

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2017

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THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

Crl. Revision Case No.656 of 2017 &
Crl.M.P.Nos.6058 and 6059 of 2017

A.Jeevakarunyam

... Petitioner

//vs//

State Rep. by
Inspector of Police,
Central Crime Branch,
Salem City.

... Respondent

Prayer: Criminal Revision Petition filed under Section 397 read with 401 of the Code of Criminal Procedure, to call for the records pertaining to the order dated 01.02.2017 in C.M.P.No.4948/2015 in C.C.No.506 of 2015 on the file of the Judicial Magistrate No.3, Salem and set-aside the same and consequently acquit the petitioner from all charges.

For Petitioner : Mr.R.Neethi Perumal

For Respondent : Mr.R.Ravichandran
(Gov. Advocate (Crl.side))

* * * *

ORDER

Challenging the order dated 01.02.2017 in C.M.P.No.4948/2015 in C.C.No.506 of 2015 on the file of the Judicial Magistrate No.3, Salem, arraying the petitioner as an additional accused, the present revision has been filed.

2. The case of the prosecution is that A-1 in this case participated in a public auction conducted by Salem Tahsildar Office for the sale of 16.125 tonnes of old clothes, which were collected for distributing to the persons affected by Tsunami. A-1 emerged as a successful bidder and he paid Rs.80,000/- as advance and removed the entire material weighing 16.125 tones, but he failed to pay the balance amount, alleging that the failure of A-1 to pay the remaining amount of Rs.1,31,238/-, would amount to cheating, a complaint was filed against A-1. Based on the complaint, a case has been registered for an offence under Section 420 of I.P.C. against A-1. Subsequently, a final report was filed and the same was taken on file in C.C.No.506 of 2005 by the learned Judicial Magistrate, Salem. During trial, three witnesses were examined, out of whom, P.W.1 is the Sub Tahsildar, P.W.2 is the Zonal Deputy Tahsildar and P.W.3 is the Deputy Tahsildar, Salem. After the examination of prosecution witnesses was closed, a memo was filed under Section 319 of Cr.P.C. on the ground that during trial from the evidence of prosecution witnesses, it came to light that only the revision petitioner, who is in-charge of the clothes, had allowed A-1 to take away the auctioned materials without

collecting the balance amount, and hence, he is also liable to be prosecuted. The Court below has also allowed the application. Challenging the said order, the present revision has been filed.

3. Heard Mr.R.Neethi Perumal, learned counsel for the petitioner and Mr.R.Ravichandran, learned Government Advocate (Criminal Side), for the respondent.

4. The learned counsel appearing for the petitioner would submit that the evidences of P.W.1 to P.W.3 are not at all sufficient to come to a conclusion that the petitioner had a role in the commission of the offence. Even from their evidence it could be seen that the petitioner just accompanied A-1 when the goods were weighed in a weigh bridge and he received Rs.80,000/- from A-1 and remitted the same in the office. Apart from that, he had no role to play. P.W.3, in his evidence, has stated that P.W.2 only A1 permitted to remove the materials. In the above circumstances, there is not even any iota of evidence was brought on record to make out a *prima facie* case that the petitioner has committed the offence. The Court below, without considering the facts in a proper perspective, allowed the application.

5. Per contra, the learned Public Prosecutor appearing for the respondent has submitted that from the evidence of P.W.1, it could be seen that it is only this petitioner who accompanied A1 to weigh the materials and

permitted A-1 to remove the clothes. In the above circumstances, the Court below was right in coming to the conclusion that the petitioner had a role in the crime.

6. I have considered the rival submission made on either side and perused the materials available on record.

7. The petition under Section 319 Cr.P.C. has been filed on the ground that A1, who was a successful bidder in the public auction and paid only a sum of Rs.80,000/- out of Rs.2,11,238/- to the defacto complainant and without paying the remaining amount, he removed the goods and thereby he committed an offence punishable under Section 458 IPC. Now, the allegation against the petitioner is that he had allowed A-1 to take away all the clothes without receiving the balance amount of Rs.1,32,238/-. During trial P.W.1, the Special Tahsildar has deposed that the petitioner only accompanied A-1 to weigh bridge and thereafter, A1 paid a sum of Rs.80,000/- to the petitioner who in turn remitted the same to the Deputy Tahsildar on the very same day. Since A1 is well known to them and he used to participate in public auctions, regularly believing A-1, they have permitted him to take away the goods. Since A-1 did not pay the amount both P.W.1 and the petitioner, called upon A-1 and asked him to pay the balance amount. According to P.W.2, without his permission, some other person employed in the Tahsildar Office permitted A-1 to remove the clothes. The Deputy Tahsildar (P.W.3) has categorically stated

in his cross-examination that it was only P.W.2, Zonal and Deputy Tahsildar permitted A1 to remove the auctioned goods.

8. The petitioner was working as a Clerk in the Revenue Department. Now, the allegation against the petitioner is that he only permitted the successful bidder, A1 to remove the auctioned materials but his name did not find in the complaint. Based on the evidence of P.W.1 to P.W.3 during the trial, he was sought to be added as an accused. But on perusal of the evidence, none of the witnesses spoke about the involvement of the petitioner in the offence. They have simply stated that he had accompanied A1, to weigh the auctioned materials. This evidence is not sufficient even to *prima facie* come to the conclusion that the petitioner had a guilty intention. To attract the offence of cheating *mens rea* on the part of the person accused of a crime must be established. In the instant case, from a perusal of the evidence of P.W.1 to P.W.3, this Court is of the view that from the evidences available during trial does not show anything incriminating against the petitioner and that he had committed any offence and based on the above evidence, the petitioner cannot be included as an accused.

9. The Court below without considering the evidence in a proper perspective has allowed the application and added the petitioner as additional accused which requires interference by this Court.

10. In the result, this Criminal Revision Case is allowed and the order of the learned Judicial Magistrate No.III, Salem in C.C.No.506 of 2015, dated 01.02.2017 is hereby set-aside. The learned Magistrate shall proceed with the case as against the sole accused in accordance with law. Consequently, connected miscellaneous petitions are closed.

14.06.2017

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Note: Issue order copy on 22.08.2017

Index : Yes/no.

Internet: Yes/no.

Speaking order/non speaking order

To

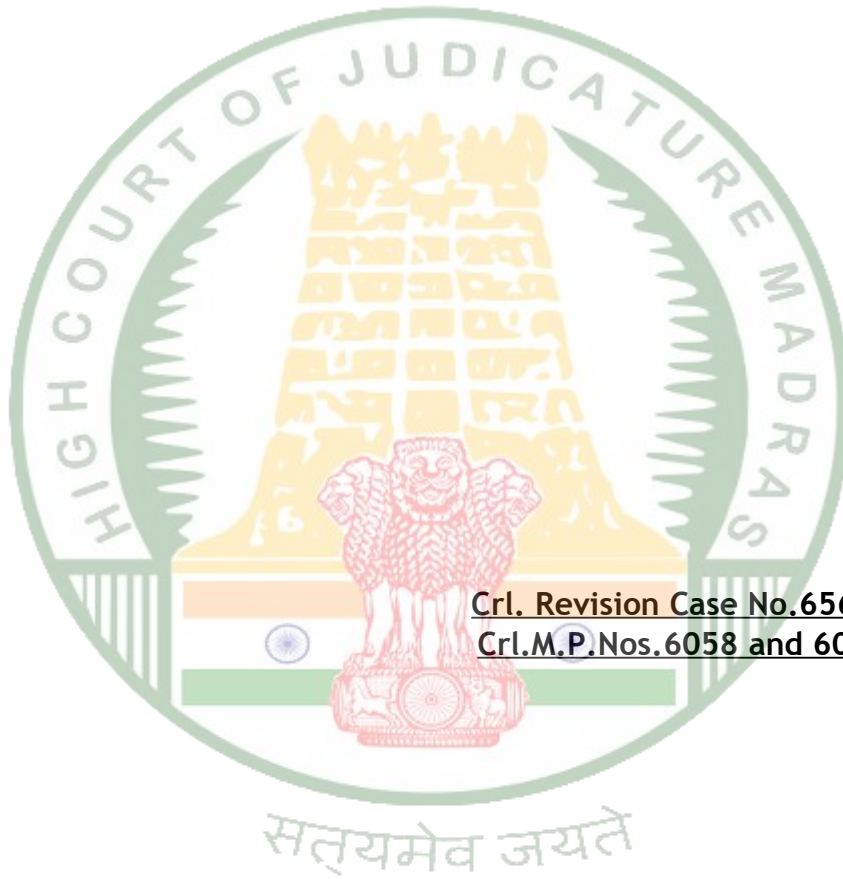
1. The Inspector of Police,
Central Crime Branch,
Salem City.

2. The Public Prosecutor,
High Court, Madras.

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V.BHARATHIDASAN, J.

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