

BAIL SLIP

The Petitioner/Accused viz 1. D.Thanikachalam @ Kuttai Kalakki 2. Sankar 3. Alavudeen were released on bail as per the order of this court dated 17.11.2016 in Crl.M.P. No 12029 of 2016 in Crl.R.C.No.1355 of 2016.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.03.2017

CORAM

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

Crl.R.C.No.1355 of 2016

1.Thanikachalam @ Kuttai Kalakki
2.Sankar
3.Alavudeen

... Petitioners

vs

State, rep. by its
Deputy Superintendent of Police,
Anti Dacoity Cell,
CB-CID, Chennai.
(Crime No 179 of 1996)

... Respondents

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.227 of 2014 by the XIX Additional Sessions Judge, Chennai, confirming the Judgment dated 11.08.2014 in C.C.No.9377 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)

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O R D E R

This criminal revision case has been filed against the order of conviction. The petitioners are accused 1 to 3 in C.C.No.9377 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 405 r/w 34 IPC and the second petitioner/2nd accused stood charged for an offence under Sections 120-B and 405 r/w 34 IPC

and the third petitioner/third accused stood charged for an offence under Sections 120(B) and 407 r/w 109 r/w 114 IPC. 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 405 r/w 34 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 405 r/w 34 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 third 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 109 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.227 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 said 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.2 is one of the Directors of one S.D.P. forwarding and clearing company. In the year,1996, they have sent consignment of 42 pallets of papers in three container from Chennai Harbour to Colombo, in Sri Lanka, the said consignments were also reached at Colombo. Thereafter, they have received a message from the buyer that some quantity of paper pallets rolls were found missing in the container. Immediately, he has given complaint before the M-1, Harbour Police Station, Chennai.

(ii) P.W.8, the Inspector of Police working in M-1, Harbor police station, on receipt of the complaint, registered a case in Crime No.179 of 1996 for an offence under Section 379 IPC, prepared a first information report[Ex.P10]. He examined the witnesses and recorded their statements. On 15.07.1996, he arrested the first accused and on such arrest, he voluntarily given a confession statement and based on the disclosure statement, he recovered 30 gunny bags with 12 pallets of papers from the house of A-3. Then, A-1 identified the other accused

and P.W.8 arrested them. Then, based on the order passed by the Commissioner of Police, he handed over the investigation to CBCID Anti Dacoity Cell.

(iii) P.W.9, the Deputy Superintendent of Police working in CBCID Anti Dacoity Cell, continued the investigation, he examined the owner of the lorry and recorded his statement and also seized the lorry with trailer. Then, he arrested the third accused and on such arrest, he voluntarily given a confession statement, he recorded his statement and sent him to Judicial custody. Then, he has taken steps to record the statement of witnesses under Section 164 Cr.P.C. P.W.9 also examined the witnesses and recorded their statements, thereafter he handed over the investigation to P.W.10.

(iv) P.W.10, the Deputy Superintendent of Police, working in CBCID Anti Dacoity Cell, continued the investigation, 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 10 witnesses were examined and 13 documents were exhibited and 2 material objects were marked.

4. Out of the said witnesses examined, P.W.1 is witness to the arrest and confession statement of the first accused. P.W.2 is the Director of one S.D.P. Services Private Ltd, a forwarding and clearing company. According to him, in the year, 1996, they have sent consignment of 42 pallets of papers to Colombo at Sri Lanka, thereafter, they received a information from the buyer that some quantity of papers were found missing and based on the same, he lodged a complaint before the respondent police. In his cross examination, he stated that he has not present at the time of loading the consignment. P.W.3 is the owner of the lorry, where the consignment was transported to the Harbour. P.W.4 is doing real estate business. According to him, A-3 approached him to sell some papers. P.W.5 is a person selling the house hold articles. P.W.6, the learned VIII Metropolitan Magistrate, Chennai. He recorded the statement of witnesses under Section 164 Cr.P.C. P.W.7 turned hostile. P.W.8, the Inspector of Police working in the respondent police station. On receipt of the complaint, registered a case and prepared first information report, arrested the first accused and remanded him to judicial custody, examined the witnesses and recorded their statements and then hand over the investigation to CBCID Anti Dacoity Cell. P.W.9, the Deputy Superintendent of Police working in CBCID Anti Dacoity Cell. He continued the investigation, examined the witnesses and recorded their statements, arrested the third accused and recorded his confession statement and remanded him

Judicial Custody then handed over the investigation to P.W.10. P.W.10, the Deputy Superintendent of Police working in CBCID Anti Dacoity Cell, continued the investigation, examined the witnesses and recorded their statements, after completion of investigation, he laid the 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 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 Colombo and some pallets of papers were missing. P.W.2 is the Director of a clearing and forwarding Company. According to him, in the year,1996, 42 pallets of papers were sent to Colombo at Sri Lanka in three containers. After the consignment reached at Colombo, he received a information from the buyer that some quantity of papers were found missing and based on the above information, he lodged a complaint. Subsequently, he also identified 3 tonnes of papers which is said to have seized from the accused. But, in his cross examination, he has stated that he was not present at the time of loading the consignment in the container. P.W.2 alone spoke about the sending of consignment to Colombo, but from his evidence, it could not be ascertained about the exact number of pallet papers sent to Colombo, the bill of lading was also not marked before the Court below to show that exact quantity of materials sent to Colombo. Apart from that the complaint was given based on the information received from the buyer at Colombo. But, the buyer was not examined to establish the actual quantity of papers purchased by them and what was the quantity received by them and the quantity of papers actually missing. P.W.8, the Investigating Officer also in his cross examination stated that at the time of entry of 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. P.W.8 admitted that the Customs Department Officials who checked the seal at the Harbour has not examined by the prosecution to prove that the seals were broke open before the container enter into the Harbour and the

materials were found missing. Apart from that in order to prove the exact quantity of goods missed in the container, there is no evidence was available on record and the person who received the consignment in Colombo was not examined by the prosecution. Hence, in the absence of any clear evidence to show that the exact quantity of paper exported to Colombo, and whether the seal put in the container was broke open by the accused and they removed the consignment, the petitioner cannot be found guilty of any offence. In the absence of any such evidence, the Courts below, on total misreading of evidence, has convicted the accused, it is totally perverse and the same is liable to be set aside. In the above circumstances, I am of the considered view that the prosecution has failed to prove the case beyond any reasonable doubt and hence the petitioners/accused are entitled for acquittal.

9. In the result, this Criminal Appeal is allowed. The conviction and sentence dated 02.11.2016 passed in C.A.No.227 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.

s/d-
Assistant Registrar(CS-VI)

True Copy

Sub-Assistant Registrar

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.
- +2 CC to Mr.K.Elangovan, sr 15735

Cr1.R.C.No.1355 of 2016

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