

Crl.Rev.Pet.No. 1387 of 2018



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2025:KER:36941

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

MONDAY, THE 26TH DAY OF MAY 2025 / 5TH JYAISHTA, 1947

CRL.REV.PET NO. 1387 OF 2018

AGAINST THE JUDGMENT DATED 29.09.2018 IN Cr1.A NO.101 OF 2016
OF ADDITIONAL SESSIONS COURT - IV, THIRUVANANTHAPURAM ARISING
OUT OF THE JUDGMENT DATED 31.03.2016 IN CC NO.74 OF 2002 OF
ADDITIONAL CHIEF JUDICIAL MAGISTRATE, THIRUVANANTHAPURAM

REVISION PETITIONER/APPELLANT/2ND ACCUSED:

ANIL KUMAR
AGED 48 YEARS, S/O CHELLAPPAN PILLAI,
PLAMOOTTILKONATH VEEDU,
KONCHIRA P.O., VIA- VEMPAYAM,
THIRUVANANTHAPURAM DISTRICT.

BY ADVS.
GOPAKUMAR R.THALIYAL
SRI.RAHUL RAJ

RESPONDENT/RESPONDENT/STATE/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM, KOCHI - 682 031

SRI.SANGEETHA RAJ.N.R-PP

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 26.05.2025, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



ORDER

The petitioner is the 2nd accused in C.C.No. 74 of 2002 on the file of the Additional Chief Judicial Magistrate Court, Thiruvananthapuram (for short, 'the trial court'). The offence alleged are under Sections 465, 468, 471 r/w 34 of IPC.

2. The 1st accused was working as a Clerical Assistant in the office of the Kerala Public Service Commission (for short, 'the KPSC'), Thiruvananthapuram. The 2nd accused/petitioner was working as a Clerk in the Travancore Cochin Medical Council, Thiruvananthapuram. The prosecution case in short is that, the 1st accused forged Ext.P1 certificate which showed that the 2nd accused had passed the departmental test and thereafter the latter produced and used it as original before the Travancore Cochin Medical Council, Thiruvananthapuram. It was alleged that the



accused shared a common intention and committed the offence.

3. The 1st accused expired during trial. The petitioner alone faced trial for the offences under Sections 465, 468, 471 r/w 34 of IPC. On the side of the prosecution, PW 1 to PW 9 were examined and Exts.P1 to P5 were marked. No defence evidence was adduced. After trial, the trial court found that the petitioner had committed offence punishable under Section 471 r/w 465 of IPC and he was convicted for the said offence. He was sentenced to undergo simple imprisonment for one year for the offence under Section 471 r/w 465 of IPC. He was found not guilty for the offence under Section 468 of IPC and he was acquitted for the said offence. The petitioner challenged the conviction and sentence before the Additional Sessions Court-IV, Thiruvananthapuram (for short, 'the appellate court') in Crl.Appeal No. 101 of 2016. The appellate court confirmed the conviction but reduced the



substantive sentence till the rising of the court and to pay a fine of Rs.50,000/-, in default, to suffer simple imprisonment for a further period of two months. This revision petition has been filed challenging the conviction and sentence passed by the trial court as well as the appellate court.

4. The learned counsel for the petitioner Sri.Gopakumar R. Thaliyal, submitted that the prosecution failed to adduce legal evidence to prove that Ext.P1 is a forged document and in the absence of proof of forgery, no conviction under Section 471 of IPC is possible. The learned counsel further submitted that there is absolutely no evidence to prove that it was the petitioner, who produced Ext.P1 certificate before the Medical Council and in the absence of such proof, the conviction under Section 471 of IPC for possession and use of a forged document is not sustainable. The learned counsel added that the impugned conviction and sentence are vitiated by illegality and



impropriety.

5. On the other hand, Sri.Sangeetha Raj N.R., the learned Public Prosecutor submitted that the evidence on record are sufficient to prove that the petitioner has committed the offence under Section 471 r/w 465 of IPC and re-appreciation of evidence is impermissible in a revision filed under Section 397 r/w 401 of IPC.

6. It is not in dispute that the 1st accused was working as a clerk in the Departmental Test Wing of KPSC and the petitioner was employed in the Travancore Cochin Medical Council, Thiruvananthapuram at the relevant point of time. The specific case of the prosecution is that Ext.P1 is a forged document. It was alleged that the 1st accused committed forgery, handed it over to the petitioner and he used it as genuine. The trial court found that there is evidence to show that Ext.P1 is a forged document. However, the trial court



found that there is no evidence to show that it was the 1st accused who forged the document. The said finding was upheld by the appellate court. Both the trial court as well as the appellate court found that there is no direct evidence to prove that it was the petitioner who produced Ext.P1 document before the Medical Council. However, based on circumstantial evidence and also taking into account the fact that the petitioner is the beneficiary of Ext.P1 document, the trial court as well as the appellate court presumed that it was the petitioner who produced Ext.P1 document before the Medical Council.

7. The petitioner was convicted for the offence under Section 471 of IPC with the aid of Section 465 of IPC. Section 471 provides that whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document, shall be punished in the same manner as if he had forged such document. So in order



to attract Section 471, it is a pre-requisite that the document in question was a forged one. In other words, in the absence of proof of forgery, no offence under Section 471 of IPC would lie. As stated already, the trial court as well as the appellate court found that though there is evidence to prove that Ext.P1 is a forged document, there is no evidence to prove that it was forged by the 1st accused as alleged by the prosecution. To prove that Ext.P1 is a forged document, the prosecution mainly relied on the evidence of PWs 1 and 4 to 6. PW1 was the Selection Grade Assistant at the Departmental Test Wing of KPSC. PW4 was the Deputy Secretary at the KPSC. PW5 was the Joint Secretary of the Departmental Test Wing of KPSC. PW6 was the Section Officer at KPSC. Ext.P1 was seen signed by the Under Secretary (Departmental Test Wing, KPSC). PW1 deposed that, at the time of the issuance of Ext.P1, one Mr. Gangadharan Nair was the Under Secretary. He deposed that



it was CW2 Gangadharan Nair who subscribed the signature in Ext.P1. Gangadharan Nair was no more. PW1 identified the signature of Gangadharan Nair. He deposed that Ext.P1 was not issued from the office of KPSC. However, it has come out in evidence that he was not working in the KPSC office at Thiruvananthapuram when Ext.P1 was issued. PWs 4, 5 and 6 also simply deposed that Ext.P1 was not issued from the office of KPSC at Thiruvananthapuram. PW1 or 4 to 6 had no direct knowledge regarding Ext.P1. They were not working at the KPSC office at the time when Ext.P1 was issued. It has come out in evidence from PW4 that a vigilance wing of KPSC conducted an enquiry and found that Ext.P1 was forged. But such a document is not forthcoming. Moreover, the investigating agency has not ventured to send Ext.P1 for scientific examination to find out whether Ext.P1 is a forged document. Thus, it cannot be said that the prosecution has succeeded in proving that Ext.P1 is a forged document.



8. There is also no legal evidence to prove that it was the petitioner who produced Ext.P1 before the Medical Council. The case of the prosecution is that the petitioner produced the forged Ext.P1 certificate before one Sri. Gangadharan Nair who was the then Registrar of the Medical Council. It is the further case of the prosecution that Gangadharan Nair forwarded Ext.P1 certificate to the KPSC for verification. But strangely, Gangadharan Nair was not cited or examined as a witness. Instead, PW2, one Karthikeyan P.G. was examined to prove that it was the petitioner who produced Ext.P1 before the Medical Council. In cross-examination he had deposed that he did not know anything about the case and everything was in the knowledge of Mr. Gangadharan Nair. The evidence of PW2 would not prove that it was the petitioner who produced Ext.P1 before the Medical Council. The burden is entirely on the prosecution to prove that the petitioner has possessed and used the



forged document as a genuine document. Therefore, it is incumbent on the part of the prosecution to prove with positive evidence that it was the petitioner who produced Ext.P1 before the Medical Council. The best witness to prove the same was none other than one Gangadharan Nair. For the reason best known to the prosecution, he was not examined. The finding of the trial court as well as the appellate court that since the petitioner is the beneficiary of Ext.P1 certificate, it has to be presumed that it was he, who produced Ext.P1 before the Medical Council cannot be accepted. The trial court as well as the appellate court ought not to have convicted the petitioner in the absence of evidence to show that he had produced Ext.P1 certificate before the Medical Council.

9. It is true that this court is not supposed to re-appreciate the evidence in a revision petition. But this is not a case of re-appreciation of evidence. It is a case where the



trial court as well as the appellate court failed to appreciate the evidence in the correct perspective. The powers vested with this Court under Section 397 r/w 401 of Cr.P.C. are inherent in nature to correct the judgment of the court which suffers from gross illegality. The findings in the impugned judgments of the trial court as well as the appellate court have been arrived at by ignoring the relevant materials and evidence on record. The entire records of the trial court as well as the appellate court dealing with the evidence and law on the ground was patently wrong. For these reasons, I hold that this is a fit case where the discretionary power vested with this Court under Section 397 r/w 401 of Cr.P.C. could be exercised. Accordingly, the impugned judgment and conviction are hereby set aside.

10. It is submitted by the learned counsel for the petitioner that as per the direction of this court, at the time of admission, the petitioner had deposited 50% of the fine

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amount. The trial court is directed to refund the said amount to the petitioner.

The revision petition is allowed.

Sd/-
DR. KAUSER EDAPPAGATH
JUDGE

APA