

IN THE HIGH COURT OF JUDICATURE AT MADRAS**DATED : 11.12.2017****CORAM****THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN****Crl.A.No.37 of 2011**

State represented by:
The Inspector of Police,
Vigilance & Anti Corruption,
Vellore.

... Appellant/Complainant

Vs.

V.S.Sampathgiri

... Respondent/Accused

Prayer: Criminal Application filed under Section 378 of Criminal Procedure Code, to set aside the judgment of acquittal passed in Special Case No.1/2000, dated 06.09.2010 by the learned Chief Judicial Magistrate Court cum Special Court, Tiruvannamalai and convict the respondent/accused as charged.

For Appellant : Mr.P.Govindarajan
Additional Public Prosecutor.

For Respondent : Mr.V.Parthiban

J U D G M E N T

This appeal is filed by the State, aggrieved by the order of acquittal passed by the trial Court in Special Case No.1/2000 on the

file of learned Chief Judicial Magistrate Court cum Special Court, Tiruvannamalai.

2. The case of the prosecution in brief is that,

Based on credible information, the vigilance and Anti Corruption, Vellore District has registered First Information Report Ex.P2 on 16.09.1995, on the premise that the accused Sampathgiri, had cheated R.Seethapathy, son of Ramachandran promising him to get appointment for his daughter Selvi.S.Kalpana in the Social Welfare Department and on such false promise, he has received Rs.10,000/- and cheated him by given a fake appointment order Ex.P.2. When Seethapathy went to Social Welfare Office, Tiruvannamalai to verify about appointment order, he came to know that its a fake one. Since the respondent did not give back the money, the complainant has given a complaint. Meanwhile, the police *suo motu* registered a complaint and enquired the said Seethapathy and found that fake appointment order was created by the respondent herein for Kalpana and one Elangovan. After completion of investigation, final report has been filed against the respondent and the trial Court has framed charge against the appellant for offence under Sections 420, 468, 471 read with 477 (a) IPC and 13(2) read with 13(1) (d) Prevention of

Corruption Act, 1988. To prove the charges against the respondent, the prosecution has examined 30 witnesses and marked 20 exhibits. The trial Court after appreciating the prosecution witnesses and documents has acquitted the accused. Since the prosecution failed to prove guilty of the accused beyond reasonable doubt.

3. The learned Additional Public Prosecutor appearing for the appellant/State submitted that the evidence of P.W.2, regarding the fake appointment order Ex.P2 given by the accused and handing over the same to the investigation officer is the proof to show that fake appointment order has been manufactured by the respondent herein and given to P.W.2 so as to make him believe that for the money received by him, Social Welfare Department has given appointment to her daughter Kalpana along with one Elangovan. The prosecution has examined the said Elangovan as P.W.11, who has also in his deposition admitted that he knew the accused through his uncle and the accused assured him to get job but however he has not paid any money. Though during the investigation, he has said that the accused has demanded Rs.50,000/-, and he has paid the money, while examining on oath, during trial he has turned hostile. However, the fact Elangovan had met the respondent is proved and the fake appointment

order which reflects the name of Elangovan would go to show that the respondent is a known person to PW.2 as well as P.W.11. The date and initial found in the fake appointment order is in the hand writing of accused as per the opinion given by the Hand writing expert. Ex.13 is the opinion given by the expert PW.16. In the light of the above facts, it is the respondent herein who is responsible for the fabricated document and used it to cheat P.W.2 and therefore, the trial Court ought not to have acquitted the accused.

4. Per contra, the learned counsel appearing for the respondent submitted that even by reading of the deposition of PW.2, it is very clear that it was P.W.2 who has gone to the house of the respondent and sought for his assistance to get employment to his daughter. The deposition does not disclose the date on which he met the respondent and the date on which he paid the money. Except P.W.2, there is no material to show that the respondent herein had received any money from the prosecution witness Seethapathy or Ex.P2 had been given by the respondent to P.W.2. It is also contended by the learned counsel for the respondent that the alleged opinion of the Hand writing expert, the alleged date and initial found is Ex.P2 is that of the respondent, cannot be relied upon, since during the cross

examination of prosecution witness, it has been elicited that the accused was taken to the office of DVAC and asked to affix his hand writing in the presence of witness and what is now opined by the hand writing expert, are those documents.

5. Based on the expert opinion, the accused cannot be held guilty for the grave offence of cheating and misconduct. A perusal of the exhibits indicates that somewhere in the year 1993, the forged document marked as Ex.P.2 has been created and from the evidence of PW.2 we see that the forged appointment order was alleged to have been given by the respondent. The date found in the forged document is 22.10.1993 P.W.2., in his deposition has said that when he enquired about her daughter's appointment he came to know that it is a fake order. But he has neither approached the police nor informed the Social Welfare Department about this fake appointment order. It is only after two years, on some reliable information, the appellant has registered a case on 16.09.1995. The evidence of P.W.2 and P.W.11 read together may indicate that the respondent herein had some role in fabricating Ex.P2, but it is not sufficient and adequate to hold the respondent guilty for the charges framed against him. Further more the charge as framed itself is very clumsy and no specific charge for

Dr.G.JAYACHANDRAN,J.

AT

each of the offence framed as contemplated in Section 211 of the Cr.P.C.,

6. Therefore, when there are two versions possible, while appreciating the evidence, the trial Court has taken one version in favour of the accused person and held him not guilty. Though, the contra version may be possible, the right conferred on the accused person need not be disturbed at appellate level.

7. Hence, the criminal appeal stands dismissed.

11.12.2017

AT

Index: Yes/No

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Crl.A.No.37 of 2011