

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Judgment 29.11.2017	Date of Pronouncing Judgment 05.12.2017
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CORAM :

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Revision No: 1047 of 2014
in CrI.M.P. No: 1 & 2 of 2014

M.Veeraiah

...Petitioner/Appellant

Versus

Superintendent of Police,
Central Bureau of Investigation,
SPE, ACB, Chennai.

... Respondent

PRAYER: Criminal Revision Petition is filed under Section 397 & 401 Criminal Procedure Code, against the conviction imposed on the petitioner to undergo rigorous imprisonment for a period of 12 months and also to pay a fine of Rs.5,000/- (Rupees Five Thousand only) in default to undergo simple imprisonment for the three months for the offence u/s 468 r/w 471 I.P.C and also sentenced to undergo rigorous imprisonment for a period of 12 months and also to pay a fine of Rs. 5,000/- in default simple imprisonment for three months for the offence u/s 420 I.P.C. The said judgment dated 04.11.2013 was appealed in C.A.No. 13/2013 on the file of the Learned Principal Sessions Court at Puducherry which confirmed the sentence and conviction imposed on the petitioner by its judgment dated 02.09.2014.

For Petitioner : Mr. J. Suresh

For Respondent : Mr. K. Srinivasan
Special Public Prosecutor
for CBI Cases

ORDER

This Criminal Revision is against the judgment of the appellate court confirming the conviction and sentence imposed on the revision petitioner arising out of the criminal trial in 154/2008 on the file of Chief Judicial Magistrate, Pondicherry confirmed in Criminal Appeal 13 of 2013 by the Principal Sessions Judge, Pondicherry by his order dated 2nd September, 2014.

2. The case against the revision petitioner herein is that as a registered contractor of CPWD, in the name of style of V.P. Construction, Pondicherry. He was awarded the contract of executing the construction of the Auditorium at JIPMER campus in Pondicherry on 25.02.2005. While in the course of construction, for the wall lining with butch work with 65 mm thick red sand stone, he reported to CPWD that red sand stone is not available in the market, hence sought for substitution with artificial cement butch (unistone brand). Initially permission was refused but later the senior architect / DGHS agreed to substitute. The revision petitioner though purchased UNISTONE from M/s Concrete Tiles and Pavers, Delhi at the rate of Rs 43/- per sq.ft with CST VAT @ 4% with C Form, he fabricated the bills as if the cost of the UNISTONE is Rs 53/- per sq.ft with CST VAT at the rate of 12%. Later, with fabricated invoice Ex.P-20 he presented bills and same was cleared.

3. The CBI which investigated the case based on source information found that by inflating the price and fabricating the invoice, the revision petitioner had cheated CPWD to a tune of Rs. 2,02,985/-.

4. The trial court framed charges under section 468 r/w 471 IPC and 420 IPC against the revision petitioner / accused and tried. After examining 10 witnesses, 57 exhibits and 2 material objects on the prosecution side and 8 exhibits on the defence side besides 3 court exhibits, it found the accused guilty and sentenced him to undergo 12 months RI and fine of Rs 5,000/- in default 3 months SI for the offence under section 468 r/w 471 IPC and to undergo 12 months RI and fine of Rs 5,000/- in default 3 months SI for the offence under section 420 IPC. Both sentences to run concurrently. The period of detention already undergone to be set off. On appeal, the conviction and sentence confirmed. Aggrieved by the same, the present revision is filed by the accused/appellant/petitioner.

5. The Learned counsel for the revision petitioner submitted that, the courts below have failed to take note of the fact that the alleged forgery of invoice not been established by the prosecution, the non examination of the person namely Gangadarawar who prepared the disputed bills is fatal to the prosecution. The bills were not sent to scientific examination to establish forgery. The evidence of PW-7 who admits that the market price of UNISTONE used to flexuate. At the relevant point of time the market price was Rs. 60/- per sq.ft. The original of the bill never recovered by the prosecution, therefore without any verification, the trial court as well as the appellate court has come to an erroneous conclusion. The finding of the courts below that the invoice were forgery and thereby the petitioner had cheated CPWD is baseless. The prosecution has not proved the alleged forgery, hence the trial court judgment as confirmed by the appellate court ought

6. The learned counsel for the revision petitioner, after reading through the testimony of PW-7 and PW-10 submitted that the PW-7 who is the marketing manager of Concrete Tiles and Pavers Company had spoken about the price of UNISTONE and Ex D-4 given by him on 2nd March 2006 quoting the price of UNISTONE at the rate of Rs 53/- per sq.ft. The admission of PW-10 that he did not go to Delhi to investigate the case and he did not examine Gandarwar the signatory of Ex P-20 and failure to prosecute the CPWD engineers who have accepted the bill and paid will show that the investigating officer who is also the officer who registered the case on source information had acted with prejudice and contrary to CBI manual to victimise the petitioner and petitioner alone.

7. The case of the prosecution is that, the revision petitioner fabricated the rate of UNISTONE from Rs 43/- per sq.ft with 4 % CST VAT as Rs 53/- per sqft with 12% CST VAT. Thereby the revision petitioner has cheated CPWD as sum of Rs 2,02,985/- To prove the same the prosecution has relied upon the evidence of PW-7 M.C. Mahajan, the Marketing Manager of M/s Concrete Tiles and Pavers, Delhi. Ex P-16 to P-20 are the exhibits relating to the supply of UNISTONE by PW-7 company. Through the prosecution witnesses, the court has come to the conclusion that has arrived at market rate based on the photocopy of the invoices Ex P-16 and P-18 produced by the revision petitioner. Whereas the bills maintained by the supplier which are marked as Ex P -45 to 47 differs from what produced by the revision petitioner to claim his bill. PW-7 in his deposition has categorically stated that though the prevailing price of UNISTONE at the relevant point of time was around Rs 60/- per sq. ft, it was negotiated with the buyer and

settled for Rs 43/-per sq. ft plus tax at the rate of 4 % with C Form. The goods was sold at the rate of Rs 43- per sq. ft to the buyer (V.P.Construction). Ex P-20 is the invoice produced by the contractor V.P.Construction to CPWD for payment, showing the price Rs 53/- per sq. ft. PW-7 has positively deposed that rate found in Ex P-20 is not the actual invoice rate. No doubt, as pointed by the counsel for the revision petitioner the prosecution evidence could not fix the accused for forgery, but the prosecution has proved that the forged document is used as genuine to cheat the CPWD and get payment on inflated price. This court finds that based on Ex P-20 the CPWD had paid a sum of Rs 13,66,773.66 for the execution of 958.11 Sq mts. Of butch work with UNISTONE which is Rs 2,02,985/- in excess due to inflated price. The courts below has held that, the accused being the beneficiary of forged document and he had used it for getting excess payment he is guilty of the crime.

8. For offence under section 468 r/w 471 IPC and 420 IPC the ingredients required is use of forged document as genuine and inducement to deliver any property dishonestly. The prosecution has convincingly proved the required ingredients, hence the courts below has held the accused guilty. In the revision, this court could not find any error in the finding of the court below. Hence the revision petition is dismissed.

9. The learned Counsel for the revision petitioner pleads that the age of the revision petitioner is 72 years and he suffers multiple ailment which requires medical care and he cannot be physically fit to undergo rigorous imprisonment. Hence without altering the finding, the nature of sentence is altered as simple

10. According the Criminal revision is disposed off. Consequently connected Criminal Miscellaneous Petitions are closed.

05.12.2017

speaking/non speaking

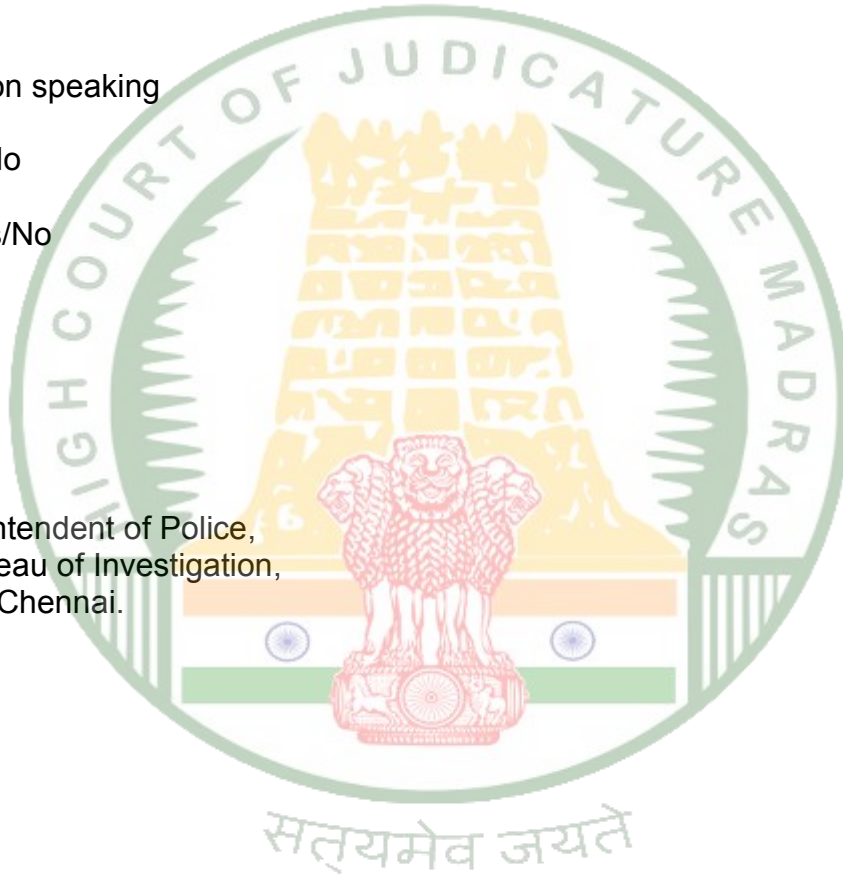
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To

The Superintendent of Police,
Central Bureau of Investigation,
SPE, ACB, Chennai.



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DR.G.JAYACHANDRAN.J.

bsm



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Criminal Revision No: 1047 of 2014
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