

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2017

CORAM :

THE HONOURABLE MR. JUSTICE S.BASKARAN

Crl.R.C.Nos.1205 of 2015 and (CRL MP.1566/2016)

and 263 of 2016 (CRL MP.5520/2016)

Nazeem ... Petitioner in Crl.R.C.1205/2015

Anirudh Adhikary ... Petitioner in Crl.R.C.263/2016

Vs.

The State rep. By
Inspector of Police
CBI:ACB:Chennai

R.C.No11/A0/96(Crl.RC.263/16)

R.C.No.11(A)/96(Crl.RC.1205/15)

... Respondent/Complainant

Criminal Revision cases filed under Section 397 and 401 Cr.P.C., seeking to set aside the judgment passed in C.A.Nos.203 of 2012 and 206 of 2014 dated 31.10.2014 on the file of XVII Additional Judge, City Civil Court, Chennai against C.C.No.6014/1999 dated 04.10.2012 on the file of Additional Chief Metropolitan Magistrate Court, Egmore, Chennai.

For Appellant

in Crl.R.C.1205/2015 : Mr.C.V.Kumar

For Appellant

in Crl.R.C.263 of 2016 : Mr.T.Muruganantham

For Respondent

: Mr.K.Srinivasan,
Special Public Prosecutor

COMMON ORDER

Challenge in the above Criminal Revision cases is to the dismissal order passed by XVII Additional Judge, City Civil Court, and on the file of vii additional Judge city civil court chennai respectively in the appeals preferred by the petitioners herein, against the judgment of the trial court, wherein they were found guilty and sentenced them as under:-

Conviction	Sentence
(1) 120(B) IPC	(1) 1 year R.I., and fine Rs.50,000/- i/d. 3 months S.I.
(2) 420 IPC	(ii) 4 years RI and fine Rs.2,00,000/- i/d. 6 months S.I.
(3) 468 IPC	(iii) 4 years R.I., and fine Rs.2,00,000/- i/d. 6 months S.I.
(4) 471 r/w.465 IPC	(iv) 1 year R.I., and fine Rs.1,00,000/- i/d. 6 months S.I.

2. The concurrent convictions and sentences passed in Calendar Case No.6014/1999 and in C.A.Nos.203/2012 and 206/2014 by the Additional Chief Metropolitan Magistrate, Egmore, Chennai and XVII Additional Judge, City Civil Court, Chennai, respectively are being challenged in the present Criminal Revision Cases.

3. The epitome of the case of the prosecution is that both the accused have entered into criminal conspiracy during May 1995, who are the proprietor and Financial Adviser of M/s.RAZ Leathers at No.74, Choolai High Road, Chennai-112 respectively, to cheat the Canara Bank, Thousand Lights Branch. Both of them on 17.05.1995, applied for open cash credit (OCC) to the tune of Rs.7.5 lakhs from the above bank and Nazeen (petitioner in CrI.R.C.1205/2015) furnished wrong information to the above bank that he does not have any outstanding liability with any financial concern or bank, by hiding the fact that he and his company owes Rs.11 lakhs to SBI, Purasaiwalkam, Rs.11 lakhs to Industrial Venture Capital Ltd., Chennai, Rs.6 lakhs to M/s.Jenson & Nicholson Financial Services, Rs.10 lakhs in Central Bank of India, Aminjikarai Branch, Rs.5 lakhs to M/s.SRF Finance Ltd., and availed OCC limit of Rs.7 lakhs in the name of M/s.RAZ Leathers from Canara Bank, Thousand Lights Branch. In pursuance of the said conspiracy, during May 1995, Nazeem acquired a blank letter heads of M/s.Mohan Meaken Ltd., Delhi from the Area Manager of M/s.Mohan Meakin Ltd., at Chennai, and fabricated a "Leather supply order" for Rs.31 lakhs in that letter head showing date 24.04.1995 in which Aniruthy Adhikary forged the signature of a non-existing officer of M/s.Mohan Meakin Ltd., as Manager, Leather Division, and both of them

produced the same as original document to the Bank and availed adhoc OCC Limit of Rs.2.5 lakhs from Canara Bank, Thousand Lights Branch and subsequently, Nazeem with the help of Aniruth Adhikary destroyed the above said fabricated and forged document after the sanction of the said loan and thus the petitioner in CrI.R.C..263/2016, committed offences punishable under Section 120-B r/w.420, 468, 471 and 201 IPC.

4. The trial court took cognizance of the complaint filed by the respondent for the offences under Section 120-B r/w.420, 268, 471 and 201 IPC and on the side of complainant, P.Ws.1 to 11 were examined and Exhibits 1 to 35 were marked. On the side of defence, neither oral nor documentary evidence was produced.

5. After full trial, the trial court has convicted the petitioners herein and sentenced them to undergo sentence and convicted as stated supra. As against the said conviction and sentence, the petitioners herein/accused 1 and 2 preferred appeal before the XVII Additional Judge, City Civil Court, Chennai, in Criminal Appeal No.203 of 2012 and 206/2014 respectively. The First Appellate Court, on a finding that the conspiracy hatched by the accused to cheat the bank was established by the prosecution, the offence under Section 468 was also established against the accused as the element of making false document dishonestly and fraudulently with an intention of causing belief that it was made or executed or by the authority of a person who did not make or execute it and with a knowledge that it was not so made or executed. Further it was pointed out by the First appellate court that the act of conspiracy is established by the facts and circumstances of the case and all the offences against the accused are proved as concluded by the trial court. It is also observed that the offences are against the bank run by the Government of India. Thus the finding of the trial court was confirmed by the First Appellate Court and aggrieved over the same, the accused has come forward with these appeals.

6. Thus before this court, the learned counsels appearing for the petitioners/accused 1 and 2 contended that even though the petitioners herein mentioned the names of Bank Officials as co-conspirators of the offence, they were not arrayed as an accused and also the lower courts failed to consider the fact that one Hussain of Mohan Meakin Limited was not examined and the same is fatal to the prosecution. The learned counsels further contended that the ingredients of fraud and dishonest intention are not available from the records and evidences.

7. Even though several grounds have been raised by the learned counsels for the revision petitioners, challenging the finding of the lower court, as against the conviction and sentence passed by the trial court, which was confirmed by the

First Appellate Court, today, at the time of arguments, learned counsel for the petitioners submits that the petitioners plead only mercy and not substantially questioning the finding of the trial court in other aspects and in the said circumstances, the learned counsels for the revision petitioners prayed that some leniency may be shown in awarding sentence.

8. In view of the said submission of the learned counsel appearing for the revision petitioners, there is no need to consider the various grounds raised by the revision petitioners, challenging the finding of the trial court. On a perusal of the records, it is clear that the trial court has considered oral and documentary evidence placed before it by the prosecution and arrived at the conclusion that the accused are guilty and the said finding is just and proper. No discrepancy is found in the conclusion arrived at by the trial court vis-a-vis the judgment of the First Appellate Court. In such circumstances, while considering the plea of the revision petitioners that they are not challenging the finding of the courts below and only pleading mercy, this court is inclined to consider the same. In such circumstances, taking into account the attendant circumstances of the revision petitioners/accused and also considering the fact that the petitioners have undergone major portion of the punishment imposed against them by the trial court, this court while confirming the conviction is inclined to modify the sentence imposed against the revision petitioners/accused and to that extent this appeal is to be entertained and is liable to be allowed in part. In such circumstances, the finding of the trial court holding the accused guilty and convicting them is confirmed.

9. As per the submissions made before this court, it is seen that the revision petitioners have already undergone 3 years 9 months and 11 days incarceration. In the light of the above said discussion, now turning to the quantum of punishment, going by the attendant circumstances particularly that the petitioners have undergone major part of the punishment and there is no other bread winner for their family and they are having no source of income, it will be appropriate to modify the sentence and fine amount as under:-

(1) The conviction imposed on the petitioners/accused 1 and 2 are confirmed.

(2) The sentence of imprisonment on the petitioners is reduced to already undergone.

(3) As far as fine amount imposed by the trial court, ie., Rs.5 lakhs and 50 thousand against each of the revision petitioners concerned, the same is modified as Rs.2,50,000/- each, in default, the petitioners are ordered to undergo 6

months S.I., The petitioners are directed to pay the fine amount less the amount already deposited.

10. In the result, Criminal Revision Cases 1205 of 2015 and 263 of 2016 are partly allowed with the above observation. Connected Miscellaneous Petitions are closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

nvsri

To

- 1.The xvii additional judge,
City Civil, Court, Chennai.
- 2.Additional Chief Metro Politain Magistrate,
Egmore, Chennai.
- 3.The vii Additional Judge,
City Civil Court, Chennai-104.

+1cc to Mr.T.Muruganathan, Advocate SR.No.2453.
+1cc to Mr.CR.Kumar Advocate, SR.No.2456.

LRS (CO)
GN(30/01/2017)

Cr1.R.C.Nos.1205 of 2015
and 263 of 2016

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