

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.12.2018

CORAM:

THE HONOURABLE MR.JUSTICE M. DHANDAPANI

Crl.R.C.No.910 of 2006

and

Crl.A.No.200 of 2012

Crl.R.C.No.910 of 2006

S.Arokiasamy

... Petitioner/PW11

Vs.

1.State Represented by
The Inspector of Police,
Economical Offence Wing,
Perambalur.

... 1st Respondent/Complainant

2.Natesan

3.Meena

4.Raja

5.Thangapandian

... Respondents 2 to 5/
Accused Nos.1 to 4

Prayer:- Criminal Revision Petition filed under Section 397 r/w 401 of the Code of Criminal Procedure, to set aside the Judgment of the learned Judicial Magistrate, Perambalur dated 17.10.2005 passed in C.C.No.264 of 2003 and convict the respondent Nos.2 to 4 of all the charges.

For Petitioner : Mr.P.V.S.Giridhar

For R1 : Mr.R.Ravichandran,
Government Advocate

For R2 to R5 : Mr.Elango

Crl.A.No.200 of 2012

State rep. by
The Inspector of Police,
Economic Offences Wing,
District Crime Branch,
Perambalur Cr.No.20/99

... Appellant/Complainant

Vs.

1.Natesan

2.Meena

3.Raja

4.Thangapandian

... Respondents/Accused

Prayer: Criminal Appeal filed under Section 378 of the Code of Criminal Procedure, against the Judgment of Acquittal dated 17.10.2005 in C.C.No.264 of 2003 on the file of the learned Judicial Magistrate, Perambalur and to set aside the order of Acquittal and Convict the accused as charged.

For Appellant : Mr.R.Ravichandran,
Government Advocate

For R1 to R4 : Mr.Elango

J U D G M E N T

PW11 has filed the above said Criminal Revision Case under Section 397 r/w 401 of the Code of Criminal Procedure, to set aside the Judgment of the learned Judicial Magistrate, Perambalur dated 17.10.2005 made in C.C.No.264 of 2003 and to convict the respondent Nos.2 to 4 of all the charges.

2.The State has filed the above said Criminal Appeal under Section 378 of the Code of Criminal Procedure, against the Judgment of Acquittal dated 17.10.2005 made in C.C.No.264 of 2003 on the file of the learned Judicial Magistrate, Perambalur and to set aside the order of Acquittal and Convict the accused as charged.

3.The brief case of the prosecution is as follows:

The first accused was a retired police constable, A2 and A3 are the wife and son who defrauded a huge sum of money from several persons under promise of securing them overseas employment. A1 refused to return the money and passports. A4 assisted the other accused and threatened them. Thereby the complainant namely Maria Anthonysamy has filed a complaint before the Law Enforcement Agency for the offence under Sections 406, 420 and 506 (ii) and 109 of I.P.C. The said complaint was marked as Ex.P1. After furnishing the free copies under Section 207 of the Code of Criminal Procedure and after framing the charges under Section 209 of the Code of Criminal Procedure, the trial Court framed the charges and since the accused persons did not plead guilty, they went on to try the case.

4.PW33 conducted investigation, recorded the statements of witnesses and after investigation, filed the final report as against the accused persons for the above said offences. Based on the evidence and materials, the learned Trial Judge acquitted the accused. As against which, P.W.11 has referred the above Criminal Revision Case and the state has preferred the above Criminal Appeal.

5.In order to prove the prosecution case, the prosecution has examined 33 witnesses i.e., P.W.1 to P.W.33 and marked documents Ex.P1 to Ex.P19 and also produced Materials Objects M.O.1 to M.O.3. However, no witnesses were examined and no documents were marked on the side of the defence.

6.Heard Mr.P.V.S.Giridhar, learned counsel appearing for the revision petitioner/PW11, Mr.R.Ravichandran, learned Government Advocate appearing for the State and Mr.Elango, learned counsel appearing for the accused Nos.1 to 4.

7.The learned counsel appearing for the revision petitioner would submit that though the amount was paid directly to PW1, the said amount was in turn paid to the accused/A1. Further, PW1, in his cross examination, admitted that the above said amount was not received directly by the accused and he also admitted that the entire amount was settled in favour of the accused and other witnesses also categorically established the commission of offences by the accused beyond any cavil of doubt. The fact remains that the amount was settled in favour of PW1, though the amount was paid to PW11 and thereafter PW11 to PW1. However on behalf of PW11, PW1 filed a complaint before the respondent Police. Based on the complaint, the Law Enforcement Agency registered a case against the accused persons. Merely the amount was settled in favour of PW1. Till date, the amount was not paid to PW11 and PW11 makes out the case under Sections 420 and 406 of IPC. Accordingly, he prayed for convicting the accused.

8.The learned Government Advocate reiterated the submission of the learned counsel appearing for the revision petitioner. The witnesses were turned hostile and the portions of evidence of PW1 and other witnesses supported by the prosecution case, though the amount was settled in favour of PW1. However, the fact remains that some of the amount was not settled in favour of PW1.

9.The learned Government Advocate fairly concedes that there are no materials available for implicating the accused under Section 506(ii) of IPC. Even PW1 and other witnesses including PW11 corroborates each other and the accused did not make the

payment, though he received the amount from various persons for securing job in overseas. Without considering those points, the Lower Court passed an order of acquittal which is unsustainable.

10. The learned counsel appearing for the respondents would submit that based on the complaint of PW1, FIR was registered and thereafter, the Investigating Officer took up the investigation, recorded the statements of PW1 to PW31. PW1 is the victim of the crime. Allegedly the other victims had paid the amount to PW1, thereafter PW1 paid the said amount to the accused persons for the purpose of securing overseas job. However, PW1, in his cross examination, admitted that the entire amount was paid only to PW1. Other victims also admitted the same. Thereafter, the amount was paid to the accused persons for securing job in overseas.

11. PW1 and other victims admitted that the entire amount was settled in their favour. It is relevant to note that even in the FIR itself, it is disclosed that one person namely, Arokiasamy S/o.S.Averimuthu has filed a separate complaint before the District Crime Branch, Ariyalur and other victims are only the witnesses and in the present case, they had deposed that the amount was settled in favour of PW11. PW11, in his cross examination has admitted that the amount was settled in favour of PW1 and not to the accused persons. Hence, the remedy available to PW11 is not only against PW1 but also against the accused persons and furthermore, the prosecution does not prove the case beyond reasonable doubt and this Court analysed the Order of acquittal and the same is perverse and against the principles of well settled law.

12. In the light of the above submission made in the complaint, whether the prosecution has proved the guilt of the accused persons beyond all reasonable doubt. The undisputed fact is that PW1 is the complainant and he has filed the above complaint before the Law Enforcement Agency for the offence under Sections 406, 420, 506(ii) and 109 IPC. Though all the witnesses were examined by the appellant in CrI.A.No.200 of 2012, they have supported the deposition of PW1 except PW11. Even in the chief and cross examination of PW1 and PW11/the Revision Petitioner they clearly deposed that the amount was paid to PW1 and not to the accused persons. PW1 and other witnesses had admitted that the entire amount was paid only to PW1 and not to the accused persons, except PW11. If it is so, the remedy available to PW11 is only against PW1 and not against the accused persons. The prosecution has not proved the case beyond reasonable doubts.

13. In the present case, the learned Government Advocate concedes that there is no material available to implicate the accused persons under Section 506 (ii) IPC. Even in order to

prove the guilt under Section 406 and 420 IPC no material was placed before this Court. Hence this Court is not inclined to interfere with the order of acquittal passed by the learned Trial Judge, in the absence of any material. This Court cannot interfere in the routine manner in the order of acquittal.

14.Hence both the Criminal Revision Case and the Criminal Appeal are dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Judicial Magistrate,
Perambalur.

2.Do Thro The Chief Judicial Magistrate,
Perambalur.

3.The Inspector of Police,
Economic Offences Wing,
District Crime Branch,
Perambalur

4.The Public Prosecutor,
High Court, Madras.

Copy to:

The Section Officer,
Criminal Section,
High Court, Madras

+1cc to Mr.K.Elango, Advocate sr.83554
+1cc to M/s.Giridhar & Sai, Advocate sr.83275

Cr1.R.C.No.910 of 2006
and
Cr1.A.No.200 of 2012

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nr 17/10/2019
nr 18/10/2019