



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03 .01.2018

Orders Reserved on 13.06.2017

CORAM:

THE HONOURABLE MR.JUSTICE A.M.BASHEER AHAMED

Crl.RC(MD)No.431 of 2017

and

CRL M.P(MD)Nos.4380 & 4381 of 2017

Vinoth : Petitioner / Petitioner / A2

Vs.

State through
Inspector of Police,
DCB, Sivagangai,
In Crime No.21 of 2010

: Respondent / Complainant

PRAYER: Revision is filed under Section 397 r/w 401 of Cr.P.C., praying to set aside the order dated 31.01.2017 passed in Crl.M.P.No.41 of 2016 in C.C.No.102 of 2014 on the file of the learned Judicial Magistrate No.II, Sivagangai and consequently discharge the petitioner of all the charges levelled against him in the case.

For Petitioner : Mr.M.Rajaraman

For Respondent : Mr.C.Mayilvahana Rajendran
Additional Public Prosecutor

ORDER

This Criminal Revision Petition has been filed praying to set aside the order dated 31.01.2017 passed in Crl.M.P.No.41 of 2016 in C.C.No.102 of 2014, by the learned Judicial Magistrate No.II, Sivagangai and consequently, discharge the petitioner of all the charges levelled against him.

2. The Criminal Revision is taken up for final hearing, in the admission stage itself, with the consent of the learned counsel appearing for either side.



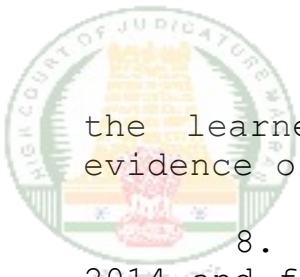
3. The case of the prosecution is that 21 sovereigns of gold jewels was entrusted with the first accused in the year 2002 for getting a loan of Rs.40,000/-, by way of pledge and even after the payment of the said loan amount with interest by the complainant to the petitioner herein, as directed by the first accused, since the pledge receipt stood in the name of the petitioner, the jewels were not returned to the complainant and both the accused cheated the complainant.

4. The learned counsel appearing for the petitioner would submit that FIR and 161(3) Cr.P.C., statements recorded from the witnesses also not implicated the petitioner and hence, there is no *prima facie* case made out to proceed against the petitioner for the offences under Sections 406 and 420 of IPC., and the petitioner was at Malaysia on 18.02.2009 and as if it is stated in the FIR that the petitioner was present on the above said date and a sum of Rs.50,000/- was given to the petitioner by the complainant towards the redemption of the above jewels.

5. The learned Additional Public Prosecutor, in support of his contentions, has relied on the Judgment of the Hon'ble Apex Court in **State Anti Corruption Bureau, Hyderabad and Another Vs. P.Suryaprakasam** reported in **(1999 SCC (Cri.) 373)** "Held - Cr.P.C., 1973 Sections 239 & 240 and 228 - At the stage of framing of charge court is required to consider only the police report and documents sent with it under Section 173 - Accused has right of being heard and the Court may examine him, if it thinks necessary - However, the High Court not justified in looking into the documents filed by the accused and relying upon them to conclude that no offence was committed by them."

6. Perused the materials available on record produced by the petitioner herein. Heard the rival submissions made by the counsel appearing for the petitioner and also the learned Additional Public Prosecutor appearing for the respondent.

7. Admittedly FIR has been registered in Crime No.21 of 2010 by the respondent for the offences punishable under Sections 406 & 420 of IPC., and after completing the investigation, charge sheet was also laid on 25.05.2017 against two accused persons before the learned Judicial Magistrate No.2, Sivagangai, for the offences punishable under Sections 406 and 420 IPC., wherein the petitioner is arrayed as 2nd accused. While the said case was taken on cognizance against both the accused including the petitioner herein and was pending as C.C.No.93 of 2012, on the file of the said Court. Thereafter, the case against A2, who is the petitioner herein, was split up as C.C.No.102 of 2014, since NBW was issued against the petitioner herein was pending for a long period. C.C.No.93 of 2012 against the first accused was taken up for trial and after framing charges and is pending before



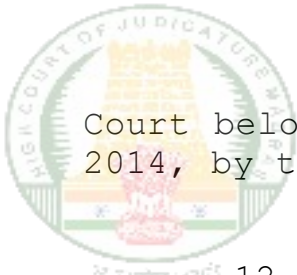
the learned Judicial Magistrate No.2, Sivagangai, for further evidence of prosecution.

8. The petitioner / 2nd accused appeared in C.C.No.102 of 2014 and filed Cr.M.P.No.41 of 2016, under Section 239 of Cr.P.C., for discharge from this case and the said petition was dismissed on 31.01.2017, by the learned Judicial Magistrate-II, Sivagangai. Aggrieved by the dismissal order, the petitioner has preferred the present Criminal Revision before this Court to set aside the order of dismissal passed by the learned Judicial Magistrate-II, Sivagangai in Cr.M.P.No.41 of 2016 dated 31.01.2017.

9. On perusal of the said FIR in this case, the alleged pledge receipt handed over by the first accused stood in the name of the petitioner and the loan amount of Rs.40,000/- along with interest of Rs.10,000/- totally Rs.50,000/- was given to the petitioner. Subsequently, after receipt of the alleged pledge receipt by the first accused in this case and latter on both the accused have cheated the complainant without redeeming the jewels, which was entrusted with the accused, after receipt of Rs.50,000/- from the complainant. The statements of the complainant, her husband Chelladurai and sister Sundari recorded under Section 161 (3) of Cr.P.C., prove the above fact. The statement of the other witnesses only speak about the fact that no jewels were pledged by the petitioner from the year 2004, but the alleged occurrence of pledging the jewels took place in the year 2002, as per the FIR. It is stated that the alleged pledge receipt, which stood in the name of the petitioner was given back to the first accused in the year 2002 itself on her demand alleging that she is paying the interest amount to Bank towards jewel loan.

10. Further, the petitioner pleads the defence of alibi by producing the copy of the Passport that he was at Malaysia from 02.06.2008 to 25.06.2010. Such a defence cannot be taken at this stage. The alleged confession of the first accused stating about the involvement of the petitioner in the alleged offence cannot be totally discarded and it can be taken into consideration at the end of the trial, as stated by the trial Court. The trial Court cannot weigh the evidentiary value of the materials placed on the side of the prosecution except to find out the prima facie material to support the charges levelled against the accused persons. It is settled law that the trial Court has to see and rely the documents produced by the prosecution along with the final report and to find out any prima facie grounds to proceed against the petitioner at the time of framing charges.

11. Considering the above facts and circumstances of the case and also the principles laid down by the Hon'ble Apex Court in the Judgment reported in **(1999 SCC (Cri.) 373)** cited supra, this Court is not inclined to interfere with the findings of the



Court below in dismissing CrI.M.P.No.41 of 2016 in C.C.No.102 of 2014, by the learned Judicial Magistrate -II, Sivagangai

12. In the result, this Criminal Revision Petition is dismissed. Consequently, connected Criminal Miscellaneous Petitions are also dismissed.

Sd/-
Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate-II,
Sivagangai.
 2. The Inspector of Police,
District Crime Branch,
Sivagangai.
 3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
 4. The Record Keeper,
Vernacular Section
Madurai Bench of Madras High Court.
- + 1 cc TO Mr.M.Rajaraman , Advocate in SR No. 40460

MPK
AE/JC/SAR2/12.01.2018/4P/7C

Order made in

CrI.RC(MD)No.431 of 2017
03.01.2018



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Dated:-
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