IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2018

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.A.No.38 of 2008

State by the Deputy
Superintendent of Police,
Central Bureau of Investigation,
Special Crime Branch,
Chennai. .. Appellant/Respondent/Complainant

Vs.

1.Narendra Kumar Mohnot
Proprietor of M/s.Mohnot and Company,
No.38, College Road,
Nungambakkam,
Chennai.

2.K.Vijayarangam .. Respondents/Appellant/Accused

Prayer: Criminal Appeal filed under Section 378 of Cr.P.C. to set aside the acquittal order dated 28.09.2007 of the Court of learned Additional Sessions Judge-Fast Track Court-V, Chennai in C.A.No.165 of 2004 to confirm the Judgment dated 23.04.2004 of the learned Additional Chief Metropolitan Magistrate, Egmore, Chennai in C.C.No.6606/1995 of CBI Case No.RC.11/S/92 convicting the respondents/Accused persons.

For Appellant : Mr.K.Srinivasan
Special Public Prosecutor

For R1 : M/S.R.Rajarathinam

For R2 : Mr.R.S.Anhamuthu

JUDGMENT

This Criminal appeal is preferred by the State aggrieved by the reversal Judgment of the first appellate Court acquitting A1 and A2 on the ground that the prosecution has not proved the case against them for the charges of conspiracy cheating, forgery, using forged documents as genuine to cheat the assessee of Income Tax Department.

2. The brief facts of the prosecution case is that Mr.Narendra Kumar Mohnot is the Chartered Accountant and an Income Tax Practitioner, running his office under the names and style of Mohnot and Company at Nungambakkam, Chennai. One Vijayarangam and Mani (since deceased) are employed under him. All of them conspired to cheat their clients namely Mittalal, Sukidevi and Ashok Kumar for assessing the Income Tax liability by submitting forged remittance challan to the tune of Rs.3,25,000/-.

3. In pursuant to the said conspiracy, fake rubber stamp was prepared by A2-Vijaya Rangam and using the fake rubber stamp and seal of Indian Bank, he, at the instruction of A1, prepared remittance challan for payment of Income Tax in the name of Mittalal, Sukidevi and Ashok Kumar. The forged counterfile of the challan had been annexed along with the covering letter sent by A1 to the Income Tax Department as if tax for the assessee has been paid under the said challan. The Income Tax Office has accepted it and after conciliation of the account they found that the challan presented by A1 on behalf of his clients are forged challan and no remittance was made in Indian Bank as found in the challan. This has lead to lodging of complaint by K.V.Savuthiri, Deputy Commissioner of Income Tax, Head quarters Administrative Circle-II, Chennai on 04.08.1992. Pursuant to the complaint Central Bureau of Investigation official registered the First Information Report against 9 persons including the assessee in whose name the forged challan was presented to the Income Tax Department. Later, on completion of investigation, the prosecution has laid final report only against Narendra Kumar Mohnot, the Chartered Accountant-A1 and Vijayarangam-A2 and Mani-A3 the employees of A1. The trial Court after assessing the evidence let in by the prosecution namely 21 witnesses and 60 exhibits had held A1 and A2 guilty of the offences and sentenced them as below:-

> " Hence A1 is convicted and sentenced u/s 120 (B) r/w 420 IPC to undergo one year rigorous imprisonment and to pay a fine of Rs.3,000/- in default 6 months rigorous imprisonment, u/s. 468 IPC to undergo one year rigorous imprisonment and to pay a fine of Rs.3,000/- in default 6 months rigorous imprisonment, u/s.471 r/w 468 IPC to undergo one year rigorous imprisonment and to pay a fine of Rs.3,000/- in default 6 months rigorous imprisonment.
>
> A2 is convict and sentenced u/s. 120 (B) r/w 420 IPC to undergo one year rigorous imprisonment and to pay a fine of Rs.3,000/- in default 6 month rigorous imprisonment, u/s.468 IPC to undergo one year rigorous

> imprisonment and to pay a fine of Rs.3,000/- in default 6 month rigorous imprisonment, u/s.471 r/w 468 IPC to undergo one year rigorous imprisonment and to pay a fine of Rs.3,000/- in default 6 month rigorous imprisonment. All the sentences are run concurrently. Total fine Rs.18,000/-."

4. However, the Trial Court acquitted A3 on the ground that except the opinion of the handwriting expert there is no other corroborative evidence to fix criminality upon the said accused and acquitted him.

5. Aggrieved by the same the convicted accused had preferred Crl.A.No.165 of 2004 on the file of Additional Sessions Judge, Fast Track Court-V, Chennai and on re-appreciation of the evidence the first appellate Court has allowed the appeal and acquitted the accused persons vide order dated 28.09.2007.

6. Aggrieved by the order of acquittal the present appeal is preferred by the prosecution on the ground that the first appellate Court while passing the order of acquittal had concluded that no complaint was made by the assessee regarding cheating and money entrusted to the chartered auditor and his employee. While so, the charge against the appellant alleging cheating of the assessee does not arise and further the first appellate Court has held that the non-conducting of test identification parade by the stampmaker PW.19 to identify A2 as the person who has ordered to make fake Indian Bank seal is fatal to prosecution. These two reasons are not germane to the case of the prosecution to hold them innocent and that the first appellate Court without assigning any acceptable reason has acquitted the accused persons by reversing the well considered Judgment of the trial Court, hence it needs interference.

7. Point for consideration is whether the first Appellate Court, while reversing the finding of the trial Court, has assigned any acceptable reason for reversal. The incriminating evidence relied on by the prosecution as against the accused A1 to A2/respondents herein is the evidence of PW.9 who spoke about manufacturing the rubber stamp at the instance of A2. Next the prosecution rely upon the evidence of PWs.17 and 18 assessees on whose behalf the forged chalans were submitted to the department to corroborate the evidence regarding forgery and fraudulent creation of document. The prosecution further relies upon the opinion of the handwriting expert which is marked as Ex.P.52. On perusal of the deposition of PWs.17 and 18 assessees, this Court would find that except allegation against the accused A1 and A2 that a sum of Rs.3,00,000/- was not paid to the employee of A1 office namely A2 to remit the Income Tax on behalf of Mittalal, Sukidevi and Ashok Kumar for the assessment years

1987-88 and 1991-92. There is no positive evidence elicited to prove through these witnesses that in the challans Exs.P1 to 12 the signature of the person making payment is found on the reverse of the document and those signatures was signed by them or somebody else on their behalf. This omission to ascertain the person who signed on behalf of the tax payer becomes very vital omission because when the assessees have come out positively about giving payment to the auditor, who in turn has embezzled the money and given forged the challan to them and also forwarded the copy of the challan to the Income Tax Department along with their returns, the defence has suggested to the witnesses that they have given the forged challans to the auditor for onward submission to the Income Tax Department and they have no knowledge about the forgery of the said challans.

8. The Trial Court has heavily relied upon the entries found in the challan said to be made by A2 as per the opinion of the handwriting expert. The first appellate Court has rightly pointed out that filling up the challan by itself will not given rise to any criminality on the part of A2. With regard to the forgery or fabrication of the document on the reverse of the challan, on scrutiny of the evidence let in by the prosecution, both the ocular evidence as well as the document evidence, the lacuna on the part of the prosecution to ascertain or fix the person who has signed the challans marked as Exs.P.1 to P.12 raises a possible doubt in the mind of the Court that it could have been done at the instance of the assessee and not at the office of the auditor. Unless the forgery is proved against A1 and A2 beyond reasonable doubt, they cannot be held liable for forgery and cheating. In this case as pointed out by the lower Appellate Court there is a gray area in the case of the prosecution to prove the accusation of the accused which does not indicate that the chalan was forged only by A1 and A2 and by none else.

9. This Court while considering the evidence on record find that apart from seizure of these challans in respect of the three assesses, no other material incriminating the accused persons were recovered during seizure of the residence and office premises of the accused persons. When there is possibility of forging the remittance challan by the assesses and when the prosecution has failed to rule out that possibility through positive evidence, just because the challan has been remitted from A1 office and reached the Income Tax Department along with his covering letter, cannot be a reason to hold him guilty of forging the record and cheating the department.

10. For the aforesaid reasons, when an alternate fact is possible and favourable to the accused persons of the crime and same has been pointed out by the first appellate Court while acquitting him the benefit of doubt extended to the appellants

need not be disturbed. Therefore this court holds that there is no sufficient reason to interfere with the finding of the first appellate Court to allow this appeal.

11. Hence, the criminal appeal is dismissed and the order of acquittal of the Lower Appellate Court passed in Crl.A.No.165 of 2008 is hereby confirmed.

Sd/-
Asst.Registrar (CS IX )

/true copy/

Sub Asst. Registrar

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To

1.The Additional Sessions Judge,
Fast Track Court-V, Chennai.

2.The Additional Chief Metropolitan Magistrate,
Egmore, Chennai.

3.do Thro Chief Metropolitan Magistrate,
Egmore, Chennai.

4.The Public Prosecutor,
High Court, Madras.

+ 1 cc to Mr.R.S.Anhamuthu Advocate,SR.

+ 1 cc to Mr.K.Srinivasan Special PP(CBI),SR.13775

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nr 21/03/2018