Bail Slip

The Petitioner/Accused No.2 namely Jayakumar, S/o. Muthu was directed to be released on bail as per order of this court dt. 12.08.2010 and made in MP.2/10 in Crl.RC.850/10 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :10.4.2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No. 850 of 2010

Jayakumar .. Petitioner

Versus

State by
Sub - Inspector of Police
Kollathur Police Station
Salem District .. Respondent

Criminal Revision Petition filed under Section 397 and 401 of Cr.P.C. to set aside the order passed by the learned Judicial Magistrate No.I, Mettur, Salem District in C.C.No.31 of 2009 judgment dated 09.3.2010, confirmed the order by the Additional District Sessions Judge, Fast Track Court No.I, Salem in C.A.No.55 of 2010 dated 11.5.2010.

For Petitioner : Mr.N.Sudharsan

For Respondent : Mr.R.Prathap Kumar
Government Advocate (Crl.side)

ORDER

The petitioner, who was arrayed as accused No.2 in C.C. No. 31 of 2009 on the file of the learned Judicial Magistrate No.I, Mettur, was tried for the offence punishable under Section 420 of IPC. After trial, the trial court convicted the petitioner for the offence under Section 420 of IPC and sentenced to undergo Rigorous Imprisonment for one year and pay a fine of Rs.1,000/-and in default, to undergo simple imprisonment for three months. Aggrieved by the judgment of the trial court, the petitioner filed an appeal before the appellate Court. The appellate Court, while dismissing the appeal, has confirmed the conviction and judgment dated 09.3.2010 of the trial Court. As against the same, the present Criminal Revision Case is filed.

2. The facts of the case, as could be unfolded from the records, is that PW1 was working at Reliance Company as Salesman. On 26.2.2009, he had read one advertisement which was published in Dinakaran Tamil Daily, wherein advertisement was given by the accused to make arrangement for getting loan based on education certificate. Accused Phone No. was also mentioned in the said advertisement. Believing the said advertisement, the defacto complainant rang up to the accused No.1 and based on his instruction he has given Rs.15,000/- along with educational Certificate to the accused on 21.3.2009. Again on 22.3.2009, he has given another sum of Rs.3,000/- to the accused and on that day, the accused returned the original certificates to P.W.1. Since there was no response thereafter, a complaint was given by PW1 to the respondent police based on which, the case in Crime No. 117 of 2009 came to be registered for the offence punishable under Section 420 of IPC. Based on the registration of the case, PW6, Sub-Inspector of Police commenced investigation and recorded the statement of witnesses and filed final report as against the accused under Section 420 IPC.

3. The learned counsel for the petitioner would contend that there is no overt act as against the revision petitioner/Accused No.2. In the FIR as well as in the evidence, it was only stated that the petitioner was present at the time when the money was given by P.W.1. The learned counsel further stated that the recovery was made only from the first accused. According to the learned counsel, no specific overt act has been mentioned against the present petitioner in the FIR as well as in the evidence. It is stated by the learned counsel that alleged advertisement has not been marked and, therefore, no offence is made out as against the present petitioner. It is also stated by the learned counsel that Criminal Revision has been filed by the first accused and he was acquitted by this Court and, therefore, the same benefit should be given to the petitioner.

4. On the other hand, the learned Government Advocate (Criminal side) submitted that mens rea should be taken into consideration as the petitioner/ A2 was present on both occasions at the time, when the money was given by P.W.1. The learned Government Advocate further stated that cheating has been clearly established before the Courts below. According to the learned Government Advocate, the courts below analysed the evidence available on record and came to a correct conclusion. Therefore, the order passed by the courts below need not be interfered with.

5. I heard the learned counsel for the petitioner, learned Government Advocate and perused the materials placed on record.

6. The main ground of attack raised by the learned counsel for the petitioner is that there is no specific overt act as against the revision petitioner and that the main accused has already been acquitted by this Court.

7. From the reading of the judgment of the Courts below, it is very clear that the alleged paper publication has not even been marked as Exhibits. Further, there is no evidence in whose name the the alleged phone No.stands. More so, neither in the FIR nor in the evidence, no specific overt act has been made against the revision petitioner except stating that he was present on both occasions when the money was given by P.W.1. P.W.1 in his evidence has stated that first accused alone promised the complainant to arrange for a loan based on his educational certificate. P.W.1 also stated in his evidence that the advertisement in the paper was given by the first accused mentioning his cell phone No. The entire materials would go to show that there is no inculpatory statement deposed either by P.W.1 or P.W.2 against the revision petitioner. The only statement made in the FIR as well as in the evidence is that the revision petitioner was present at the time when the money was given by P.W.1.

8. Mere presence of the revision petitioner/accused on a particular time along with the alleged co-accused will not sufficient to prove mens rea. It is also not the case of the prosecution that at the instance of the revision petitioner, P.W.1 paid money to the first accused. That apart, MOs were seized only from the first accused and no incriminating materials were seized from the revision petitioner.

9. Thus, it is evident that the alleged offence against the revision petitioner has not been clearly established. Further, there is no evidence to establish the specific overt act against the revision petitioner. In the absence of the same, it has to be concluded that the prosecution has not proved the guilt against the revision petitioner/accused beyond reasonable doubt and therefore the revision petitioner/accused is entitled to benefit of doubt. The lower Court ought not to have convicted the petitioner herein. Further, it is brought to the notice of this Court that the first accused has already been acquitted.

10. In view of the above, the conviction and sentence imposed on the petitioner by the courts below are set aside. The Criminal Revision Case is allowed. The surety bond, if any, executed by the petitioner/accused shall stand cancelled. Fine amount, if any, paid by the petitioner/accused is ordered to be refunded.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To
1. The Judicial Magistrate No.I,
Mettur, Salem.
2. -do- Chief Judicial Magistrate, Salem.
3. The Additional District Sessions Judge,
Fast Track Court No.I, Salem
4. -do- Principal Sessions Judge, Salem
5. The Sub Inspector of Police,
Kollathur Police Station, Salem District.
6. The Public Proseuctor, High Court, Madras.

Copy to: The Section Officer,
Crl.Section, High Court, Madras.

Crl.RC No. 850 of 2010

RSY(CO)
Eu 20.05.2015