THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 13.04.2016

Pronounced on : 28.04.2016

Coram

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL

Crl.R.C.No.205 of 2009

Salia Beevi ... Petitioner

V.

1.Annadurai

2.The Inspector of Police,
Central Crime Branch,
Chennai - 8. ... Respondents

Prayer: Criminal Revision Petitions filed under Section 397 & 401 of the Code of Criminal Procedure, 1973 against the order of acquittal dated 27.04.2007 in C.C.No.12168 of 2004 on the file of the Additional Chief Metropolitan Magistrate, Chennai.

For Petitioner : Mr.C.Rajan

For 1st Respondent : Mr.S.Karthik Ganesh

For 2nd Respondent : Mr.V.Arul
Government Advocate (Crl. Side)

ORDER

The Petitioner has preferred the instant Criminal Revision Petition as against the Judgment dated 27.04.2007 in C.C.No.12168 of 2004 passed by the Learned Additional Chief Metropolitan Magistrate, Chennai.

2.The Learned Additional Chief Metropolitan Magistrate, Chennai, while passing the impugned Judgment in C.C.No.12168 of 2004 on 27.04.2007, at paragraph 6, had, inter alia, observed that '... in the present case, in respect of the sale of the house, no document had come into existence and therefore, Ex.P.1 was not to be acceptable and P.W.1 (Salia Beevi), in her cross examination, had stated that she was not acquainted with the Accused and that she was not in talking term of the Accused and

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

also had not seen him, she does not know in which year the case house was agreed to be sold; does not know about the door number of the sale of the house; does not know about what was the sale amount and on what date the money was paid to Azeez, whether the said amount was paid to him, she had not paid attention to the same'. Further, it was stated that there was no sale agreement written between herself and one Annadurai and that she had not signed Ex.P.3 and Ex.P.4 and also not produced any proof and no talks were held by keeping the Accused, in the presence of elders and Panchayatdars and from this, the prosecution had not established the charge against the Accused beyond reasonable doubt and found him not guilty under Section 420 of the Indian Penal Code and acquitted him under Section 248(1) of the Criminal Procedure Code.

3.Challenging the Judgment dated 27.04.2007 passed by the trial Court, the Learned Counsel for the Petitioner submits that the trial Court had committed an error in acquitting the 1st Respondent/Accused based on available material oral and documentary evidence on record.

4.The Learned Counsel for the Petitioner takes a stand that the signature of the 1st Respondent/Accused in Exs.P.1, P.3 and P.4 were proved and it is for the 1st Respondent/Accused to establish that they were executed for a different purpose.

5.Advancing his arguments, the Learned Counsel for the Petitioner submits that Ex.P.1 - Receipt is admitted by P.W.1 and that the D.W.1 (1st Respondent/Accused) denies his signature and in fact, the trial Court under Section 73 of the Indian Evidence Act, 1872 can compare the signature in Exs.P.1, P.3, P.4 documents by sending the same to an Handwriting Expert, for comparing the same with the admitted signatures. However, such an exercise was not resorted to by the trial Court and in short, the evidence of P.W.1 to P.W.3 is quite consistent as regards the aspect of 'Fraudulent Representation'.

6.The Learned Counsel for the Petitioner proceeds to take a stand that when the 1st Respondent/Accused denies the signature, he should have taken steps to prove the same in the manner known to Law and in accordance with Law. Also that, it is represented on behalf of the Petitioner that no suggestion is put on the side of the 1st Respondent/Accused that Exs.P.1, P.3 and P.4 - Documents have no relevance to the compliant given.

7.Finally, it is the submission of the Learned Counsel for the Petitioner that the trial Court had erroneously acquitted the 1st Respondent/Accused from the main case in C.C.No.12168 of 2004, there had occasioned failure of Justice and as such, the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

same is to be set aside by this Court by allowing the present Revision filed by the Petitioner.

8.Per contra, it is the submission of the Learned Counsel for the 1st Respondent/Accused that the Petitioner/P.W.1 in her evidence before the trial Court had stated that no panchayat was held and no document was executed and in fact, there is dichotomy as to where money was given.

9.It is represented on behalf of the 1st Respondent that till the son-in-law of the Revision Petitioner/Complainant was alive, no civil suit was filed and further, no notices were exchanged between the parties.

10.The Learned Counsel for the 1st Respondent brings it to the notice of this Court that to prove Ex.P.1, P.W.1 and P.W.2 was examined and in fact, P.W.6, being an independent witness (running a Tea Shop) does not know about the Ex.P.1 – Receipt. As such, the question of entrustment falls to the ground.

11.Continuing further, the Learned Counsel for the 1st Respondent draws the attention of this Court that P.W.1 had deposed that a sum of Rs.80,000/- was paid in one slot whereas P.W.5 had stated that it was received by the 1st Respondent/Accused in piecemeal/smaller denominations.

12.That apart, the Learned Counsel for the 1st Respondent contends that the complaint was given on 17.09.2003 and P.W.7 (Investigating Officer) had deposed that 17 days before the complaint, the summons was issued and P.W.7 in his cross examination had stated that the notice was sent to the 1st Respondent/Accused to appear in the office on 31.08.2003 and that in the said notice, he had affixed his signature and put the date as 30.08.2003.

13.The Learned Counsel for the 1st Respondent refers to the evidence of P.W.1 (in cross examination) to the effect that he had already stated that the complaint was given on 17.09.2003 and that the only complaint given by Petitioner/P.W.1 was received by him and only on the Petitioner/P.W.1's complaint, the case was filed.

WEB COPY

14.The Learned Counsel for the 1st Respondent takes a very vital plea that if the summons/notice was issued on 30.08.2003 and that the complaint was given on 17.09.2003 (as per P.W.7's cross examination), how a notice/summons could be issued earlier to the date of complaint and there arise a big question what happened to the earlier complaint and in short, it is forcefully

https://hcservices.ecourts.gov.in/hcservices/

contended that no summons could be issued in the absence of any complaint.

The submissions of the 2nd Respondent/State:

15.The Learned Government Advocate for the 2nd Respondent contends that the trial Court, on an appreciation of evidence of P.W.1 to P.W.7 and on consideration of Exs.P.1 to P.6, D.W.1's evidence and Exs.D.1 to D.5, came to a consequent conclusion that the charge levelled against the Accused under Section 420 I.P.C. was not proved beyond reasonable doubt and acquitted him under Section 248(1) of the Criminal Procedure Code.

Narration of Evidence of Prosecution Witnesses:

16.Evidence of P.W.1 (Complainant):

(i) It is the evidence of P.W.1 that her son-in-law is Abdul Azeez and that the Accused (1st Respondent) is acquainted to her son-in-law and that the Accused had stated that he has a house bearing Door No.10 at Pudupet, which was agreed to be sold with his son-in-law and that her son-in-law had agreed to sell at a consideration of Rs.18,00,000/-.

(ii) It is the further evidence of P.W.1 that the Accused (1st Respondent) had agreed to get the aforesaid house purchased through him and as a first instalment, she had paid a sum of Rs.3,00,000/- during the year 1999 and in the year 2000, she had paid a sum of Rs.2,00,000/-. Also that, she had paid a sum of Rs.80,000/- and at the time of making payment, her son-in-law (Abdul Azeez) was present and handed over the money to the Accused and later, her son-in-law had died.

(iii) Added further, it is the evidence of P.W.1 that when she spoke with the Accused (1st Respondent) about the sale of the house, he informed that the house belonged to another person and that they had informed that the said house could not be sold. However, she had paid a sum of Rs.5,80,000/- to the Accused and when she demanded back the aforesaid money from the Accused (1st Respondent), he informed her that he would pay the same, but prolonged the time. Apart from that, in the Panchayat, when the Accused (1st Respondent) was required to pay the money, a document was written in the presence of Panchayatdars that the aforesaid sum would be paid as Rs.80,000/- on 05.09.2001 and before 05.02.2002, the balance sum of Rs.5,00,000/- was to be paid and in the said document – Ex.P.1, he had affixed his signature and that till date the Accused had not paid the amount and cheated her and in this regard, she gave a complaint (Ex.P.2), in which she had affixed her signature before the Central Crime Branch.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

(iv) P.W.1 proceeds to add in her evidence that she does not know that the door number of the house purported to be sold by the Accused and that the said house was adjacent to a marriage hall and further that, the Accused had not informed her about the sale of case property and that the Accused would have informed her son-in-law about the sale of the house in question. Moreover, she went on to add that she does not know what was the amount of sale consideration and firstly, a sum of Rs.3,00,000/- was paid by her son-in-law to the Accused but on what date the money was given to Azeez and that she had not bestowed her attention to the effect whether he had paid the money.

(v) P.W.1 had also stated in her evidence that after payment of Rs.3,00,000/-, further sum of Rs.2,00,000/- was paid after two months and the said amount given by her was paid by her son-in-law and after four months, another sum of Rs.80,000/- was paid and all the aforesaid amounts were paid in cash to the Accused. Apart from that, it is the evidence of P.W.1 that the money was paid to the Accused after selling the house situated at outstation and the said money was taken out from the Bank and the said amount was not paid towards advance and every time when money was paid, the Accused had written a document (Ex.P.3) in his own hand and in which, the Accused had purportedly signed and below the signature, '25/11/1995' was written. But, it was found to be written as 'year 1999, 11th month, date 25' and in the stamp paper was dated 23/11/1999 and below the Ex.P.4 – Document, the date was mentioned as 1/4/2000. But in the Document, the date was written as 20/1/2000.

(vi) P.W.1 in her evidence had stated that before making payment of Rs.3,00,000/- on 1/12/1999, she had no money transaction (either as giving or taking loan) and that at the time of receipt of Rs.3,00,000/- by the Accused and reduced into writing in the said Document, two witnesses viz., 1) Abu Bakkar and 2)Ali Akbar had signed and they had also signed in the paper wherein the Accused had received Rs.2,00,000/- and that she had not affixed her signature in Exs.P.3 and P.4.

17.Evidence of P.W.2:

(i) P.W.2 in her evidence had deposed that the Accused had spoken about the sale of the house at Rs.18,00,000/- and as first instalment in the year 1999, a sum of Rs.3,00,000/- and a sum of Rs.2,00,000/- was paid in the year 2000 by her mother to the Accused and that the Accused had not purchased the house after receipt of money and prolonged the time and in the meanwhile, her husband had expired and that in the Panchayat, the Accused had agreed to repay a sum of Rs.5,80,000/- by means of a Document and executed the said Document. Further, he had not paid the money and cheated.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

(ii) P.W.2 had also stated in her further evidence that the money which was given to the Accused (1st Respondent) was drawn from the Bank and the Bank account was in her mother's name and P.W.1 was her mother and that she had not seen the house which were purported to be sold in favour of her mother.

18. Evidence of P.W.3:

(i) P.W.3 in his evidence had stated that Abdul Azeez and the present Accused were close friends and it was informed that the house bearing Door No.10, at 1st Lane, Pudupet was coming up for sale and the said house was situated near the marriage hall and that his cousin Abdul Azeez informed him on 1/2/1999 that the said house was coming up for sale and that Annadurai had stated that he was in possession of power, patta documents and that he talked the sale of the said property for Rs.22,00,000/- and lastly, he had agreed to sell the house for Rs.19,00,000/- and that he asked for payment of advance and that himself, his brother Salyuf Azeez, his sister Rahmath and his mother went and paid a sum of Rs.3,00,000/- on 1/2/1999 for which no receipt was issued to them and thereafter on 1/2/2000 they paid a sum of Rs.2,00,000/- and after some days a sum of Rs.80,000/- was paid in cash and in all, a sum of Rs.5,80,000/- was paid to the Accused (1st Respondent) and further that, for the payment of Rs.3,00,000/- and 2,00,000/-, the Accused had affixed his signature in 10/- rupees stamp paper and that as agreed, the Accused had not completed the sale and also not paid the money.

(ii) It is the evidence of P.W.3 that for a sum of Rs.5,80,000/- received by the Accused was not returned back and they came to know later that the Accused was not in possession of any document relating to the sale of the house and based on the complaint given by his mother, he was examined.

19. Evidence of P.W.4 to P.W.7:

(i) P.W.4 in his evidence had stated that they themselves talked about the sale of the house and they had not contact any outside person and made an endeavour to sell the house. Further, in particular, as regards the sale of the house, nothing was talked with the Accused (Annadurai) and that they do not know about Annadurai, Salia Beevi.

WEB COPY

(ii) P.W.5 in his evidence had stated that the Accused had not shown the power deed in respect of the house to be sold and that he had not seen the document and 5 ½ years before, on 1/2/1999 a sum of Rs.3,00,000/- was paid to the Accused at Salia Beevi's house and that on 5/2/2000, a sum of Rs.2,00,000/- was paid by Annadurai to Salia Beevi and that a sum of Rs.80,000/- was received in piecemeal by the Accused in different denominations and that a sum of Rs. 5,80,000/- was paid by the

https://hcservices.ecourts.gov.in/hcservices/

Accused to the Complainant and till date the money was not returned.

(iii) P.W.5, in his cross examination, had stated that Ex.P.1 – Document typed and brought by the Accused and signed in the Document before them and it was not correct to state that the Accused had not signed in any stamp paper and document. Also, it was not correct to state that the signature found in Ex.P.1 does not belong to the Accused.

(iv) It is the evidence of P.W.6 that the Accused had received a money from a women at Pudupet and he was not examined by the Police in connection with the Accused and in Ex.P.1, the signature was obtained. However, P.W.6 (in his cross examination) had stated that he does not know about the entire contents of Ex.P.1 and at the time when he affixed his signature in Ex.P.1 – Document along with him, no one had signed.

(v) P.W.7 in his evidence had stated that presently he is serving as Crime Branch Inspector at F.2 Egmore Police Station and that when he was working as Assistant Inspector in Central Crime Branch (Forth Squad) and was on duty on 17.9.2003 from one Tmt.Salia Beevi, he received a complaint which was sent by the Deputy Commissioner and registered a case in Central Crime Branch in Crime No.847 of 2003 under Section 406, 420 I.P.C. and Ex.P.6 is the First Information Report and further he examined witnesses Salia Beevi, Tmt.Rahmath, Mohammed Usyuf, Abubakkar, James Manickam, M.Mohammed Akbar and recorded their statements and also filed the document produced by the witness Salia Beevi before Court and after completion of enquiry, he filed a Final Report under Section 420 I.P.C. against the Accused and that the Accused had obtained an Anticipatory Bail.

(vi) P.W.7 (in his cross examination) had stated that in Ex.P.1, it was mentioned as year 2001, dated 5.8.2001 and that the Complainant had not informed him on what date Ex.P.1 was written and apart from Ex.P.1-Document, the Complainant had not handed over any document to him. Further, P.W.7, in his re-examination, had stated that in Ex.P.1 - Document was written on 6.8.2001 as informed by the Complainant.

20.Evidence of D.W.1/1st Respondent:

(i) The 1st Respondent/Accused in his evidence had deposed that he knew the son-in-law of P.W.1 viz., Azeez and from him, he sued to receive money on loan and once he went to his house for taking part in his funeral rites and that the said Azeez was at 17 Munusamy Lane, Pudupet and he used to come to his shop at No.25, Panthiyan Road and give money to him and when Azeez used to lend money to him on loan, he would obtain his signature in a

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

blank paper and in six or seven blank papers, he had affixed his signature and given it to Azeez.

(ii) It is the further evidence of D.W.1 that Azeez had returned two blank stamp papers where the Accused had affixed his signature and from the year 1995, he used to receive money from Azeez on loan and he had seen the Complainant (Salia Beevi) but till date, he had not spoken to her. Continuing further, it is the evidence of D.W.1 that it was wrong to state that he had received a sum of Rs.5,80,000/- from P.W.1 – Salia Beevi and in Ex.P.1 – Document (Xerox copy), the signature found in the bottom does not belong to him and in Exs.P.3 and P.4 – Documents (Xerox copy), the signatures found do not belong to him.

(iii) D.W.1, in his evidence (in cross examination), had stated that it was wrong to state that a sum of Rs.5,80,000/- was paid to him by the son-in-law of Salia Beevi and added further, it was wrong to state that he had issued a receipt for the said amount. Also, D.W.1 had proceeded to state that it was wrong to state that since Azeez had expired based on the talks held in the presence of elders, he had agreed to return back the said amount in two instalments to Salia Beevi by means of Document dated 06.08.2001.

Discussions and Findings:

21.At the set out, this Court relevantly points out that the charge levelled against the 1st Respondent/Accused is that he had informed that the house owner James Manickam of Door No.31, Tiruvenkadam Street, Pudupet, Chennai had given him the absolute right to sell his house and determined the sale price of Rs.18,00,000/- with witness Salia Beevi (P.W.1) and received an advance of Rs.5,80,000/- and later had not sold the house and in an dishonest manner received the money and not paid the same to the witness and cheated her, as a result of which, he had committed an offence under Section 420 of the Indian Penal Code.

22.At this juncture, this Court, on perusal of Ex.P.1 – xerox copy of the letter of the 1st Respondent/Accused dated 5.8.2001, finds that the sale consideration of Door No.10, 1st Street house was fixed at Rs.18,00,000/- with one Salia Beevi and towards the 1st instalment in respect of the said house on 1.12.1999 he had received a sum of Rs.3,00,000/-, the 2nd instalment on 01.02.2000, he had received a sum of Rs.2,00,000/- and later received a sum of Rs.80,000/- and that for the Door No.10, 1st Street house, he had received a sum of Rs.5,80,000/- and that subsequently, Door No.10 people had informed that they were selling the house to one among themselves and not to outsider and therefore, he was not in a position to purchase the house and Salia Beevi (P.W.1) had demanded the return of

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Rs.5,80,000/- and he informed that immediately the said amount could not be paid and through Panchayat, in the presence of M.Mohammed Akbar S/o.Mugaitheen Haji, M.A.M.Abubakkar S/o.Mohammed Meera Hoji, S.A.Yazin S/o Aliyar M.Muzthafa S/o.Meera Mytheen on 5.9.2001 he had agreed to pay Rs.80,000/- and the balance of Rs.5,00,000/- was agreed to be paid by him before 5.2.2002 and if he failed to pay the amount, then, he had agreed to abide in respect of any action taken against him.

23.Ex.P.2 is the undated Complaint addressed to the Commissioner of Police, Egmore (received by the Office of the Deputy Commissioner of Police dated 07.07.2003, Central Crime Branch, Egmore) wherein it was mentioned, among other things, that the 1st Respondent/Accused had received a total sum of Rs.5,80,000/- as an advance in three instalments through her son-in-law Abdul Azeez for that the the 1st Respondent/Accused had executed a Written Document, but had failed to purchase the house in her favour and ultimately sought for taking necessary action against him by requiring him to repay the amount received by her.

24.Ex.P.3 is the xerox copy of the undertaking letter dated 25.11.1995 of the 1st Respondent/Accused wherein it was stated that the 1st Respondent/Accused had assured to get the sale completed in respect of Door No.10 of Pudupet 1st Street, in favour of the Complainant between 1.2.1999 to 28.2.2000 and had received a sum of Rs.3,00,000/- as an advance. Likewise, Ex.P.4 is the undertaking letter dated 1.2.2000 executed by the 1st Respondent/Accused wherein he had, among other things, stated that he had assured to execute the completed sale in favour of the Complainant between 01.02.2000 - 18.05.2000 and the receipt of sum of Rs.2,00,000/-.

25.Ex.P.5 is the letter dated 12.11.2003 of one James Manickam wherein it was mentioned that they had not given any power in respect of their house to one Annadurai of Tiruvenkadam Street,
for selling the same and further, they do not know that the 1st Respondent/Accused (Annadurai) had received a sum of Rs.5,80,000/- from the Complainant.

WEB COPY

26.Ex.P.6 is the First Information Report in F.I.R.No.847/2003 (registered by the District Crime Branch) under Sections 406 and 420 I.P.C. based on the complaint of Complainant - Salia Beevi (P.W.1), against the 1st Respondent/Accused. A perusal of the contents of Ex.P.6 – F.I.R. shows that on 17.9.2003, the complaint was received by the District Crime Branch and a case was registered in Crime No.847/2003. The period of date of occurrence in Ex.P.6 – F.I.R.

https://hcservices.ecourts.gov.in/hcservices/

was stated to be from the year 1999 till the year of 2000. Also, in Ex.P.6 – F.I.R., it was mentioned that the delay in lodging the complaint was attributed on the part of the Complainant.

27.It is to be pointed out that to bring a case within its purview of Section 420 I.P.C. not only the cheating simpliciter but, also dishonest inducement to a person sought to be deceived to deliver any property etc. are required to be established.

28.Indeed, Section 415 of the Indian Penal Code 'Cheating' requires (a)deception of any individual; (b) fraudulently or dishonestly inducing that person (i) to deliver any property to any individual; or (ii) to consent that any individual shall retain any property; or (iii) intentionally inducing that person to do or omit to do anything which he would not do or omit if he were not so deceived and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property.

29.It is to be remembered that a person to be convicted under Section 420 IPC, it has to be established not only that he had cheated someone but also that by doing so, he had dishonestly induced the person who has cheated to deliver any property etc.

30.In the instant case, this Court pertinently points out that Ex.P.1 undertaking given by the 1st Respondent/Accused on 20 rupees stamp paper dated 05.08.2001, Ex.P.3 – xerox copy of the assurance document dated 25.11.1999 (executed in 10 rupees stamp paper), Ex.P.4 another undertaking document executed in 10 rupees stamp paper dated 01.03.2000 and all of them marked before the trial Court were only xerox copy of the documents. It appears that originals of the said documents were not filed.

31.In this connection, this Court worth points out that Section 62 of the Indian Evidence Act, 1872 speaks of 'Primary Evidence'. As a matter of fact, primary documentary evidence of a transaction evidenced by writing is the document itself which ought to be produced in original to prove the contents of the same as a best evidence if it exists and the same is obtainable. Also, it cannot be forgotten that secondary evidence is impermissible until the non-production of primary evidence is satisfactorily established, as per decision of the Hon'ble Supreme Court in Tukaram v. Dighole V. Manik Rao Shivaji Kokate, AIR 2010 SC 965.

32.Furthermore, secondary evidence of a document can be allowed to be let in only when original is proved to have existed but was lost or misplaced as per decision in Bank of

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Baroda, Bombay V. Shre Moti Industries, Bombay, AIR 2008 Bom 201 (204).

33.It is true that ordinarily if a party to an action does not object to a document being taken on record and the same is marked as an exhibit, he is estopped and precluded from questioning the admissibility thereof at a later stage. However, it is trite that a document which is otherwise inadmissible cannot be taken in evidence only because no objection to the admissibility was taken thereof as per decision of the Hon'ble Supreme Court in Malay Kumar Ganguly V. Dr.Sukumar Mukherjee, (2009) 9 SCC 221 (250).

34.At this stage, this Court aptly points out that in the Judgment of the trial Court in C.C.No.12168 of 2004, nowhere it was mentioned that as to why the xerox copy of Exs.P.1, P.3, P.4 were marked, in the absence of the originals of the said documents. It is also not known whether the originals of the said documents were either lost or destroyed.

35.It is to be pointed out by this Court that as per Section 65 (a) of the Indian Evidence Act, 1872 a secondary evidence may be given of the existence, condition or contents of a document when the original is shown or appears to be in the possession or power of the person against whom the document is sought to be proved, or of any person out of reach of, or not subject to, the process of the Court, or of any person legally bound to produce it, and when, after the notice mentioned in Section 66, such person does not produce it.

36.Also, a mere admission of a document in evidence does not amount to its proof. As such, it is the obligatory duty of a Court of Law to decide the question of an admissibility of a document in secondary evidence before making endorsement thereon. In short, a secondary evidence of the contents of the document cannot be admitted without non-production of the original being first accounted for in such a manner as to bring it within one or the other of the cases provided for in Section 65 of the Evidence Act. Added further, in Law, unless a secondary evidence is authenticated by foundational/cementing evidence that the purported copy or xerox copy is in fact a true copy of the originals, the xerox copies of Exs.P.1, P.3 and P.4 are inadmissible in evidence, in the considered opinion of this Court.

37.Even on merits, when the 1st Respondent/Accused had denied his signature in Ex.P.1, Ex.P.3 and Ex.P.4, then, the Revision Petitioner/Complainant (P.W.1) should have taken necessary steps to compare the signature found in those

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

documents with that of his admitted signature in the contemporaneous documents, by taking out necessary petition under Section 73 of the Indian Evidence Act, seeking an opinion of an Expert under Section 45 of the Indian Evidence Act. But in the present case, such a course was not adopted by the Revision Petitioner/Complainant.

38.It is to be noted that from the tenor and spirit of Ex.P.2 – Complaint of the Revision Petitioner/P.W.1, it is quite evident that the 1st Respondent/Accused had reportedly informed the Revision Petitioner/Complainant that the house owners had informed that they would take the house among themselves and that the 1st Respondent/ Accused would return the amount. But, in the meanwhile, her son-in-law had expired and in spite of repeated demands made by the Revision Petitioner/Complainant, the 1st Respondent/Accused had not returned the money, but protracted the days. Further, in the presence of known elders, the Revision Petitioner/Complainant had got a written document from the 1st Respondent/Accused that he would pay a sum of Rs.5,80,000/- in two instalments before 5.2.2002 and the said document was obtained by her on 6.8.2001. A perusal of Ex.P.2 Complaint of the P.W.1 (Revision Petitioner), with reference to Exs.P.3 and P.4 undertaking documents purportedly executed by the 1st Respondent/Accused, unerringly prima facie point out that the return of money issue is only a civil transaction, since the 1st Respondent/Accused had not honoured his commitment in returning the amounts in two instalments as agreed to by him. Also that, in Ex.P.6 – F.I.R. in the column of occurrence day, it was mentioned that it was between the year 1999 till 2000. Even though the transaction relates to a period from the year 1999 till 2000, the Revision Petitioner/P.W.1 had chosen to file complaint only during the year 2003 before the Commissioner's Office, which was received on 7.7.2003 by the office of the Deputy Commissioner of Police, Chennai and only because of the Revision Petitioner/P.W.1, the delay was attributed, as shown in Serial No.8 in Ex.P.6 – F.I.R filed before the Central Crime Branch. Apart from that, the Revision Petitioner/ Complainant had not resorted to the recourse of initiation of any civil proceedings before the competent Civil Court against the 1st Respondent/Accused in respect of the return of the advance amount of Rs.5,80,000/- aggregating in all. In this connection, it cannot be ignored that P.W.1's son-in-law (Abdul Azeez) had died.

39.Be that as it may, in the light of aforesaid detailed discussions and also this Court on taking note of the entire gamut of the case in an encircling fashion and also coupled with especially the evidence of the Revision Petitioner/P.W.1 that she does not know what was the sale price and further, in

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

between Revision Petitioner/Complainant (P.W.1) and the 1st Respondent/Accused (D.W.1), admittedly, no written document was executed and besides these, when it is the evidence of the 1st Respondent/Accused (D.W.1) that he had not executed Ex.P.1 – receipt, Ex.P.3 and Ex.P.4 undertaking letters etc., this Court comes to a resultant conclusion that the offence under Section 420 I.P.C. levelled against the 1st Respondent/Accused by the prosecution was not established beyond all reasonable doubt and in this regard, the conclusions arrived at by the trial Court that the 1st Respondent/ Accused was not guilty under Section 420 I.P.C. and consequently, acquitting him under Section 248 (1) of the Criminal Procedure Code, do not suffer from any material irregularities or patent illegalities in the eye of Law. Consequently, the Criminal Revision Petition fails.

40.In the result, the Criminal Revision Petition is dismissed. The Judgment dated 27.04.2007 in C.C.No.12168 of 2004 passed by the trial Court is affirmed by this Court for the reasons assigned in this Revision.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

Sgl

To

1.The Additional Chief Metropolitan Magistrate,
Chennai.

2.Thro'The Chief Metropolitan Magistrate, Chennai

3.The Inspector of Police,
Central Crime Branch,
Chennai – 8.

1 cc to Mr.S.Karthik Ganesh, Advocate, sr.27224

Crl.R.C.No.205 of 2009

lrs co
kra 23.05.2016

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/