

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 27.06.2018

Pronounced on : 05.07.2018

CORAM:

THE HON'BLE MR.JUSTICE N. ANAND VENKATESH

Criminal Revision Case No.1303 of 2010

Deivamagan

....Petitioner /Accused 5

...Vs...

State, Represented by,
The Sub-Inspector of Police,
District Crime Branch,
Namakkal.
(Crime No.1 of 2004)

.... Respondent/Complainant

PRAYER: Criminal Revision Petition filed under Section 397 read with 401 of the Criminal Procedure Code, to set aside the order in C.A.No.16 of 2007 on the file of Additional Sessions Judge cum Fast Track Court, Namakkal, dated 07.12.2010 and confirming the Judgment in C.C.No.486 of 2005 on the file of Judicial Magistrate, Rasipuram, dated 09.01.2007.

For Petitioner : Mr.N.Sudharsan

For Respondent : Mr.S.Thankira
Government Advocate (Crl. Side)

O R D E R

This Criminal Revision Petition is directed against the order passed in CRL.A.No.16 of 2007 by the Additional Sessions Judge cum Fast Track Court, Namakkal, dated 07.12.2010, confirming the order of conviction and sentence passed by the Trial Court in C.C.No.486 of 2005.

2.The case of the prosecution is that the petitioner, who is arrayed as A1, and his son who was arrayed as A2, were running a finance Company in the name and style of "Sri Angalamman Finance" at Rasipuram Taluk. In the course of business, they

started a chit for Rs.1,00,000/- in 50 monthly installments. The de-facto complainant by name Rahamathullah, joined the said chit on 10.04.2001 and paid the sum of Rs.22,500/- in 26 monthly installments. On 10.06.2003, the de-facto complainant made his bid for Rs.54,000/- after deducting a sum of Rs.46,000/-. The accused person did not pay the amount of Rs.54,000/- to the de-facto complainant. Similarly the other persons, who had also participated in the chit transaction were also not paid the amount due to them. The accused persons mis-appropriated the total sum of Rs.4,09,200/- which was due and payable to 11 victims including the de-facto complainant.

3. A complaint was lodged before the respondent police and a case was registered in Crime No.1 of 2001 for the offences under Sections 409 and 420 IPC on 01.02.2004, and investigation was taken up. On completion of the investigation, the final report was filed on 28.10.2004 and the same was taken on file by the Trial Court in C.C.No.486 of 2005 and charges were framed against the accused persons under Sections 409 and 420 IPC. After completion of the trial, the Trial Court convicted both the accused persons and imposed the sentence of 2 years rigorous imprisonment and fine of Rs.500/- and in default 6 months simple imprisonment, for each of the offence.

4. Aggrieved by the order passed by the Trial Court, the accused persons filed an appeal. The Appellate Court by an order dated 07.12.2010 allowed the appeal insofar as A2 is concerned by setting aside the order of conviction and sentence and dismissed the appeal insofar as A1 is concerned and thereby confirmed the order of the Trial Court.

5. Aggrieved by the order passed by the Appellate Court, A1 has filed the above Criminal Revision Petition before this Court.

6. The prosecution in order to prove the case has examined 10 witnesses and marked 11 documents. PW1 to PW9 are the persons who had deposited the money in the chit fund and who were not paid back the money invested with the accused persons. The accused persons never denied the chit transaction and the various amounts that were deposited by the victims. The only defence that was sought to be projected by the accused persons was that the amount that was deposited by the victims have been returned back to them.

7. The learned counsel for the petitioner submits that there was delay in lodging the complaint since the incident is said to have taken place on 10.06.2003 and the complaint was given only on 01.02.2004. The learned counsel for the petitioner further submits that the partnership firm was not made as an accused and therefore proceeding independently against the partners alone is not sustainable. The learned counsel for the

petitioner further contended that the sentence imposed on the petitioner is harsh and the same requires interference by this Court.

8.The learned Government Advocate (Crl.Side) submitted that the prosecution has proved the case beyond reasonable doubts against the petitioner and there are absolutely no grounds to interfere with the order passed by both the Courts bellow. The learned counsel further contended that this Court in exercise of its revisional jurisdiction cannot re-appreciate the facts that have already been analysed by both the Courts below, unless the findings on fact is perverse. The learned counsel therefore submits that this Criminal Revision Petition is liable to be dismissed.

9.A reading of the order passed by both the Courts below and also the oral and documentary evidence on the side of the prosecution, clearly shows that the prosecution has proved the case beyond reasonable doubts against the petitioner. The evidence of PW1 to PW9 and also Exs.P2 to P9 and P10 and P11 clearly shows that the petitioner was in fact running the chit business and he has collected the money from 11 victims to the tune of Rs.4,09,200/- and had failed to repay back the money and thereby has committed by offences under Sections 409 and 420 IPC.

10.A careful perusal at the documents marked as Exs.P2 to P9 and P10 and P11 clearly shows that the accused persons had in fact collected various amount from the victims towards the chit transaction and there was absolutely no evidence to show that the amount was repaid to the victims.

11.The contention of the learned counsel for the petitioner that there was the delay in giving the complaint cannot be countenanced for the simple reason that the victims were requesting and pleading with the petitioner to return back the amount for a period of 6 months and only after all their efforts failed, they decided to set the Criminal Law in motion. Therefore, mere delay in filing the complaint will not enure to the benefit of the petitioner.

12.The next contention of the petitioner that the partnership firm was not made as an accused in this case is liable to be rejected at the out set for the simple reason that such an eventuality will arise only if the concept of vicarious liability is applied like in cases of Negotiable Instruments Act, Companies Act etc. Where as, in the present case, the offence involved are IPC offences and the concept of vicarious liability cannot be applied. The prosecution has proved the involvement of the accused persons in the offence and it is enough for the prosecution to proceed against those persons who

are directly involved in the offence and it need not add the partnership firm also as an accused.

13.Both the Courts bellow have discussed the oral and documentary evidence in detail and have given a categorical finding that there is over whelming evidence against the accused persons and they have mis-appropriated the amount collected from the victims in the chit transaction. The Appellate Court had acquitted A2 on the ground that he did not actively participate in the business and he was only a sleeping partner and there were no direct materials against A2. Insofar as the petitioner is concerned, the Appellate Court has given a categorical finding that all the documents marked before the Court contained the signature of petitioner and all the witnesses have spoken about chit transaction with A1 cogently and there was absolutely no material to prove that the petitioner had repaid the amount received by him. Therefore, the Appellate Court has confirmed the findings of the Trial Court which found the petitioner to be guilty of cheating, mis-appropriation and breach of trust.

14.This Court does not find any ground to interfere with the order passed by both the Courts below. There is no manifest illegality, perversity or infirmity in the order passed by both the Courts below. This Court sitting in revisional jurisdiction cannot re-appreciate the evidence in the absence of manifest illegality. Therefore, the order of conviction passed against the petitioner stands confirmed.

15.Insofar as, the sentence is concerned taking into consideration the facts and circumstances of the case and the length of time, the same is modified to period already undergone. This is an appropriate case where compensation must be awarded in exercise of powers under Section 357 (4) of Cr.P.C. The petitioner is directed to deposit the compensation of Rs.4,10,000/- and in default to undergo 3 months simple imprisonment. On such, deposit of compensation before the Trial Court in C.C.No.486 of 2006, the Trial Court shall issue notice to the victims and permit them to withdraw the amount due to them under the chit transaction.

16.In the result, this Criminal Revision Petition is partly allowed by confirming the order of conviction against the petitioner and modifying the sentence to the extent stated above.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

gsp

To

1.The Additional Sessions Judge
cum Fast Track Court, Namakkal.

2.The Judicial Magistrate,
Rasipuram.

3.The Sub-Inspector of Police,
District Crime Branch,
Namakkal.

4.The Public Prosecutor,
High Court, Madras.

+lcc to Mr.N.Sudharsan, Advocate, S.R.No.44258

Crl. RC. No.1303 of 2010

CNR(CO)
GSP(09/08/2018)



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