Bail Slip

The appellants/accused viz, K.Subramania Rao @ Prakash S/o Kuppaji Rao and Gugan @ N.Krishnan @ R.Krishnan S/o late T.C.Rajavelu are directed to be released, on bail as per order of this Court dated 17/04/2014. and made in Crl.M.P.1/14 Pending disposal of Crl.Rc.No.193/14.

IN THE HIGHCOURT OF JUDICATURE AT MADRAS

Date of Reservation : 30.11.2016

Date of Pronouncement : 01.06.2017

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Criminal Revision Case No.193 of 2014

1. K.Subramania Rao @ Prakash
2. Gugan @ N.Krishnan @ R.Krishnan .... Petitioners/Accused

versus

The Inspector of Police,
SPE/CBI/ACB, Chennai
RC.MA 2001 A 00W0 ... Respondent

Prayer: Criminal revision petition filed under Section 397 read with 401 of Cr.P.C., to call for the records of the case in C.A.No.204 of 2011 before VI Additional Sessions Court at Chennai in C.C.No.4758 of 2003 on the file of the Additional Chief Metropolitan Magistrate, Egmore, Chennai and set aside the order of conviction and direct the acquittal of the petitioners.

For Petitioners : Mr.M.Anandaraj

For Respondent : Mr.K.Srinivasan, S.P.P. for CBI cases

ORDER

The criminal revision has been filed by the petitioners/A1 and A2 against the judgment of conviction passed by the learned VI Additional Sessions Judge, Chennai in C.A.No.204 of 2011 dated 07.02.2014, in which, the appellate

Court, while dismissing the appeal so filed by the present petitioners has upheld the judgment of conviction passed by the learned Additional Chief Metropolitan Magistrate, Egmore, Chennai in C.C.No.4758 of 2003 dated 22.08.2011, in which, the trial Court had convicted the present petitioners for commission of offences under Sections 120(B), 420, 419, 468, 471 read with 468 of I.P.C. and sentenced them to undergo two months R.I. each for the offence under Section 120(B) of I.P.C. and six month R.I. each for the offence under Sections 420, 419, 468, 471 read with 468 of I.P.C. and directed to pay a fine of Rs.2,000/- in default to undergo one month S.I. each for the offence 120(B) of I.P.C. and directed to pay a fine of Rs.12,000/- each for each section in deafult to undergo four month S.I. each for the each offence under Sections 420, 419, 468, 471 read with 478 of I.P.C.

2. The case of the prosecution is that one E.Gopinath, K.Subramania Rao, Gugan, R.Elumalai were entered into a criminal conspiracy during the year 1996 to cheat the Customs Department regarding Duty Drawback admissible to M/s.Sara Leathers, Chennai and R.Gugan insitaged Gopinath to open a current account with IOB, Choolai Branch and the said Gopinath opened A/c No.1482 in the name of M/s.Sara Leathers, No.27, De Mellows Road, Perambur Barracks, Chennai - 12 and R.Gugan prepared a letter by using the letter head of M/s.Sara Leathers (original) addressed to AC(Drawback) Seaports Customs Department, as if, the said letter was given by the original exporter, M/s.Sara Leathers, which was entrusted to K.Subramania Rao by M/s.Sara Leathers through M/s.Sky Speed Freight Forwarders (P) Ltd., forged the signature as Manager of the company and induced the Customs Department to issue A/c payee cheques to IOB, Choolai. R.Gugan got two rubber seals made in the name of State Bank of Mysore, Thiruvanmiyur and IOB, Choolai affixed the same on the letter intimating the change of bank as if the said letter was given by the original exporter M/s.Sara Leathers. K.Subramania Rao submitted the same to Customs Department. Subramania Rao and R.Gugan induced the Customs department to issue cheques to credit the drawback amount of Rs.1,66,014/- by submitting fabricated letter and obtained various cheques for that amount. R.Gugan deposited the same into the account of IOB, Choolai. Gopanath who is shown as Proprietor of M/s.Sara Leathers at No.27, De Mellows Road, Perambur Barracks. Gopinath given blank cheques to R.Gugan, who in turn prepared the cheques in the names of M.Prakash, N.Krishnan, R.Krishnan, M/s.Chitra Leathers. K.Subramania Rao impersonated as M.Prakash and encashed the cheques. R.Gugan impersonated in the names of R.Krishnan, N.Krishnan and encashed the cheques in their names and also R.Gugan impersonated as the Proprietor of M/s.Chitra Leathers, a non-existing firm, opened a current account No.195 with TNSC Bank, Periamet Branch, Chennai and encashed the cheques in the name of M/s.Chitra Leathers. R.Elumalai fraudulently and dishonestly received a cheque for

Rs.50,000/- in his name, thus the above said four persons have beneficiaries of these amounts and cheated the customs department to the tune of Rs.12,66,014/- and caused wrongful loss to the customs department and thereby committed an offence punishable under Sections 120(B) read with 419, 420, 409, 467, 468 and 471 of I.P.C.

3. After completion of investigation, the Inspector of Police, SPE, CBI, ACB, Chennai filed a charge sheet against the petitioners and other accused before the learned Additional Chief Metropolitan Magistrate, Chennai, where the case was taken on file in C.C.No.4758 of 2003 and the case against Gopinath was separated in C.C.No.8510 of 2007 and as prima facie was found against the accused persons, they were charge sheet for the commission of offence under Sections 120(B), 420, 409, 419, 468, 471 read with 468 of I.P.C.

4. In order to prove the case of prosecution, on the side of prosecution, as many as 23 witnesses, P.W.1 to 23 were examined and Exs.P1 to 85 were marked. However, on the side of the accused, even though no oral evidence was let in, Exs.D1 to 4 were marked. The trial Court, after completion of trial, on the basis of materials produced on records by the prosecution, found the accused for the offence and sentenced them as stated above.

5. Aggrieved by the said judgment of conviction passed against them by the learned trial Judge, the petitioners/A1 and A2 filed an appeal in C.A.No.204 of 2011 before the learned VI Additional Sessions Judge, Chennai, where the same was dismissed vide its judgment dated 07.02.2014 and confirmed the judgment of the trial Court. Against the said judgment, the present revision has been filed.

6. The learned counsel for the petitioners would submit that there is no specific complaint from M/s.Sara Leathers, Pammal, but, there was an enquiry regarding malpractices in claiming the duty drawback claim in general and P.W.2 has also accepted the same and the investigation has not been conducted properly and P.W.23 has accepted that he has failed to examine the Registrar of the company and failed to seize the blank letter heads of M/s.Sara Leathers either from the customs or from the bank official and he has not seized the authorization letter, which was given to change the bank account and issue the cheques in favour of IOB, Choolai branch and he has not accepted that he has not recorded any statement from Assistant Commissioner of Customs in this regard. The trial Court relied on the confession statement of the petitioners, which was recorded by P.W.2 and kept in their custody until the charge was filed and the trial Court had arrived at a conclusion that there

are some irregularity committed by P.W.2, while recording the confession statement from the petitioners, which shows that confession were not recorded voluntarily and the same were inadmissible evidence in the eye of law. The Judgments of the learned trial Judge and upheld by the learned appellate Judge were perverse and not sustainable in law. According to him, the findings of guilt rendered by the learned trial Judge was totally erroneous findings as the prosecution had failed to prove its case beyond reasonable doubt against the petitioners/accused. The learned appellate Judge had also failed to correctly appreciate the evidence on records, which had resulted in great travesty of justice as far as the present petitioners were concerned.

7. The learned Special Public Prosecutor appearing for the respondent would submit that neither the judgment passed by the learned trial Judge was perverse nor the findings of conviction rendered against the petitioners/accused could be said to be not sustainable in law. He would further submit that the prosecution had successfully proved its case against the accused beyond reasonable doubt and on the basis of materials produced on record by the prosecution,the guilt of the accused stood established. He would further submit that when both the Courts below had found the accused guilty of charges levelled against them, then the said findings did not warrant any interference by this Court in exercise of its revisional jurisdiction as there was no perversity in the findings so recorded by both the Courts below. Accordingly, he submitted that there was no merit in the revision petition and the same is liable to be dismissed.

8. Heard the learned counsel for the petitioners and the learned Special Public Prosecutor appearing for the respondent and perused the materials available on records as well as the judgment passed by both the Courts below.

9. The brief facts of the case is that A1 Subramania Rao was employed by CHA (Malappuram Agencies and Sky Freight Forwarders) and he misused the letter head of M/s.Sara Leathers, No.86, Bajanai Koil Street, Pammal, Chennai 75 and in collusion with accused Gopinath, A2 T.Gugan and A3 R.Elumalai opened the current account No.1482 with Indian Overseal Bank, Choolai in the name of M/s.Sara Leathers, No.27, Demallows Road, Perambur Barrack Road, Chennai as Proprietor. Gopinath, A1 and A2 got the duty draw back cheques drawn on M/s.Sara Leathers and deposited in Indian Overseas Bank, Choolai and encashed it and later A1 to A3 and Gopinath withdrawn the amount by means of cheques and diverted the ill-gotten amount to various lines and deposited in fictitious names etc,. and thereby all the accused cheated the customs department and M/s.Sara Leathers, Pammal.

10. A perusal of the judgment of the appellate Court demonstrates that on the basis of material produced on record by the prosecution, it was concluded by the learned trial Judge that the fictitious account opened in the name of M/s.Sara Leathers was opened by the accused persons, which was proved through P.W.11 and the amount credited in the account, the pay-in-slip that were used to credit various amounts in the said account, various cheques were issued to various persons and the issuance of the above cheques were shows in day-by-day entries and as per the evidence of P.W.16, the issuance of cheques to P.W.16 by Manoharan in the name of M/s.Sara Leathers, which was proved the involvement of the accused persons along with the absconding accused. Hence, the trial Court, after analysing all the evidence has come to the correct conclusion and convicted the accused and accordingly, there is nothing to interfere in the judgment. The appellate Court, while upholding the judgment of the conviction held that the fact that all the prosecution witnesses have supported the prosecution case and the investigation officer has proved on records of the links in the entire case.

11. In the present case, it is undisputed fact that P.W.1 was working as Preventive Officer in the Customs Department and he conducted a search on 20.12.1999 in the residence of Guhan, A2/second petitioner herein. P.W.3 was also working as Preventive Officer in the Customs Department and he also had conducted search on 20.12.1999 at the residence of Subramania Rao, the first petitioner herein. From the evidence of prosecution witnesses, prosecution has proved its case beyond reasonable doubt. In this regard, it is relevant to point out the following lines:

> "P.W.1 in his evidence has stated that on the basis of search warrant Ex.P2, P.W.2, Shanmugam, the Preventive Officer conducted search on 20.12.1999 in the residence of A2 Gugan and recovered 9 documents under Mahazer Ex.P3. P.W.2, Shanmugam, Preventive Officer has stated that he recorded Ex.P13 statement dated 27.12.1999 of accused Subramania rao, wherein, he admitted that he along with the accused Gugan and Elumalai entered into criminal conspiracy and in pursuance of the same, received duty drawback in respect of M/s.Sara Leathers by sumitting forged documents. He recorded the confession of Subramania Rao, where, he was admitted that he received Rs.4,50,000/- by fraudulent manner. P.W.3 Boothalingam, who was working in customs department was conducted search and recovered Mahazar Ex.49 and 50. P.W.11.Thiru.Rajachandiramohan, who was the

> Branch Manager, Indian Overseas Branch, Choolai Branch. P.W.16 Thiru.Senguttuvan gave loan of Rs.15,000/- to one Manoharn, for which Manoharan has given Ex.P 65 cheque dated 18.04.1996 for a sum of Rs.18,5000/- in the name of Sara Leathers and he encashed the same. P.W.13 Thiru.Veerabhadra Reddy, who was an appraiser of customs, Chennai speaks about the procedure for sanction of drawback . P.W.22, Thiru. Bhosaley was working as Assistant Government Examiner in the Office of Government Questioned documents at Hyderabad and he speaks about the documents were received from S.P. Of Police, SPE. CBI, ACB, Chennai for examination and he examined the documents in his office and came to the conclusion and forwarded his opinion to CBI, ACB, Chennai. Thereafter, P.W.23, Thiru.Ponnalagan, completed the investigation and filed the charge sheet"

12. The trial Court has elaborately discussed the above oral and documentary evidence and come to the correct conclusion and convicted the accused persons and hence, there is no reason to interfere with the order of the learned trial Judge.

13. Even, the learned Appellate Judge has correctly appreciated the evidence produced on record both ocular as well as documentary by the prosecution as well as the findings rendered by the learned trial Judge and only thereafter, the learned Appellate Judge has upheld the findings of conviction so rendered against the accused by the trial Court. In my considered view, material on record clearly proves that the petitioners were guilty of forgery because they had not only forged the documents, but they had also used the said documents for the purpose of cheating the bank as well as the customs department and they had also produced the same as genuine knowingfully well when they used it as a genuine document that the same in fact was a forged document.

14. It is well settled law that the jurisdiction of High Court in revision is severely restricted and it cannot embark upon re-appreciation of evidence. The High Court in revision cannot absence or error on a point of law, re-appreciate evidence and reverse a finding of law. It has been further held by the Hon'ble Supreme Court in that object of the revisional jurisdiction was to confer power upon superior criminal Courts a kind of paternal or supervisory jurisdiction in order to correct miscarriage of justice arising from misconception of law, irregularity of procedure, neglect of proper precaution or apparent harshness of treatment which has resulted on the one hand, or on the other hand in some

undeserved hardship to individuals.

15. It is reiterated by the Hon'ble Supreme Court in the case of Shlok Bhardwaj V. Runika Bhardwaj and others reported in (2015) 2 Supreme Court Cases 721 that the scope of revisional jurisdiction of the High Court does not extend to reappreciation of evidence. It has been further reiterated by the Hon'ble Supreme Court in Sanjaysinh Ramrao Chavan V. Dattatray Gulabrao Phalke and others reported in (2015) 3 Supreme Court Cases 123 and the relevant portion of para 14 is extracted herein:

> "14.In the case before us, the learned Magistrate went through the entire records of the case, not limiting to the report filed by the polie and has passed a reasoned order holding that it is not a fit case to take cognizance for the purpose of issuing process to the appellant. Unless the order passed by the Magistrate is perverse or the view taken by the court is wholly unreasonable or there is non-consideration of any relevant material or there is palpable misreading of records, the revisional court is not justified in setting aside the order, merely because another view is possible. The revisional court is not meant to act as an appellate court. The whole purpose of the revisional jurisdiction is to preserve the power in the court to do justice in accordance with the principles of criminal jurisprudence. Revisional power of the court under Sections 397 to 401 of Cr.P.C. is not to be equated with that of an appeal. Unless the finding of the court, whose decision is sought to be revised, is shown to be perverse or untenable in law or is grossly erroneous or glaringly unreasonable or where the decision is based on no material or where the material facts are wholly ignored or where the judicial discretion is exercised arbitrarily or capriciously, the courts may not interfere with decision in exercise of their revisional jurisdiction.

16. Therefore, in view of what has been discussed above, I do not find any merit in the present revision petition nor it can be said the judgment of conviction passed by the trial Court and upheld by appellate Court is not sustainable either on facts or law.

17. As already held above, there is no perversity in the judgments passed by both the Courts below. These judgments have been passed by appreciating all the material on record and

the judgments are neither cryptic not in can be said that the conclusion arrived at are not borne out from the material placed on record by the prosecution. Thus, the revision has no merits and the same is dismissed. The trial Court is directed to take steps to secure the petitioners/accused and confine them into jail to undergo the remaining period of sentence.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

Arul

To

1. The Inspector of Police,
   SPE/CBI/ACB, Chennai.

2. The VI Additional Sessions Judge,
   Chennai

3. The Additional Chief Metropolitan Magistrate,
   Egmore, Chennai.

4. The Chief Metropolitan
   Magistrate, Egmore,
   Chennai.

5. The Superintendent
   Central Prison, Puzhal
   Chennai.

6. The Special Public Prosecutor
   for CBI Cases,
   High Court,
   Madras.

Criminal Revision Case No.193 of 2014

SSI(CO)
CS/12/06/17