BAIL SLIP

The Appellant herein namely M.C.Kalaithangam S/o.M.Chinappan, accused in CC.No.7225/04 on the file of the XI Metropolitan Magistrate, Saidapet Chennai, was directed to be released on bail, as per order of this Court dated 10.09.2015 made in Crl.MP.No.1/15 in CRl.RC.942/15

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 08.06.2017

Judgment Pronounced on : 13.06.2017

CORAM

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

Crl.R.C.No.942 of 2015

M.C.Kalaithangam

... Petitioner/Accused

vs

State, rep. by
The Inspector of Police,
Central Crime Branch,
Egmore, Chennai.

...Respondent/Complainant

Criminal Revision Case filed under section 397 r/w 401 of the Code of Criminal Procedure, to call for the records pertaining to judgment dated 26.08.2015 passed in C.A.No.181 of 2013 by the XV Additional Sessions Judge, Chennai, confirming the Judgment dated 19.08.2013 in C.C.No.7225 of 2004 passed by the XI Metropolitan Magistrate, Saidapet, Chennai, to set aside the same.

For Petitioner : Mr.V.Gopinath,
Senior Counsel for
Mr.S.Suresh

For Respondent : Mr.R.Ravichandran
Government Advocate(Crl. Side)

.....

O R D E R

This criminal revision case has been filed against the order of conviction. The petitioner is the sole accused in C.C.No.7225 of 2004 on the file of the learned XI Metropolitan Magistrate, Saidapet, Chennai. He stood charged for an offence under Sections 420, 465, 467, 468, 471 r/w 465 of IPC. The trial

Court, after trial, convicted the petitioner/accused under Section 420 IPC and sentencing him to undergo three years rigorous imprisonment and to pay a fine of Rs.5000/- in default to undergo simple imprisonment for six months and convicted him under Section 467 IPC and sentencing him to undergo rigorous imprisonment for two months and to pay a fine of Rs.3000/- in default to undergo simple imprisonment for six months and convicted him under Section 468 IPC and sentencing him to undergo rigorous imprisonment for three years and to pay a fine of Rs.3000/- in default to undergo simple imprisonment for six months and convicted him under Section 471 r/w 465 IPC and sentencing him to undergo rigorous imprisonment for two years. Challenging the above said conviction and sentence, the petitioner/accused has filed a Criminal Appeal in C.A.No.181 of 2013 on the file of the learned XV Additional Sessions Judge, City Civil Court, Chennai. The lower appellate Court, by its judgment dated 26.08.2015, dismissed the appeal, confirming the conviction and sentence passed by the Trial Court. Challenging the above conviction and sentence, the petitioner preferred this present criminal revision case.

2. The case of the prosecution, in brief, is as follows:-

(i) P.W.1/the defacto complainant is the owner of the property in Door No.57, Ragavan Colony, Muthuvel Naicker Street, Vadapalani, Chennai-24, to an extent of 3940 sq.ft. The above said property has been leased out for various tenants and the defacto complainant has appointed the petitioner/ accused as his power of attorney on 03.12.1993. The above power of attorney has been given only for the purpose of entering into the tenancy agreement, to receive the rents, and to take eviction proceedings against the tenants before the competent court. Apart from that the P.W.1 has also signed some blank papers and the same were given to the accused for taking steps to evict the tenants. By using the above said signed blank papers, the petitioner created a forged sale agreement(Ex.P23) in his favour, and he entered into a another sale agreement with one Sri Vari Estate Agencies (p) Ltd,(Ex.P24) and received a sum of Rs.3 lakhs on 02.03.1996. The above said sale agreement has been manipulated and created by the petitioner. Subsequently, P.W.1 cancelled the power of attorney. Even thereafter, the petitioner entered into an another sale agreement with one Subiksha Housing Enterprises, and received a sum of Rs.1 lakh towards sale consideration from them and the petitioner also entered into an another sale agreement with one Mahalakshmi Estate. Subsequently, the petitioner has filed a civil suit in O.S.No.8853 of 1997 against the P.W.1, and forged his signature, filed a vakalat through a advocate, and obtained an exparte interim order against him and with the help of the interim order, he prevented P.W.1 from entering into the property. In the above circumstances, the defacto complainant filed a complaint before the Central Crime Branch against the petitioner. Since no action has been taken, he has filed a petition under Section 156(3) Cr.P.C. before the Judicial Magistrate Court seeking a direction to register the complaint and based on the direction, a crime has been registered against the petitioner and after investigation, a final report has been filed.

3. Considering the above materials, the Trial Court framed charges as detailed above and the accused denied the same as false. In order to prove the case of prosecution, as many as 13 witnesses were examined and 36 documents were exhibited and no material objects were marked.

4. Out of the said witnesses examined, P.W.1 is the defacto complainant. According to him, he is the owner of the property in Door No.57, Ragavan Colony, Muthuvel Naicker Street, Vadapalani, Chennai-24, to an extent of 3940 sq.ft. According to him, the petitioner/accused is his brother's son, he has given a power of attorney in his favour on 03.12.1993. On 15.10.1993, the petitioner has brought one Srivari Estate for purchasing the property and they have agreed to sell the land for Rs.9 lakhs and the petitioner received a cheque for a sum of Rs.2,70,000/-, but he did not pay anything to him. Subsequently, P.W.1 cancelled the sale agreement and also power of attorney given in favour of the accused. Thereafter, the petitioner made over a sale agreement in favour one Mahalakshmi Estate and he received a sum of Rs.3 lakhs from Mahalakshmi Estate, then without the knowledge of the Mahalakshmi Estate, the petitioner have entered into an another agreement with one Subiksha Builders for promotion of flats in the property and received a sum of Rs.1 lakhs from them. Thereafter, the petitioner filed a civil suit in O.S.No.8853 of 1997 against him, and he himself engaged a lawyer, forged his signature and filed a vakalat, and obtained an exparte interim order. Hence, he has given a complaint against the petitioner. P.W.2 is the Head Constable working in P-5, MKB Nagar, Police Station, Chennai. According to him, he has taken steps to serve notice to one lawyer by name Anbazhagan and he found no such person in the above said address. P.W.3 is the Advocate who said to have filed vakalat on behalf P.W.1 in the civil suit filed by the petitioner in O.S.No.8853 of 1997. According to him, he has not filed any such vakalat on behalf of P.W.1 and his signature was forged by somebody. P.W.4 is the attesting witness in Ex.P24 sale agreement. P.W.5 is the another Advocate who appeared on behalf of the P.W.1 in the civil suit. He spoke about the exparte interim order obtained by the petitioner against P.W.1. P.W.6 is the partner of Mahalakshmi Estate. According to him, both P.W.1, and the accused entered into a sale agreement with one Srivari Estate and the same was made over to their company, and while executing

the sale agreement with Srivari Estate, both the P.W.1 and the accused received Rs.3 lakhs from Srivari Estate, and the same was settled by them. Thereafter, the petitioner has received a sum of Rs.6 lakhs from them to evict the tenants residing therein. Since he was not able to evict the tenants, the petitioner returned the amount to P.W.6. P.W.7 is working as Assistant Director in Forensic Department, Chennai. He compared the signature found in the vakalat and other documents along with the signature of P.W.1 and Advocate P.W.3, and he cannot give any opinion that the signature of P.W.1 and Advocate Mr.Sivaraman/P.W.3 was forged by the petitioner. P.W.8 is the attesting witness to the sale agreement [Ex.P24] between P.W.1 and accused with one Srivari Estate. P.W.9 spoke about the sale agreement entered between P.W.1 and accused with Srivari Estate and subsequent made over of the agreement in favour of Mahalakshmi builders, and also spoke about the fact that both the P.W.1 and his son-in-law demanded Rs.10 lakhs from him for withdrawing the case. P.W.10 is the Inspector of Police who registered the complaint. P.W.11 is the Inspector of Police working in Central Crime Branch. According to him, he obtained the signature from the accused, P.W.1 and P.W.3 and sent the same to the handwriting expert for comparison. P.W.12 is another Advocate, he filed a vakalat in the suit in O.S.No.8853 of 1997 and then he has given change of vakalat. P.W.13 is the Inspector of Police working in Central Crime Branch. He conducted the investigation, examined the witnesses and recorded their statements and after completion of investigation, he laid charge sheet.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. The accused did not examine any witness nor marked any document.

6. Having considered all the above materials, the Trial Court convicted the accused as stated in first paragraph of this judgment. Challenging the above conviction and sentence, the petitioner/accused filed a Criminal Appeal in C.A.No.181 of 2013 on the file of the learned XV Additional Sessions Judge, City Civil Court, Chennai. The lower appellate Court, by its judgment dated 26.08.2016, dismissed the appeal, confirming the conviction and sentence passed by the Trial Court. Challenging the above conviction and sentence, the accused is before this Court with the revision case.

7. I have heard Mr.V.Gopinath, learned Senior Counsel appearing for the Petitioner and Mr.R.Ravichandran, learned Government Advocate(Crl. Side) appearing for the respondent and perused the materials available on record.

8. Mr.V.Gopinath, the learned Senior Counsel appearing for the petitioner would submit that so far as the allegation of forgery of Ex.P24 sale agreement is concerned, after entering into a sale agreement[Ex.P24] dated 06.10.1993, both the P.W.1 and the petitioner have entered into an another sale agreement (Ex.P23) with one Sri Vari Estate Agencies (p) Ltd on 15.10.1993 and the above said sale agreement, it was admitted by P.W.1. In Ex.P23 sale agreement, the petitioner was shown as a confirming party and the sale agreement [Ex.P24] dated 06.10.1993 has been admitted by P.W.1, wherein it is stated that the petitioner is a confirming party and already P.W.1 had entered into a sale agreement on 06.10.1993, and received advance amount from the petitioner and the petitioner will hand over the possession to the purchaser within a period of one week from the date of agreement. When P.W.1 himself admitted, executing Ex.P24 sale agreement dated 06.10.1993, now it is not open to him to say that the petitioner has forged the sale agreement. So far as the second allegation, namely, the petitioner has forged the signature of P.W.1 in the vakalat and filed the same before the civil Court and obtained an exparte interim order in his favour is concerned, absolutely there is no evidence to show that the petitioner has forged the signature of P.W.1 and filed vakalat and obtained an exparte interim order. Even P.W.7, handwriting expert, clearly stated that the signature of P.W.1 found in the vakalat and other documents is not tallying with the signature of the petitioner. Merely because the civil Court granted an exparte interim order in favour of the petitioner, it cannot be presume that the petitioner has forged the signature of P.W.1 and P.W.3 Advocate and filed vakalat on behalf of P.W.1 and obtained interim order and the petitioner cannot be convicted based on that mere presumption without any evidence to that effect. Hence, he prays for allowing the criminal revision case by setting aside the order of Courts below.

9. Per contra, the learned Government Advocate(Crl. Side) would contend that the prosecution has examined as many as 13 witnesses and marked as many as 36 documents to establish the case. From the evidence of P.Ws.1 and 3, the prosecution establish that they have not filed any vakalat in the civil suit filed by the petitioner and it is only this petitioner has engaged somebody and filed a vakalat by forging the signature of P.Ws.1 and 3 and obtained an exparte interim order. Apart from that it is also established that the petitioner forged the sale agreement[Ex.P24] and received the amount and cheated P.W.1. Both the Courts below concurrently held against the petitioner and there is no reason to interfere with judgment of the Courts below and he prays for dismissing the criminal revision case.

10. I have considered the rival submissions.

11. The first allegation against the petitioner was that the petitioner has misused the blank papers and stamp papers given by P.W.1 and created a sale agreement dated 06.10.1993, which was marked as Ex.P24, as if P.W.1 has executed the sale agreement in favour of the petitioner. According to P.W.1, earlier he has given a general power of attorney in favour of the petitioner who is non other than his brother's son, and also given some signed blank papers to him enabling him to take steps to evict the tenants and using the above said signed blank papers, the petitioner created the sale agreement as if, P.W.1 has executed the sale agreement in his favour. Subsequently, the petitioner filed a suit and obtained an exparte interim order against him. But, P.W.1 admitted in his evidence that he has entered into a sale agreement with one Srivari Estate, which was marked as Ex.P23 dated 24.11.1993. A perusal of the Ex.P23 sale agreement, which was admitted by P.W.1, the petitioner was shown as confirming party in the sale agreement, and in the sale agreement it is further stated that the vendor, namely, P.W.1, has already entered into a sale agreement with the petitioner on 06.10.1993, and received a advance amount from him, and it is also stated that the petitioner is being confirming party, he will hand over the possession of the property in favour of the agreement holder within a period of one week. When P.W.1 himself admitted Ex.P23 sale agreement, wherein P.W.1 clearly admitted that he has already entered into a sale agreement with the petitioner and also received an advance amount, now, it is not open to him to say that the petitioner had fabricated the sale agreement. Apart from that P.W.6, the partner of one Mahalakshmi Estate also stated that it is the petitioner and P.W.1 who have entered into a sale agreement with one Srivari Estate and received a sum of Rs.3 lakhs. Subsequently, the above agreement was made-over to them, and they have settled the amount to Srivari Estate, and the petitioner only received a sum of Rs.6 lakhs from them for the purpose of evicting the tenants residing therein, but, he was not able to evict the tenants, and he returned the amount to him. From his evidence, it is clear that both the petitioner and P.W.1 received a sum of Rs.3 lakhs from Srivari Estate and it is not correct to state that the petitioner alone received the advance amount from Srivari Estate. P.W.6 evidence is also corroborated by the evidence of P.W.9, who spoke about the sale agreement between the parties and P.W.1 and his son in law also demanded Rs.10 lakhs from them for withdrawing the case. From their evidence, it is clear that earlier P.W.1 have entered into

a sale agreement[Ex.P24] with the petitioner, subsequently he entered into another sale agreement with one Srivari Estate and it was made-over to Mahalakshmi Estate, and received advance amount. In the above circumstances, the prosecution has failed to prove the charge that the petitioner has forged the sale agreement and cheated P.W.1.

12. So far as the next allegation that the petitioner has forged the signature of P.Ws.1 and P.W.3 in the vakalat and obtained an exparte interim order in his favour is concerned, it is a admitted fact that the petitioner has filed a suit against P.W.1 and also obtained exparte interim order. Further, a vakalat has been filed on behalf of P.W.1, which is said to have been filed by P.W.1 and P.W.3. But, P.W.1 and P.W.3 denied the same. P.W.3, the Advocate in whose name the vakalat said to have been filed, has stated that he did not file any vakalat on behalf of P.W.1 and the signature found in the vakalat is not that of him. The signature of P.Ws.1,3, and the petitioner were sent to a handwriting expert for comparison. P.W.7 is the handwriting expert, he compared the signature found in the vakalat and other documents and gave the opinion that he cannot conclusively say that the petitioner has forged the signature of P.Ws.1 and 3. Apart from that there is no other evidence available on record to show that it is only this petitioner who filed the vakalat on behalf of P.W.1 and obtained an exparte interim order against him. Merely because, the petitioner obtained an exparte interim order against P.W.1, it cannot be presumed that it is only this petitioner has forged the signature of P.W.1 and filed the vakalat in the name of P.W.3 and the prosecution did not produce any evidence to show that it is only this petitioner had filed the vakalat on behalf of P.W.1 and obtained an exparte interim order. In the above circumstances, the petitioner cannot be found guilty of the offence, on assumption and presumption without any evidence to that effect. Considering the above facts and circumstances of the case, I am of the considered view that the prosecution has failed to establish the guilt of the petitioner/accused beyond any reasonable doubt. Hence, he is entitled for acquittal. Both the Courts below without considering the evidence in proper perspective convicted the petitioner. Hence, the findings of the Courts below is perverse and the same is liable to be set aside.

13. In the result, this Criminal Revision Case is allowed. The conviction and sentence dated 26.08.2015 passed in C.A.No.181 of 2013 by the learned XV Additional Sessions Judge, Chennai, confirming the Judgment dated 19.08.2013 in C.C.No.7225 of 2004 passed by the learned XI Metropolitan Magistrate, Saidapet, Chennai, is set aside and the petitioner/accused is acquitted. Bail bond, if any, executed by him shall stand cancelled and the fine amount, if any, paid by him is ordered to be refunded, forthwith.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

rrg

To

1. The XV Additional Sessions Judge,
City Civil Court.
Chennai.

2. The XI Metropolitan Magistrate,
Saidapet, Chennai,

3. The Chief Metropolitan Magistrate
Egmore, Chennai

4. The Inspector of Police,
Central Crime Branch,
Chennai.

5. The Public Prosecutor,
High Court, Madras-104.

+1 cc to M/s.S.Suresh Advocate sr 41741

Crl.R.C.No.942 of 2015

kgk(co)
aa16/06/2017