For the offence under Section 511 of 420 I.P.C revision petitioner was awarded simple imprisonment for 1½ years and fine Rs.2,000/-. Appropriate default clauses of simple imprisonments for non-payment of fines were also provided in the aforesaid judgment dated 15.05.2003.

3. The Additional Sessions Court (Adhoc-II), Thodupuzha, in Crl.A.No.172/2003 confirmed the above

verdict of the learned Magistrate and upheld the conviction and sentence. Aggrieved by the above concurrent verdicts of the trial court and the appellate court, the petitioner is here before this Court with this revision.

4. Heard the learned counsel for the revision petitioner and the learned Public Prosecutor.

5. The verdicts of the courts below are challenged by the revision petitioner on three counts. Firstly, it is stated that the original succession certificate, and the original petition for the issuance of succession certificate alleged to have been forged by the revision petitioner, are not recovered by the investigating agency and brought in evidence. The above challenge of the revision petitioner has been rightly repelled by the appellate court stating the reason that the forged documents which the revision petitioner produced before the Army Insurance Department were in fact the documents purported to be certified copies of the succession certificate and petition for succession certificate issued from the Sub Court, Thodupuzha. The forgery committed by the revision petitioner in this regard came to the notice of the learned Sub

Judge, who was examined as PW2 before the trial court, when the Army Insurance Department sent the photocopies of the above forged certified copy of succession certificate and the forged certified copy of the petition for succession certificate which are marked as Exts.P2 and P4 respectively, and a photocopy of the covering letter sent by the revision petitioner, which is marked as Ext.P3, to him, upon getting suspicious of the said documents. It is thereafter that the learned Sub Judge, having been convinced about the forgery and attempt to commit cheating on the part of the revision petitioner, preferred Ext.P1 complaint before the Circle Inspector of Police, Thodupuzha, which resulted in the commencement of investigation in this case. Later on, the investigating officer had recovered the forged certified copy of the succession certificate and the forged certified copy of the original petition for the issuance of succession certificate, which the revision petitioner submitted before the Army Insurance Department, and those records are marked as Exts.P9 and P8 respectively. The original forwarding letter sent by the revision petitioner to the Army Insurance Department, while despatching the above

forged documents, was also recovered and produced before the trial court, but somehow or other the learned Assistant Public Prosecutor who conducted the case for the prosecution before the trial court did not care to get that document exhibited in evidence. Thus, it could be seen that the challenge raised by the revision petitioner about the flaw on the part of the investigating agency in recovering the original forged records, no more survive due to the reason that Exts.P8 and P9 which are the actual documents forged by the revision petitioner, have been brought on record.

6. Secondly, it is contended by the learned counsel for the revision petitioner that prosecution failed to adduce convincing evidence to show that it was the revision petitioner who sent Exts.P8 and P9 to the Army Insurance Department, and hence the prosecution against the revision petitioner is prima facie unsustainable. The challenge in the above regard is also bereft of merit since the prosecution has successfully brought on record the evidence pertaining to the creation of Exts.P8 and P9 by the revision petitioner, and the receipt of those records by the Army Insurance Department through

post, as sent by the revision petitioner. The evidence tendered by PW14, the Advocate Clerk associated with the office of the Advocate (PW6) whom the revision petitioner approached for filing original petition before the Sub Court, Thodupuzha for the issuance of a succession certificate, would go to show that revision petitioner had obtained a model succession certificate from him. The evidence of PW7, a person involved in typing work at the Market Road, Thodupuzha, convincingly establish that Exts.P8 and P9 documents as well as Ext.P10, a purported authorisation in stamp paper executed by the mother of the deceased wife of the revision petitioner in his favour, were prepared by PW7 as requested by the revision petitioner, and handed over to him. The evidence of PW7 further reveals that he identified the revision petitioner during the course of investigation, and that he also tendered statement under Section 164 Cr.P.C (Ext.P13) to the Magistrate concerned (PW15) at the stage of investigation. As regards the affixure of the forged seal of the Sub Court, Thodupuzha in Exts.P8 and P9, PW8 who was involved in the business of moulding seals and rubber stamps, gave evidence before the trial court that

he had prepared the seals as requested by the revision petitioner, who made a payment of Rs.60/- as advance at the time when the job was entrusted, and a payment of Rs.25/- as the balance amount at the time when the seals were handed over to the revision petitioner. The register maintained by PW8 at his establishment in connection with the orders made by customers for the preparation of seals, has been brought in evidence as Ext.P11, and the relevant entry relating to the order made by the revision petitioner, as Ext.P11(a), before the trial court.

7. As regards the despatch of Exts.P8 and P9 by the revision petitioner to the Army Insurance Department, there is the evidence of PW30, the Assistant Director of Army Group Insurance Fund, New Delhi that his office received letter from the revision petitioner, addressed to the Army Group Insurance Fund, enclosed with a succession certificate purportedly issued from the Sub Court, Thodupuzha and a copy of a petition for succession certificate. The above records were later on seized by the police from the office of PW30. Thus, the evidence adduced by the prosecution in the above regard would

convincingly establish the nefarious act of the revision petitioner who forged Exts.P8 and P9 and forwarded the same to the Army Insurance Department with the intention to cheat, not only the mother and siblings of his deceased wife, but also the Indian Army and the nation as well.

8. Thirdly, it is argued by the learned counsel for the revision petitioner that the trial court wrongly relied on an F.S.L report which was not marked in evidence, towards arriving at the conclusion that the revision petitioner has involved in the forgery alleged in this case. It is the further argument of the learned counsel for the revision petitioner that the appellate court which realised the above fallacy on the part of the trial court, committed another mistake by resorting to Section 73 of the Indian Evidence Act to compare the admitted signatures of the revision petitioner which were available on record, with the disputed signature seen in the photocopy of forwarding letter purportedly sent by the revision petitioner, to arrive at the conclusion that both those signatures are of the same person.

9. As regards the procedural irregularity committed by the learned Magistrate in relying upon and acting on the F.S.L report and other accompanying records, without marking those documents and giving an opportunity to the revision petitioner to challenge the same, the appellate court has rightly acknowledged that the above course adopted by the learned Magistrate was erroneous. However, it has been observed by the appellate court in the impugned judgment dated 19.08.2005 that the documents which are marked in evidence are available for a comparison of the writings and signatures of the accused, and accordingly proceeded with the above course and arrived at the finding that there is clinching evidence available in the case to find that it was the revision petitioner herein, and nobody else, who forged documents and produced the same before the Army Group Insurance Fund to get the death benefits of his wife.

10. The extent to which reliability could be attributed upon the conclusions arrived by a court on the basis of a comparison of the disputed signatures and handwritings with the admitted signatures and handwritings by invoking Section

73 of the Indian Evidence Act, has been laid down by a catena of decisions of the Apex Court.

11. In **Fakhruddin v. State of M.P [AIR 1967 SC 1326],** the Apex Court held that even in a case where there is expert opinion as to the disputed handwritings and signatures, the court must satisfy itself by such means as are open that the opinion of the expert may be acted upon, and that one such means open to the court is to apply its own observation to the admitted or proved writings and to compare them with the disputed one, not to become a handwriting expert but to verify the premises of that expert in the one case and to appraise the value of the opinion in the other case. Paragraphs 10 and 11 of the above decision of the Apex Court read as follows:

> *"10. Evidence of the identity of handwriting receives treatment in three sections of the Indian Evidence Act. They are S.45, 47 and 73. Handwriting may be proved on admission of the writer, by the evidence of some witness in whose presence he wrote. This is direct evidence and if it is available the evidence of any other kind is rendered unnecessary. The Evidence Act also makes relevant the opinion of a handwriting expert (S.45) or of one who is familiar with the writing*

of a person who is said to have written a particular writing. Thus besides direct evidence which is of course the best method of proof, the law makes relevant two other modes. A writing may be proved to be in the handwriting of a particular individual by the evidence of a person familiar with the handwriting of that individual or by the testimony of an expert competent to the comparison of handwritings on a scientific basis. A third method (S.73) is comparison by the Court with a writing made in the presence of the Court or admitted or proved to be the writing of the person.

11. Both under S.45 and S.47 the evidence is an opinion, in the former by a scientific comparison and in the latter on the basis of familiarity resulting from frequent observations and experience. In either case the Court must satisfy itself by such means as are open that the opinion may be acted upon. One such means open to the Court is to apply its own observation to the admitted or proved writings and to compare them with the disputed one, not to become an handwriting expert but to verify the premises of the expert in the one case and to appraise the value of the opinion in the other case. This comparison depends on an analysis of the characteristics in the admitted or proved writings and the finding of the same characteristics in large measure in the disputed writing. In this way the opinion of the deponent whether expert or other is subjected to scrutiny and although relevant to start with becomes probative. Where an expert's opinion is given, the Court

must see for itself and with the assistance of the expert come to its own conclusion whether it can safely he held that the two writings are by the same person. This is not to say that the Court must play the role of an expert but to say that Court may accept that fact proved only when it has satisfied itself on its own observation that it is safe to accept the opinion whether of the expert or other witness."

12. In **State of Gujarat v. Vinaya Chandra Chhota Lal Pathi [AIR 1967 SC 778]** the Apex Court held that a court can itself compare the writings in order to appreciate properly the other evidence produced before it in that regard. The relevant portion in paragraph 10 of the aforesaid decision reads as follows:

10. "………… A Court is competent to compare the disputed writing of a person with others which are admitted or proved to be his writing. It may not be safe for a Court to record a finding about a person's writing in a certain document merely on the basis of comparison, but a Court can itself compare the writings in order to appreciate properly the other evidence produced before it in that regard. The opinion of a handwriting expert is also relevant in view of S. 45 of the Evidence Act, but that too is not conclusive. It has also been held that the sole evidence of an handwriting expert is not normally sufficient for recording a definite

finding about the writing being of a certain person or not. It follows that it is not essential that the handwriting expert must be examined in a case to prove or disprove the disputed writing. It was therefore, not right for the learned Judge to consider it unsafe to rely upon the evidence of the complainant in a case like this, i. e., in case in which no handwriting expert had been examined in support of his statement..”

13. In **Ajit Savant Majagavi v. State of Karnataka [(1997) 7 SCC 110]** the Apex Court cautioned the courts of the country against taking upon itself the responsibility of comparing the disputed signature with the admitted signature or handwriting though the courts are having power under Section 73 of the Evidence Act to adopt such a course. Paragraph 38 of the aforesaid decision of the Apex Court reads as follows:

“38. As a matter of extreme caution and judicial sobriety, the Court should not normally take upon itself the responsibility of comparing the disputed signature with that of the admitted signature or handwriting and in the event of slightest doubt, leave the matter to the wisdom of experts. But this does not mean that the Court has not the power to compare the disputed signature with the admitted signature as this power is clearly available under S.73 of the Act. (See State (Delhi Administration) v. Pali Ram, AIR

1979 SC 14 : 1979 (2) SCC 158).”

14. In **Lalit Popli v. Canara Bank and Others [AIR 2003 SC 1796]** it has been held by the Apex Court that courts can compare the admitted writings with disputed writings and come to its own independent conclusion irrespective of the opinion of handwriting expert. Paragraph 13 of the aforesaid decision of the Apex Court reads as follows:

> *“ It is to be noted that under S.45 and 47 of the Evidence Act, the Court has to take a view on the opinion of others, whereas under S.73 of the said Act, the Court by its own comparison of writings can form its opinion. Evidence of the identity of handwriting is dealt with in three Sections of the Evidence Act. They are S.45, 47 and 73. Both under S.45 and 47 the evidence is an opinion. In the former case it is by a scientific comparison and in the latter on the basis of familiarity resulting from frequent observations and experiences. In both the cases, the Court is required to satisfy itself by such means as are open to conclude that the opinion may be acted upon. Irrespective of an opinion of the Handwriting Expert, the Court can compare the admitted writing with disputed writing and come to its own independent conclusion. Such exercise of comparison is permissible under S.73 of the Evidence Act. Ordinarily, S.45 and 73 are complementary to each other. Evidence of Handwriting Expert need not be invariably corroborated.*

It is for the Court to decide whether to accept such an uncorroborated evidence or not. It is clear that even when experts' evidence is not there, Court has power to compare the writings and decide the matter. [See Murari Lal v. State of Madhya Pradesh (1980 (1) SCC 704)."

15. Thus the consistent view of the Apex Court with regard to the evidentiary value of the findings of the court which embark upon the task of comparing the disputed handwritings and signatures with the admitted handwritings and signatures, on its own accord, is that as a matter of prudence, it is necessary to look for other evidence including the opinion of the expert under Section 45 of the Evidence Act, before arriving at a conclusion on the issue involved. In other words, it has been laid down by the settled judicial precedents that, though it would be unsafe and improper to decide an issue regarding disputed handwriting, signatures, fingerprints, etc., solely on the basis of the conclusions arrived by the court, by resorting to a comparison of the records on its own accord invoking Section 73 of the Evidence Act, in cases where there are other supportive evidence pointing to such conclusions it is well within the ambit of power of the court to decide the case on the basis of the exercise undertaken by it in that

regard as well.

16. As far as the present case is concerned, it could be seen from the impugned judgment of the Appellate Court that the finding regarding the involvement of the revision petitioner in the crime has been arrived, on the basis of the other independent evidence, which would clearly reveal the criminal acts of forgery and attempt to commit cheating, perpetrated by the revision petitioner. It has to be stated here that even without an exercise on the part of the court towards comparing the admitted signatures of the revision petitioner with the signature seen in Ext.P3 and its original, there are clear circumstances pointing to the involvement of the revision petitioner in the crime, which the prosecution has successfully brought out. Therefore, the mere remark of the Appellate Court with regard to the identity of signatures and handwritings of the revision petitioner in Ext.P3 letter and Exts.P19 & P20, after resorting to a comparison of those records, does not suffer from any legal infirmity, since the course adopted in the above regard would only corroborate the evidence which is there already on record, pointing to the guilt

of the accused (revision petitioner).

17. The irresistible conclusion which could be drawn from the discussion aforesaid, is that there is absolutely no reason to interfere with the findings of the courts below, holding the accused guilty of committing the offence under Sections 466, 467, 468, 471, 475 and 511 of 420 I.P.C. It is well-settled that the court exercising revisional jurisdiction should be loath in interfering with the findings of the courts below, unless there are glaring illegalities or improprieties committed by such courts. As regards the appreciation of evidence, it is not possible to unsettle the findings of the courts below, unless it is shown that there was manifest illegality or error by refusing to act upon admissible evidence, or relying on evidence which were totally inadmissible. The proposition of law in this regard has been upheld by the Apex Court in ***State of Kerala v. Jathadevan Namboodiri*** **[AIR 1999 SC 981]**, ***Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke & Anr.*** **[2015 (3) SCC 123]** and ***Kishan Rao v. Shankargouda*** **[(2018) 8 SCC 165]**.

18. Now, the only question remains is about the suitability of the punishment awarded to the revision petitioner. On that score, it has to be stated that the trial court has imposed sentence of imprisonment and fine for various offences commensurate with the gravity of the crime committed by the revision petitioner. The sentence of substantial imprisonment under all the above Sections have been directed to run concurrently, and set off is seen allowed under Section 428 Cr.P.C. The Appellate Court has rightly found that there is no reason to interfere with the sentence so awarded by the trial court. Accordingly, I find that there is absolutely no reason to alter or modify the sentence awarded by the trial court, which has been confirmed in appeal.

In the result, the revision petition stands dismissed.

Transmit a copy of this judgment, along with the case records to the trial court, for immediate enforcement of the sentence.

(sd/-)

G.GIRISH, JUDGE

jsr