

BAIL SLIP

The Petitioner/Accused namely C.Arumugam, aged 45 years, S/o.Chinnasamy was directed to be released on bail as per order dated 29.05.2013 made in MP.No. 1 of 2013 in CrI.R.C.No. 690 of 2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2019

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

CrI.R.C. No.690 of 2013

C. Arumugam

Petitioner/Accused

vs.

State represented by
the Inspector of Police
District Crime Branch
Krishnagiri
(Cr. No. 27 of 2004)

Respondent /Complainant

Criminal Revision Case filed under Sections 397 and 401 Cr.P.C. seeking to set aside the judgment dated 17.04.2013 passed by the Principal District and Sessions Court, Krishnagiri in CrI.A. No.64 of 2006 confirming the judgment of conviction and sentence dated 11.09.2006 passed by the District Munsif-cum-Judicial Magistrate, Pochampalli in C.C.No.47 of 2005.

For petitioner

Mr. C.R. Malarvannan

For respondent

Mr. G. Ramar
Govt. Advocate (CrI. Side)

ORDER

This criminal revision has been preferred seeking to set aside the judgment dated 17.04.2013 passed by the Principal District and Sessions Court, Krishnagiri in CrI.A. No.64 of 2006 confirming the judgment of conviction and sentence dated 11.09.2006 passed by the District Munsif-cum-Judicial Magistrate, Pochampalli in C.C. No.47 of 2005.

2 Shorn of the unnecessary frills, the germane and

necessary facts leading to the filing of this criminal revision case are as under:

2.1 It is the case of the prosecution that the petitioner joined as Constable in Central Reserve Police Force (for brevity "CRPF") by producing forged SSLC mark sheet (Ex.P.7) and forged Transfer Certificate (Ex.P.6); on the petition given by one Chinnasamy, a resident of Marichetihally, Dharmapuri District, the Commandant, CRPF, addressed a communication dated 28.01.2003 (Ex.P.2) to the Secretary, State Board of School Examinations (for brevity "the SBSE") enclosing a photocopy of the petitioner's SSLC mark sheet (Ex.P.7), requesting to verify its genuineness, in response to which, the SBSE verified Ex.P.7 and addressed a communication dated 21.03.2003 to the Commandant, CRPF, stating that the said educational certificate was not issued by the SBSE; the Commandant, CRPF, also addressed a communication to the Headmaster, Government Boys Higher Secondary School, Krishnagiri, sometime in January 2003, enclosing a copy of the impugned Transfer Certificate (Ex.P.6) with a request to verify its genuineness, in response to which, the latter, by communication dated 07.04.2003, informed the former that the impugned Transfer Certificate (Ex.P.6) was not issued by the said school; a departmental enquiry was conducted against the petitioner and eventually, he was dismissed from service; pursuant thereto, the Commandant, CRPF, lodged a complaint dated 26.04.2004 (Ex.P.4), based on which, the District Crime Branch, Krishnagiri, registered a case in Cr. No.27 of 2004 and after completing the investigation, filed final report in C.C. No.47 of 2005 before the District Munsif-cum-Judicial Magistrate, Pochampalli, against the petitioner.

2.2 On the appearance of the petitioner, the provisions of Section 207 Cr.P.C. were complied with. The Trial Court framed charges under Section 465, 466, 468, 471 and 420 IPC against the petitioner and when questioned, the petitioner pleaded "not guilty".

2.3 To prove their case, the prosecution examined four witnesses and marked nine exhibits. When the petitioner was questioned under Section 313 Cr.P.C. about the incriminating circumstances appearing against him in the evidence, he denied the same. On his behalf, no witness was examined nor any document marked.

2.4 The Trial Court, after considering the evidence on record and hearing either side, by judgment dated 11.09.2006 in C.C. No.47 of 2005, convicted and sentenced the petitioner as under:

Provision under which convicted	Sentence
Section 420 IPC	Three years rigorous imprisonment and fine of Rs.1,000/-, in default to undergo simple imprisonment for three months
Section 466 IPC	Three years rigorous imprisonment and fine of Rs.1,000/-, in default to undergo simple imprisonment for three months
Section 468 IPC	Three years rigorous imprisonment and fine of Rs.1,000/-, in default to undergo simple imprisonment for three months
Section 471 IPC	Three years rigorous imprisonment and fine of Rs.1,000/-, in default to undergo simple imprisonment for three months

The aforesaid sentences were ordered to run concurrently.

2.5 Assailing the aforesaid convictions and sentences, the petitioner preferred Crl.A. No.64 of 2006 before the Court of Session, which was made over to the Principal District and Sessions Judge, Krishnagiri, who dismissed the same vide judgment dated 17.04.2013.

2.6 Calling in question the correctness of the judgments of the Trial Court and the Appellate Court, the petitioner is before this Court under Sections 397 and 401 Cr.P.C.

3 Heard Mr. C.R. Malarvannan, learned counsel for the petitioner and Mr. G. Ramar, learned Government Advocate (Crl. Side) appearing for the respondent State.

4 While dealing with a revision petition under Sections 397 and 401 Cr.P.C., this Court cannot re-appreciate the evidence as a Court of Second Appeal. At this juncture, it is apropos to allude to the following paragraphs of the judgment of the Supreme Court in State of Maharashtra, etc. vs. Jagmohan Singh Kuldip Singh Anand and Others, etc.¹:

"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

1 (2004) 7 SCC 659

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,

“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 re-appreciate 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.”

Of course, where it is demonstrated that both the Courts below had overlooked certain material evidences, then, the power of this Court to re-appreciate the evidence can be exercised.

5 Mr. Malarvannan, learned counsel for the petitioner contended that the original of the impugned SSLC mark sheet was not marked by the prosecution and only a photocopy was marked. He further contended that Vasanthi Jeevanandam, Secretary, SBSE, who had issued Ex.P.5 dated 21.03.2003 was not examined as a witness, which is fatal to the case of the prosecution.

6 Per contra, Mr. G. Ramar, learned Government Advocate (Crl.Side) refuted the contentions put forth by the learned counsel for the petitioner.

7 This Court gave its anxious thought to the rival submissions.

8 K.M. Iyer (P.W.3), Commandant, CRPF, in his evidence, has spoken to about the receipt of complaint from a civilian against the petitioner alleging that the petitioner submitted forged SSLC mark sheet and forged Transfer Certificate for joining services; his office sent a copy of the SSLC mark sheet and Transfer Certificate for verification to the SBSE and to the Government Boys Higher Secondary School, Krishnagiri, respectively. He has stated that the CRPF received communications, viz., Ex.P.3 from the SBSE, Chennai and Ex.P.8 from the Government Boys Higher Secondary School, Krishnagiri, confirming that both the certificates were not issued by them. He has further stated that departmental action was taken against the petitioner and he was dismissed from service and thereafter, the police complaint was filed.

9 Senthamil Selvi (P.W.1), Secretary, SBSE, has stated that her office received a request letter dated 28.01.2003 (Ex.P.2) from the CRPF along with two photographs and a copy of the SSLC mark sheet of one Arumugam, in which, the genuineness of SSLC mark sheet relating to Reg. No.206716 was sought; her office compared the registration number with their records and issued a letter dated 21.03.2003 (Ex.P.5); the certified extract of the mark sheet relating to Registration No.206716 was marked as Ex.P.1, which shows the name of the candidate as one S. Sridhar and not C. Arumugam.

10 Ganesan (P.W.2), Headmaster of Government Boys Higher Secondary School, Krishnagiri, has stated that he received a communication from the CRPF along with a copy of the Transfer Certificate of one Arumugam, seeking verification of its genuineness; he verified the school records and found that none by name Arumugam, S/o Chinnasamy, with T.C. No.6786 and Admission No.8692, studied in their school. The letter dated 07.04.2003 sent by him to the CRPF giving these details has been marked as Ex.P.8.

11 Albeit only photocopies of the impugned SSLC mark sheet and Transfer Certificate were marked as exhibits and not their originals, yet, both the Courts below have placed strong reliance on the oral evidence given by the Senthamil Selvi (P.W.1), Secretary, SBSE and Ganesan (P.W.2), Headmaster of Government Boys Higher Secondary School, Krishnagiri, to hold that the petitioner had not studied in the said school nor had he cleared the SSLC examination, as represented by him at the time of joining the Force.

12 In fact, Senthamil Selvi (P.W.1), Secretary, SBSE, has marked the certified copy of the extract of the record of the SBSE, as Ex.P.1, which clearly shows that the Registration No.206716 referred to above in the impugned SSLC mark sheet relates to one S. Sridhar and it does not relate to the petitioner. The nonexamination of Vasanthi Jeevanandam, who was the predecessor-in-office to Senthamil Selvi (P.W.1), cannot be said to be fatal to the case of the prosecution, for, documents of the SBSE which are official documents, can be marked through the successor-in-office. In fact, it is pertinent to point out at this juncture that Senthamil Selvi (P.W.1) is not a stranger to the case, since, it is only she who had issued the communication dated 03.12.2004 (Ex.P.3) to the CRPF stating that the SSLC mark sheet that was sent to her office for verification is a forged document, in support of which, she has sent a certified copy of the extract of the tabulated mark register that is maintained by the SBSE. The tabulated mark register is a public document, which the SBSE is required to maintain and a certified copy of the same is admissible under Section 77 of the Evidence Act.

13 Further, the Trial Court, in paragraph no.15 of its judgment, has given the following finding:

"15. Apart from Ex.P.5, P.W.1 has herself issued the true extract of the mark sheet in Ex.P.1 as per the records maintained at the office of the Board of Secondary Education. The mark register maintained by the Board of Secondary Education, is a public document under Section 74 Evidence Act. Ex.P.1 is the certified copy of the public document admissible under Section 77 Evidence Act. Wherein Section 77 Evidence Act says certified copies may be produced in proof content of public document. Hence, Ex.P.1 came to be looked into. On comparing Ex.P.7, the SSLC mark sheet produced by the accused and Ex.P.5 and P.1 the true extract, it is evident that Ex.P.7 stands in the name of the accused in Certificate Sl.No.205936 for the examination appeared for March 1983 at Government Higher Secondary School,

Krishnagiri."

14 In the opinion of this Court, there is absolutely no illegality or impropriety in the findings of the Trial Court as well the Appellate Court warranting interference. Accordingly, the conviction passed by the Courts below against the petitioner is confirmed.

15 However, as for sentence, Mr. Malarvannan, learned counsel for the petitioner submitted that given the fact that the petitioner has been dismissed from service, some indulgence may be shown.

16 Acceding to the aforesaid submission of the learned counsel for the petitioner, the substantive sentence of three years rigorous imprisonment imposed by the Trial Court and confirmed by the Appellate Court, is reduced to two years rigorous imprisonment for the offences under Sections 420,466,468 and 471 IPC. The sentences shall run concurrently. The sentence of fine and default sentence remain intact. The Trial Court is directed to secure the presence of the petitioner and commit him to prison to undergo the remaining period of sentence.

Resultantly, this criminal revision is allowed in part.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

cad

To

- 1 The District Munsif-cum-Judicial Magistrate
Pochampalli.
2. The Chief Judicial Magistrate,
Krishnagiri.
- 3 The Principal District and Sessions Court
Krishnagiri
- 4 The Inspector of Police
District Crime Branch
Krishnagiri

5 The Public Prosecutor
 Madras High Court
 Chennai 600 104

6 The Deputy Registrar
 Madras High Court
 Chennai 600 104

} (Crl.Side) with a direction to
 return the
 original records to the Trial
 Court forthwith

+1cc to Mr. N.Mohideen, Advocate, S.R.No. 7325

Crl.R.C. No.690 of 2013

NMI (CO)
GN(01/03/2019)