

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CRL.R.C.NO.85 OF 2011

K.Ramachandran

...Petitioner

Vs.

State by:

The Sub-Inspector of Police,
City Crime Branch
Coimbatore.

...Respondent

This Criminal Revision filed under Section 397 read with 401 of Code of Criminal Procedure to set aside the conviction and sentence passed in C.A.No.87 of 2009 on the file of the Additional District and Sessions Court, FTC No.III, Coimbatore dated 20.09.2010 confirm the judgment made in C.C.No.842 of 2008 on the file of the Judicial Magistrate No.VI, Coimbatore dated 22.06.2009.

For Petitioner: Mrs.Jayasri Baskar

For Respondent: Mrs.Kritika Kamal.P
Govt. Advocate (Crl. Side)

O R D E R

This Criminal Revision Case has been filed to set aside the conviction and sentence dated 20.09.2010, passed in C.A.No.87 of 2009 on the file of the Additional District and Sessions Court (FTC No.III), Coimbatore, confirming the judgment dated 22.06.2009, made in C.C.No.842 of 2008 on the file of the Judicial Magistrate Court No.VI, Coimbatore.

2. It is the case of the prosecution that one Kandasamy (P.W.1) and Ragavan had certain financial disputes, to solve which, Kandasamy (P.W.1) approached one Vinothkumar (A2) and he introduced him to Ramachandran (A1), who claimed himself to be a local heavy weight; Ramachandran (A1) and Vinothkumar (A2) demanded payments from Kandasamy (P.W.1) for arranging henchmen and towards that purpose, extorted a total sum of Rs.15 lakhs; when Kandasamy (P.W.1) refused to yield to their demand, the A1 and A2 started intimidating him.

3. On the complaint (Ex.P.1) given by Kandasamy (P.W.1), the Sub-Inspector of Police, City Crime Branch, Coimbatore, registered a case against Ramachandran (A1) and Vinothkumar (A2) for the offences under Sections 120 - B, 420, 385 and 506(ii) IPC and took up the investigation of the case.

4. Apprehending arrest, Ramachandran (A1) and Vinothkumar (A2) filed Crl.OP.No.15577 of 2008 before this Court under Section 438 Cr.P.C seeking anticipatory bail. This Court, by order dated 11.07.2008, granted anticipatory bail on condition that the accused should deposit Rs.15 lakhs to the credit of Crime No.50 of 2008 before the Judicial Magistrate No.VI, Coimbatore. It is not known whether this amount has been deposited or not.

5. After completing the investigation, the respondent police filed final report before the Judicial Magistrate No.VI, Coimbatore against Ramachandran (A1) and Vinothkumar (A2) for the aforesaid offences.

6. On their appearance, charges were framed against them under Sections 120 - B, 420, 385 and 506(ii) IPC. When the accused were questioned about the incriminating circumstances appearing against them, they denied the same and pleaded "not guilty".

7. To prove the case, the prosecution examined 10 witnesses and marked 12 exhibits. No witness was examined nor any document was marked on behalf of the accused. After considering the evidence on record and the arguments advanced on either side, the trial Court, by judgment dated 22.06.2009 in C.C.No.842 of 2008, convicted Ramachandran (A1) and Vinothkumar (A2) under Sections 120 - B, 420, 385 and 506(ii) IPC and sentenced them to undergo three months Simple Imprisonment for each of the offences and to pay a fine of Rs.5,000/-, in default to undergo one month Simple Imprisonment. The sentences were ordered to run concurrently.

8. Challenging the conviction and sentence, Ramachandran (A1) filed Crl.A.No.87 of 2009 before the Additional District and Sessions Court (FTC No.III), Coimbatore and the same was dismissed on 20.09.2010, aggrieved by which, Ramachandran (A1) is before this Court. It is not known whether Vinothkumar (A2) had filed any Criminal Revision Case or accepted the conviction and sentence.

9. Heard Mrs.Jayasri Baskar, Legal Aid Counsel for the revision petitioner and Mrs.Kritika Kamal.P, learned Govt. Advocate (Criminal Side) for the respondent.

10. Mrs. Jayasri Baskar, Legal Aid Counsel, made the following submissions:

(a) The prosecution had failed to examine Ragavan with whom Kandasamy (P.W.1) is said to have had financial disputes;

(b) The prosecution has relied upon two cheques viz., Exs.P.4 & P.5 dated 02.06.2008 and 05.06.2008 respectively, which are said to have been issued by Kandasamy (P.W.1) to Ramachandran (A1); whereas, Ramachandran (A1) has initiated prosecution under Section 138 of the NI Act against Kandasamy (P.W.1).

(c) Kandasamy (P.W.1) has admitted that the prosecution under Section 138 of the Negotiable Instruments Act, 1881 (for short "the NI Act") is pending in respect of the above mentioned two cheques. This shows that the two cheques were not issued by Kandasamy (P.W.1) out of fear, but, were issued by him in discharge of certain liabilities;

(d) Kandasamy (P.W.1) admitted that Ramachandran (A1) had given a complaint against him on 10.06.2008 and only thereafter, Kandasamy (P.W.1) has chosen to give the complaint on 23.06.2008; and therefore, it is apparent that the complaint given by Kandasamy (P.W.1) is clearly an afterthought and was given in order to avoid the prosecution under Section 138 of the NI Act.

11. Per contra, the learned Government Advocate (Criminal Side) refuted the contentions put forth by the learned counsel for the revision petitioner.

12. This Court gave its anxious consideration to the rival submissions.

13. While dealing with a Criminal Revision Case under Section 397 Cr.P.C, it is not open to this Court to completely re-appreciate the evidence as a Court of Second Appeal as held by the Supreme Court in State of Maharashtra, etc. vs. Jagmohan Singh Kuldip Singh Anand and Others, etc.¹; The relevant portion of which reads as under:

"22. The revisional court is empowered to exercise all the powers conferred on the appellate court by virtue of the provisions contained in Section 401 CrPC. Section 401 CrPC is a provision enabling the High Court to exercise all powers of an appellate court, if necessary, in aid of power of superintendence or supervision as a part of power of revision conferred on the High Court or the Sessions Court. Section 397 CrPC confers power on the High Court or Sessions Court, as the case may be,

¹ 2004 (7) SCC 659

"for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior court".

It is for the above purpose, if necessary, the High Court or the Sessions Court can exercise all appellate powers. Section 401 CrPC conferring powers of an appellate court on the revisional court is with the above limited purpose. The provisions contained in Section 395 to Section 401 CrPC, read together, do not indicate that the revisional power of the High Court can be exercised as a second appellate power. (emphasis supplied)

23. On this aspect, it is sufficient to refer to and rely on the decision of this Court in *Duli Chand v. Delhi Admn.* [(1975) 4 SCC 649 : 1975 SCC (Cri) 663 : AIR 1975 SC 1960] in which it is observed thus: (SCC p. 651, para 5)

"The High Court in revision was exercising supervisory jurisdiction of a restricted nature and, therefore, it would have been justified in refusing to reappreciate the evidence for the purposes of determining whether the concurrent finding of fact reached by the learned Magistrate and the learned Additional Sessions Judge was correct. But even so, the High Court reviewed the evidence presumably for the purpose of satisfying itself that there was evidence in support of the finding of fact reached by the two subordinate courts and that the finding of fact was not unreasonable or perverse."

14. However, this Court perused the evidence of the three main witnesses, viz., Kandasamy (P.W.1), Karthikeyan (P.W.2) and Sankar (P.W.3). Kandasamy (P.W.1), in his evidence has stated that he was into real estate business; he obtained powers of attorney from various land owners and executed sale deeds in respect of those properties in favour of Ragavan and family members; in that deal, Ragavan assured Kandasamy (P.W.1) that he will give 20 percent amount as commission when those properties are sold; when Ragavan was selling those properties, Kandasamy (P.W.1) approached him for commission, which was denied by Ragavan; Kandasamy (P.W.1) shared his grievance with his son-in-law viz., Karthikeyan (P.W.2); Karthikeyan (P.W.2) introduced his friend Vinothkumar (A2) to his father-in-law Kandasamy

(P.W.1); Vinothkumar (A2) told them that Ramachandran (A1) can solve the problem and saying so, introduced Kandasamy (P.W.1) and Karthikeyan (P.W.2) to Ramachandran (A1); on 29.04.2008, Kandasamy (P.W.1) gave Rs.2 lakhs to Ramachandran (A1); Ramachandran (A1) and Vinothkumar (A2) asked Kandasamy (P.W.1) to come to Madurai and accordingly, Kandasamy (P.W.1), Karthikeyan (P.W.2) and Sankar (P.W.3) went to Madurai on 03.05.2008 and took rooms in the name of Ramachandran (A1) in Fortune Pandiyan Hotel; Ramachandran (A1) and Vinothkumar (A2) came there with four or five henchmen saying that the problem can be solved and demanded Rs.4 lakhs which was given to them by Kandasamy (P.W.1); again, on 05.05.2008, Ramachandran (A1) demanded Rs.3 lakhs which was also given; on 07.05.2008, Kandasamy (P.W.1) went to the residence of Ramachandran (A1) and asked him as to why nothing has been done despite receiving Rs.13 lakhs; Ramachandran (A1) started threatening Kandasamy (P.W.1), saying that if the problem is solved, huge amount will be received as commission by Kandasamy (P.W.1) and he further demanded cheques as security and accordingly, six blank but signed cheques were handed over to him at his residence; on 15.05.2008, Ramachandran (A1) demanded Rs.2 lakhs, but, Kandasamy (P.W.1) was able to give only Rs.1,51,000/-; The balance amount of Rs.49,000/- was paid on 21.05.2008. Thus, from the evidence of Kandasamy (P.W.1), it is seen that Rs.15 lakhs has been paid to Ramachandran (A1) and Vinothkumar (A2) on various dates, as stated above. Kandasamy (P.W.1) has further stated that he came to know from several people, that Ramachandran (A1) was a cheat and therefore, he lodged the complaint to the respondent police on 23.06.2008. In the cross-examination of Kandasamy (P.W.1), he has admitted that he had seen Ramachandran (A1) on 29.04.2008 at Chennai and police enquiry was conducted on 10.06.2008 against him on the complaint given by Ramachandran (A1). He has also admitted in the cross-examination that in respect of the two cheques for Rs.10 lakhs each (Exs.P.4 and P.5) proceedings under Section 138 of the NI Act have been initiated by Ramachandran (A1).

15. Mrs.Jayasri Baskar learned counsel appearing for the revision petitioner contended that when Ramachandran (A1) initiated prosecution under Section 138 of the NI Act, the present prosecution is clearly a counter blast. This aspect was considered in detail by both the Courts below and has been rejected. It is the specific case of Kandasamy (P.W.1) that six blank but signed cheques were obtained by Ramachandran (A1) on 07.05.2008. Out of the six cheques, only two cheques, viz., Exs.P.4 and P.5 have been filed as prosecution exhibits in this case.

16. On a perusal of Exs.P.4 and P.5, it is seen that the same have been dishonoured on the ground of stop payment

instruction. The trial Court has given a finding that the ink in the body of the cheques differ from the ink in the signature of Kandasamy (P.W.1) in both the cheques. It must be borne in mind that the complaint in this case was given on 23.06.2008 and Kandasamy (P.W.1) was examined before the trial Court on 20.04.2009. Therefore, in the cross-examination, Kandasamy (P.W.1) has stated that the prosecution under Section 138 of the NI Act in respect of those two cheques is pending before the trial Court. Except this reply from Kandasamy (P.W.1) in the cross-examination, Ramachandran (A1) has not filed any document or given any explanation in his examination under Section 313 Cr.P.C about the alleged debt for which Exs.P.4 & P.5 are said to have been given by Kandasamy (P.W.1). Under Section 106 of the Evidence Act, the burden is on the person, be it the accused, to place before the Court, the facts that are within his knowledge. Had Ramachandran (A1) submitted in questioning under Section 313 Cr.P.C, any materials like promissory note or receipt to show that two cheques were issued by Kandasamy (P.W.1) for the subsisting debt, then, this Court would have some materials to disbelieve the testimony of Kandasamy (P.W.1), Karthikeyan (P.W.2) and Sankar (P.W.3). On the contrary, the evidence of Kandasamy (P.W.1), Karthikeyan (P.W.2) and Sankar (P.W.3) stands corroborated by Fortune Pandiyan Hotel receipt (Ex.P.8), Hotel Sangam Madurai receipt (Ex.P.7) and Velan Hotel Greenfields receipt (Ex.P.6). All these hotel receipts, except Ex.P.6, show that all other hotel rooms were booked in the name of Ramachandran (A1) at Madurai, and then corroborates the testimony of Kandasamy (P.W.1), Karthikeyan (P.W.2) and Sankar (P.W.3) that they were asked to come to Madurai where some persons were shown as hirelings by Ramachandran (A1) and Vinothkumar (A2). In fact, Fortune Pandiyan Hotel receipt (Ex.P.8) clearly shows that Room No.215 was booked in the name of Ramachandran (A1) and the payment has been made by Sankar (P.W.3).

17. As regards the contention of Mrs.Jayasri Baskar, that Kandasamy (P.W.1) admitted in the cross-examination that he has seen Ramachandran (A1) on 29.04.2008 at Chennai, the trial Court has held that this statement in the cross-examination cannot have the effect of demolishing the overwhelming evidence that has been produced by the prosecution to show that Ramachandran (A1) and Vinothkumar (A2) have been extorting money from Kandasamy (P.W.1) and Karthikeyan (P.W.2). In fact, the prosecution have examined P.Ws.4 to 7, who have stated that Kandasamy (P.W.1) had borrowed money in and around that time during from them and the monies so borrowed have been given to Ramachandran (A1). Further, non-examination of Ragavan cannot be said to be fatal to the case, because, the Investigating Officer recorded the statement of Ragavan, but, he has not been examined as a witness obviously because, no one can expect him

to come to the Court and depose that he had to give 20 percent commission to Kandasamy (P.W.1), at the time of sale of the lands. The fact relating to the sale of the lands has been established via Exs.P.2 and P.3 series, which are the original documents and powers of attorney, relating to the lands sold to Ragavan, but, retained by Kandasamy (P.W.1), over which the alleged dispute revolves.

18. In fine, this Court does not find any infirmity in the judgments passed by the trial Court and the first Appellate Court warranting interference under Section 397 Cr.P.C. That apart, the trial Court has awarded a sentence of three months to the accused, challenging which, the State has also not filed any enhancement petition. Hence, this Criminal Revision Case stands dismissed. However, this Court directs the trial Court to return the sum of Rs.15 lakhs, if deposited by the accused, in compliance with the order of anticipatory bail in CrI.OP.No.15577 of 2008 dated 11.07.2008 to the victim, Kandasamy (P.W.1) if he is alive and if not, to his son-in-law, Karthikeyan (P.W.2).

19. This Court places on record its appreciation to Mrs.Jayasri Baskar learned counsel for the accused and Mrs.Kritika Kamal.P, learned Government Advocate (Criminal Side) for the thorough manner in which they presented the case.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Additional District and Sessions Court,
FTC No.III Coimbatore.
 2. The Public Prosecutor, High Court of Madras.
 3. The Sub-Inspector of Police, City Crime Branch
Coimbatore.
 4. The Judicial Magistrate No.VI, Coimbatore.
- +1cc to Mrs.Jayasri Baskar, Advocate, S.R.No.81779

CrI.R.C.No.85 of 2011

RK(CO)
CS/10/01/2019