

PETITIONER:

STATE OF KERALA, MANAGING DIRECTOR, WESTERN INDIA PLYWOODS

Vs.

RESPONDENT:

PUTTUMANA ILLATH JATHAVEDAN NAMBOODIRI

DATE OF JUDGMENT: 11/02/1999

BENCH:

G.B.Pattanaik, S. Rajendra babu

JUDGMENT:

PATTANAIAK, J.

The State of Kerala is in appeal against the Judgment dated 4.2.94 of the Kerala High Court in Criminal Revision Petition No. 521 of 1988. By the impugned Judgment, the High Court in revision, has interfered with the conviction and sentence passed against the accused respondent of the offences under Sections 408, 468 and 477A of the Indian Penal Code.

The accused-respondent was an employee of Western India Plywoods and was head of the purchase section. In course of his duties, he was supposed to send empty barrels to the suppliers for getting the chemical Formal-dehyde. The prosecution alleged that in the process of sending such empty barrels to the suppliers for the purpose of getting refilled Formal-dehyde between the period 10.10.74 to 25.6.75, the accused-respondent manipulated the official records and documents and sold 660 empty barrels, the value of which was Rs.69,300/- and himself appropriated the same, thereby committed offence under Section 408, 468 and 477A of the Indian Penal Code. The prosecution examined as many as 24 witnesses and exhibited 96 documents. On a thorough consideration of the evidence on record, both oral and documentary, the learned Judicial Magistrate, First Class, Cannanore, came to the conclusion that the accused while working as head of the purchase section of the Western India Plywoods, took the empty barrels concerned from the factory and diverted the same to a destination of his own choice and disposed of the same according to his own convenience and mis-appropriated the entire sale proceeds thereof. The Magistrate also recorded a clear finding that the accused falsified the documents Exhibits P-2(a), P-2(b) and P-3(a), the gate passes by furnishing false information in the same and also forged the railway receipts by affixing the seal of the Western India Plywoods and putting his signature on the railway receipts on behalf of the company and thereby the charges against the accused have been established beyond reasonable doubt. For his conviction under Sections 408 and 468, the accused was sentenced to undergo simple imprisonment for five months each and to pay a fine of Rs.1000/- each, in default S.I. for one month each under each count and for offence under Section 477A, he was sentenced to pay a fine of Rs.1000/-, in default, S.I. for

two months. Sentences were directed to run concurrently. On appeal being carried, the learned Additional Sessions Judge, Tellicherry, re-appraised the entire evidence, oral and documentary and affirmed the conclusion of the learned Magistrate and upheld the conviction and sentence passed by the Magistrate. On a revision being filed by the accused, the High Court by the impugned Judgment interfered with the conviction and sentence and came to hold that the prosecution has failed to establish the case beyond reasonable doubt.

Mr. Prakash, the learned counsel, appearing for the State of Kerala contended that the High Court exceeded its revisional jurisdiction in interfering with an order of conviction and sentence passed thereunder by re-appreciating the evidence on record and, therefore, the impugned Judgment is wholly unsustainable in law. The learned counsel also contended that the High Court even has not considered several items of evidence which had been considered by the Magistrate and the Additional Sessions Judge in appeal and on such score also the impugned Judgment is unsustainable.

Mr. M.N.Rao, the learned Senior Counsel, appearing for the accused-respondent on the other hand contended that the case being one of no evidence, the High Court was justified in exercising its revisional jurisdiction and in interfering with the conviction and sentence passed against the accused. The learned counsel also contended that in the absence of any entrustment being established, the charges under Section 408 could not have held to have been established beyond reasonable doubt by the prosecution and therefore, the High Court was justified in interfering with the conviction and sentence passed by the learned Magistrate which had been upheld in appeal by the learned Additional Sessions Judge.

Having examined the impugned Judgment of the High Court and bearing in mind the contentions raised by the learned counsel for the parties, we have no hesitation to come to the conclusion that in the case in hand, the High Court has exceeded its revisional jurisdiction. In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of Supervisory Jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an Appellate Court nor can it be treated even as a second Appellate Jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to re-appreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice. On scrutinizing the impugned Judgment of the High Court from the aforesaid stand point, we have no hesitation to come to the conclusion that the High Court exceeded its jurisdiction in interfering with the conviction of the respondent by re-appreciating the oral evidence. The High Court also committed further error in not examining several items of evidence relied upon by the Additional Sessions Judge, while confirming the conviction of the respondent. In this view of the matter the impugned

Judgment of the High Court is wholly unsustainable in law and we, accordingly set aside the same. The conviction and sentence of the respondent as passed by the Magistrate and affirmed by the Additional Sessions Judge in appeal is confirmed. This appeal is allowed. Bail bonds furnished stand cancelled. The respondent must surrender to serve the sentence. In view of the order in this appeal, no further order is necessary in SLP(Criminal) No. 1466/94.

JUDIS