

BAIL SLIP

The petitioner/Accused viz 1) Rajkumar 2) Alavudeen, were released on bail as per the order of this court dated 17.11.2016 in Crl.MP.No.12028/2016 in Crl.Rc.1354/2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.03.2017

CORAM

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

Crl.R.C.No.1354 of 2016

1.Rajkumar
2.Alavudeen

.... Petitioners

vs

State, rep. by its
Deputy Commissioner of Police,
Anti Decoty Cell,
CB-CID, Chennai.
(Crime No.188 of 1996)

.... Respondent

Criminal Revision filed under section 397 r/w 401 of the Code of Criminal Procedure, to call for the records pertaining to judgment dated 02.11.2016 passed in C.A.No.228 of 2014 by the XIX Additional Sessions Judge, Chennai, confirming the Judgment dated 11.08.2014 in C.C.No.9378 of 2010 passed by the XI Metropolitan Magistrate, Saidapet, Chennai, to set aside the same.

For Petitioners : Mr.K.Elangovan

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 petitioners are accused 1 and 2 in C.C.No.9378 of 2010 on the file of the learned XI Metropolitan Magistrate, Saidapet, Chennai. The first petitioner/first

accused stood charged for an offence under Sections 120(B) and 407 IPC and the second petitioner/2nd accused stood charged for an offence under Sections 120(B) and 407 r/w 114 IPC. Totally, there are five accused in this case. Since the accused 3, 4 and 5 were absconding and the case was separated and A1 and A2 alone face trial. The trial Court, after trial, convicted the first accused under Section 120(B) IPC and sentencing him to undergo six months simple imprisonment and to pay a fine of Rs.1000/- in default to undergo simple imprisonment for three months and convicted him under Section 407 IPC and sentencing him to undergo six months simple imprisonment and to pay a fine of Rs.1000/- in default to undergo simple imprisonment for three months and the second accused found guilty for the offence under Section 120(B) IPC and sentencing him to undergo six months simple imprisonment and to pay a fine of Rs.1000/- in default to undergo simple imprisonment for three months and convicted him under Section 407 r/w 114 IPC and sentencing him to undergo six months simple imprisonment and to pay a fine of Rs.1000/- in default to undergo simple imprisonment for three months. Challenging the above said conviction and sentence, the petitioners/accused have filed a Criminal Appeal in C.A.No.228 of 2014 on the file of the learned XIX Additional Sessions Judge, City Civil Court, Chennai. The lower appellate Court, by its judgment dated 02.11.2016, dismissed the appeal, confirming the conviction and sentence passed by the Trial Court. Challenging the above conviction and sentence, the petitioners preferred this present criminal revision case.

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

(i) P.W.1 in this case is a forwarding and clearing agent in Chennai, working on behalf of one J.K. Corporate Ltd., at New Delhi. In the month of June, 1996, he sent two container loaded with 28 pallets of wood free colour printing papers to Malaysia from Chennai Harbour. After two weeks, the said consignments were reached Malaysia, and he has received a message from the buyer that 8 pallets of paper rolls were found missing in the container. Immediately, he has given complaint before the M-1, Harbour Police Station, Chennai.

(ii) P.W.12, the Sub Inspector of Police working in M-1, Harbor police station, on receipt of the complaint, registered a case in Crime No.188 of 1996 for the offence under Sections 461 and 380 IPC, prepared a first information report[Ex.P6] and sent the same to the Judicial Magistrate Court and copies of the same to the Higher Officials.

(iii) P.W.13, the Inspector of police working in M-1, Harbor police station, on receipt of the first information report, commenced investigation, examined the witnesses and recorded their statements. Then, on 09.07.1996, he arrested the first accused and on such arrest he voluntarily given confession and

based on the disclosure statement[Ex.P9], P.W.13 recovered 24 bundles of papers in the presence of witnesses under the cover of mahazar Ex.P8. Thereafter, on the same day, he seized a sum of Rs.17,200/-, a camera and a alarm time peace in presence of witnesses under cover mahazar Ex.P10. Then he seized a lorry with tailor. Thereafter, he sent the first accused for judicial custody. Then, the investigation was transferred to CBCID.

(iv) Then, P.W.14, the Deputy Superintendent of Police, CBCID continued the investigation, he has taken steps to record the statement of witnesses under Section 164 Cr.P.C. before the Judicial Magistrate. Then, he examined the witnesses and recorded their statements and handed over the investigation to P.W.15.

(v) P.W.15 is the Inspector of Police working in CBCID. He examined the witnesses and recorded their statements and after completion of investigation, he laid the charge sheet.

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 15 witnesses were examined and 24 documents were exhibited and 5 material objects were marked.

4. Out of the said witnesses examined, P.W.1 is the clearing and forwarding agent. According to him, in the month of June,1996, he sent two consignment of 62 pallets of papers to Malaysia and after receipt of the consignment at Malaysia, the buyer informed him that 8 pallets of papers were found missing, based on the same, he has given a complaint before the respondent police. Thereafter, some of the missed papers were seized by the respondent police and he identified the said papers. P.W.2 is working as Transport Manager in S.D.P. Services Ltd. According to him, in the year,1996, after the inspection by the Customs Officers, they sent 62 pallet of papers to Malaysia. The said pallet papers were loaded in two containers and it was sealed by the Customs Officers in the Godown. Then, the said papers were taken to Harbour through Lorry. The first accused alone drove the lorry and then the said consignment were sent to Malaysia and after receipt of the consignment at Malaysia, the buyer informed him that 8 pallets of papers were found missing. But, in his cross examination he stated that he was not present at the time of loading the pallet papers in the container. P.W.3 is the driver. He is the witness to the confession statement of the first accused. P.W.4 is the resident of Old Washermenpet, he turned hostile. P.W.5 is the owner of the lorry. P.W.6 is wife of P.W.5. They spoke about the return of lorry pursuant to order of the Court. P.W.7 is a news paper vendor. According to him, he purchased some papers from one Chettiar. His evidence has no way helping the prosecution.

P.W.8 is working as Driver. He turned hostile. P.W.9 is working as Clerk in the godown of S.D.P. Private Limited, where the consignment was loaded. According to him, 28 pallets of colour printing papers were loaded in the container and Customs Officials sealed it, and issued gate pass, then the materials were sent to the Harbour. P.W.10, the learned VIII Metropolitan Magistrate, Chennai. He recorded the statement of witnesses under Section 164 Cr.P.C. P.W.11 was working as Security in the godown of S.D.P. Private Limited. He turned hostile. P.W.12 is the Sub Inspector of Police working in M-1, Harbour Police Station, on receipt of the complaint from P.W.1, registered a case in Crime No.188 of 1996 for the offence under Section 461 and 380 IPC, prepared a first information report and sent the same to the Judicial Magistrate Court. P.W.12 is the Inspector of Police working in the respondent Police Station. According to him, on receipt of the first information report, he commenced the investigation, arrested the accused and recorded the confession statement of the accused, examined the witnesses and recorded their statements. Then, the case was transferred to SBCID for further investigation. P.W.14 is a Deputy Superintendent of Police in SBCID. He continued the investigation, examined the witnesses and recorded their statements and then he handed over the investigation to P.W.15. P.W.15, the Deputy Commissioner of Police working in the respondent police. He continued the investigation, arrested the accused, seized some papers, 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., they 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 for the offences as stated in first paragraph of this judgment. Challenging the above conviction and sentence, the petitioners/accused have filed a Criminal Appeal in C.A.No.228 of 2014 on the file of the learned XIX Additional Sessions Judge, City Civil Court, Chennai. The lower appellate Court, by its judgment dated 02.11.2016, dismissed the appeal, confirming the conviction and sentence passed by the Trial Court. Challenging the above conviction and sentence, the accused are before this Court.

7. I have heard Mr.K.Elangovan, learned counsel appearing for the Petitioners and Mr.R.Ravichandran, learned Government Advocate(Crl. Side) appearing for the respondent and perused the materials available on record.

8. The case of the prosecution is that some quantity of paper pallets were exported to Malaysia and after the consignment reached Malaysia, some pallets of papers were found missing. P.W.1 is clearing and forwarding agent of one J.K. Corporate Ltd. According to him, in the year, 1996, 62 pallets of colour printing papers were sent to Malaysia in two containers. Thereafter, he received the information from the buyer that 8 pallets of papers were found missing and based on the above information, he lodged a complaint. Subsequently, he identified 24 gunny bundles of papers which is said to have seized from the accused. P.W.2 is working as Transport Manager in S.D.P Services Limited and his company was a clearing and forwarding agent of one J.K. Corporate Ltd. According to him, two containers containing 28 pallets and 36 pallets of papers were loaded in the lorry from their Godown and the Customs Officials after inspection sealed the containers, then it was taken to the Harbour, the first accused has driven the lorry. But, in his cross examination, he has stated that he was not present at the time of loading of the consignment in the container and further stated that if the seals put in the container was broken, the customs officials will not permit to load the consignment in the ship. P.Ws.1 and 2 alone spoke about the sending of consignment to Malaysia. But, from their evidence, it could not be ascertained about the exact number of pallet papers were sent to Malaysia and the bill of lading was not marked before the Court below to show that exact quantity of materials sent to Malaysia. Apart from that the complaint was given based on the information received from the buyer at Malaysia. But, the buyer was not examined to prove that the actual quantity of papers purchased by them and the quantity of papers received by them. Apart from that P.W.2 in his cross examination stated that he was not present at the time of loading the papers in the container. P.W.9 is the clerk working in the godown where as the consignment was loaded. In his evidence he stated that the materials were loaded and then the Customs officials inspected and sealed the containers. But, there is no evidence to show that the seals put in the containers by the customs officials were tampered or broken. P.W.14, the Investigating Officer also in his cross examination stated that at the time of entry of the lorry in the Harbour gate, the seal put in the container will be checked and then only the vehicle will be permitted to go inside the Harbour. Thereafter, the customs officials verify the container and sent it to the ship. The Customs Officials checked the seal at the Harbour was not examined to show that the seals were broke open and the materials were found missing. Hence, there is no evidence to show that A-1, the driver of the lorry along with others tamper with the seal and removed the materials. Apart from that in order to prove that the actual goods found missing in the container, the person who received the consignment in Malaysia was not examined by the prosecution. Hence, in the

absence of any clear evidence to show that the seal was broke open by the accused and removed the consignment, the petitioners cannot be found guilty of any offence. Apart from that the prosecution has mainly relied upon the recovery of materials based on the disclosure statement of A-1, but the recovery witness P.W.3 turned hostile, hence the recovery also not proved by the prosecution.

9. In the above circumstances, I am of the considered view that the prosecution has failed to prove the guilt of the accused beyond any reasonable doubt and hence the petitioners/accused are entitled for acquittal. Both the Court below without considering the evidence in proper perspective convicted the accused. Hence the judgment of the Court below is perverse and the same is liable to be set aside.

10. In the result, this Criminal Appeal is allowed. The conviction and sentence dated 02.11.2016 passed in C.A.No.228 of 2014 by the learned XIX Additional Sessions Judge, Chennai, confirming the Judgment dated 11.08.2014 in C.C.No.9378 of 2010 passed by the learned XI Metropolitan Magistrate, Saidapet, Chennai, is set aside and the petitioners/accused are acquitted. Bail bond, if any, executed by them shall stand cancelled and the fine amounts, if any, paid by them are ordered to be refunded, forthwith.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

rrg

To

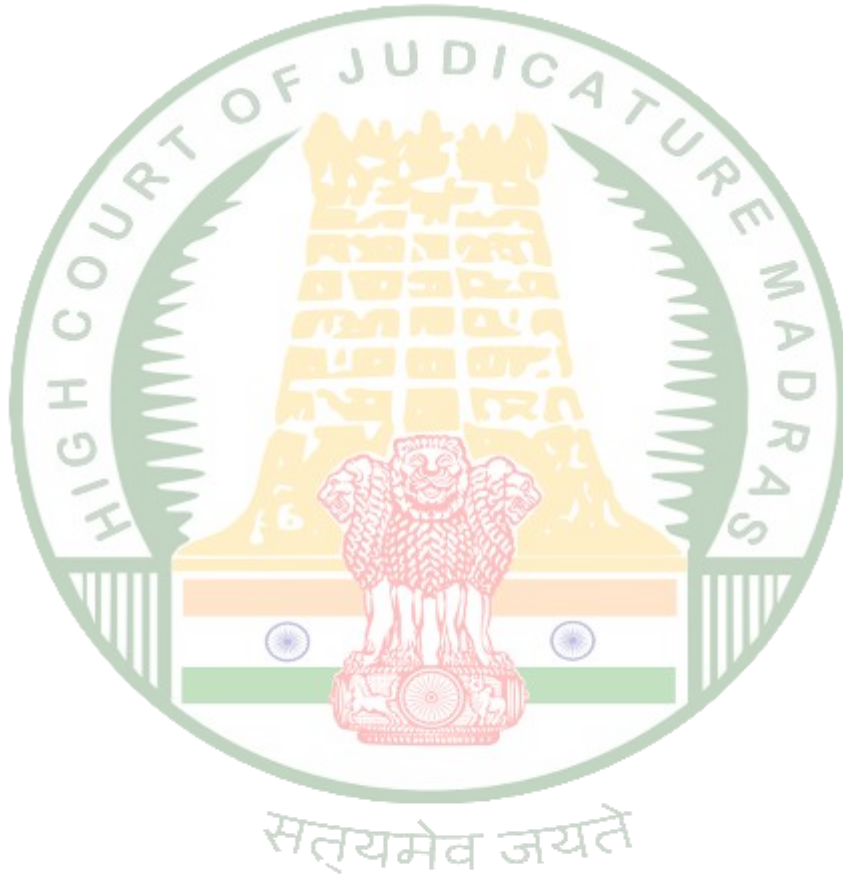
1. The XIX Additional Sessions Judge,
Chennai.
- 2.The XI Metropolitan Magistrate,
Saidapet, Chennai,
- 3.The Superintendent,Central Prison -II,Puzhal,Chennai.
- 4.The Deputy Commissioner of Police,
Anti Decoty Cell,
CB-CID, Chennai.

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

+2cc to M/s.K.Elangovan,Advocate sr.15734

Cr1.R.C.No.1354 of 2016

ss(12/5/2017)



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