

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.07.2017

CORAM:

THE HON'BLE MR.JUSTICE C.T. SELVAM

Crl.R.C.No.1213 of 2010
and
M.P.No.1 of 2010

1.Ganesan
S/o.Nachimuthu

2.Karthiga
W/o.Ganesah

.. Petitioners

VS.

The State represented by
Inspector of Police,
Tiruchengode Town Police Station,
Namakkal District.
Crime No.570 of 2001

.. Respondent

Criminal Revision Case filed under Section 397 and 401 Cr.P.C. against the judgment of learned Additional District Sessions Judge, Fast Track Court, Namakkal, passed in C.A.No.89 of 2009 on 03.11.2010 confirming the judgment of learned Judicial Magistrate, Tiruchengode, passed in C.C.No.359 of 2005 on 13.10.2009.

For Petitioners : Mr.S.Karthikeyan

For Respondent : Mr.V.Arul,
Additional Public Prosecutor

ORDER

This revision arises against the judgment of learned Additional District Sessions Judge, Fast Track Court, Namakkal, passed in C.A.No.89 of 2009 on 03.11.2010 confirming judgment of learned Judicial Magistrate, Tiruchengode, passed in C.C.No.359 of 2005 on 13.10.2009.

2. The case of the prosecution is that the first accused, who was working as an Assistant in the District Munsif Court, Tiruchengode, in order to help second accused, his wife, has fabricated records pertaining to I.A.No.681 of 2001 in O.S.No.196 of 2001 on the file of District Munsif Court, Tiruchengode, on 13.12.2001 to the effect that he had obtained favourable orders at the hands of Civil Court and using the same, preferred a complaint against complainant before the Velakavundampatty Police Station. The further allegation is that the accused, on the strength of such fabricated order, constructed a house on the suit property. A case in Crime No.501 of 2001 on the file of respondent has been registered. Upon completion of investigation and filing of charge sheet informing commission of offences u/s.120(b), 420, 468 and 471 IPC against first accused and 420, 471 r/w 34 IPC against second accused, the case was tried in C.C.No.359 of 2005 on the file of learned Judicial Magistrate, Tiruchengode.

marked seven exhibits. None were examined on behalf of the defence, however, one exhibit was marked. On appreciation of materials before it, trial Court under judgment dated 13.10.2009, convicted the first accused for offences u/s.120(b), 420, 468 and 471 IPC and second accused for offences u/s.420, 471 r/w 34 IPC and sentenced each of them to 6 months S.I. and fine of Rs.500/- i/d 1 month S.I. for each of the offences. Against such finding, petitioners/accused preferred C.A.No.89 of 2009 on the file of learned Additional District Sessions Judge, Fast Track Court, Namakkal, which came to be dismissed under judgment dated 03.11.2010. Hence, this revision.

4. Heard learned counsel for petitioners and learned Additional Public Prosecutor.

5. Learned counsel for petitioners submitted that the first petitioner and *de facto* complainant in the case are relatives and there were civil litigations pending between them. First petitioner was employed as an Assistant dealing with original suit records at the District Munsif Court, Tiruchengode. PW-1 preferred a complaint informing that in the suit preferred by him he had obtained interim orders but the first petitioner had preferred a complaint at the Velakavundampatty Police Station informing that he had obtained favourable orders at the hands of a civil Court. The further allegation against first petitioner is that in so doing, he annexed along with his complaint, five xerox pages of an interlocutory application and order therein.

While *de facto* complainant alleged that pages 1 to 4 were true copies, it was his allegation that Page No.5 was a fabricated one, fabricated towards informing that the adjudication of proceedings of a particular date inform of the first petitioner having obtained favourable orders at the hands of Court. Learned counsel submitted that the second petitioner, wife of first petitioner, has been arrayed as second accused merely because the property in dispute stood in her name. Learned counsel submitted that towards proving the prosecution allegation, original records of the Court concerned had not been called for and even to establish the forgery of offending signature at page No.5, no records for comparison or opinion of an expert was obtained. Learned counsel, hence, submitted that Courts below had erred in convicting the petitioners. Learned counsel also informed that in such a poor prosecution case, the first petitioner had suffered incarceration for period of 68 days and had also lost employment.

6. Heard learned Additional Public Prosecutor on the above submissions.

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7. The basic prosecution case of petitioners having produced before a Court a document which reflected an improper record of proceedings of another Court could have been proved only by calling for the original records of such other Court or certified copies thereof. The same has not been done.

When it is alleged that petitioners produced xerox copies of document towards

informing a wrong position to a Court, no offence of forgery can be proved as xerox copies cannot form the basis for comparison towards establishing such offence.

Accordingly, the Criminal Revision Case shall stand allowed. The judgment of learned Additional District Sessions Judge, Fast Track Court, Namakkal, passed in C.A.No.89 of 2009 on 03.11.2010 confirming the judgment of learned Judicial Magistrate, Tiruchengode, passed in C.C.No.359 of 2005 on 13.10.2009, shall stand set aside. Petitioners are acquitted of all charges. Fine amount, if any, paid shall be refunded. Bail bonds, if any, executed shall stand cancelled. Connected miscellaneous petition is closed.

17.07.2017

Index:yes/no

Internet:yes/no

gm

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C.T. SELVAM, J

gm

To

1.The Additional District Sessions Judge,
Fast Track Court,
Namakkal.

2.The Judicial Magistrate,
Tiruchengode.

3.The Public Prosecutor,
Erode District.



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