



BAIL SLIP

M.Arun, S/o.Mariraj, Male, aged about 23 years, (Accused No.3) was released on bail by an order of this Court dated 19.07.2018 made in Crl MP No.3136 of 2016 in CRL RC No.242 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:31.10.2018

Coram:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.R.C.(MD).No.242 of 2016

M.Arun ...Petitioner/ Appellant/ Accused No.3

-Vs-

The State represented by
The Inspector of Police,
"Q" Branch CID,
Dindigul, Dindiugul District
(Crime No.01 of 2013)

...Respondent / Complainant

Prayer:- Criminal Revision Petition filed under Section 397 r/w. 401 of Cr.P.C to set aside the conviction and sentence imposed on him by the learned Principal Sessions Judge, Dindigul District, Dindigul, dated 22.01.2016 by means of the judgment made in Criminal Appeal No.28 of 2014, confirming the conviction and sentence imposed on him by the learned Judicial Magistrate, Nilakottai, Dindigul dated 06.08.2014 made in C.C.No.328 of 2013.

For Petitioner : Mr.S.Palani Velayutham

For Respondent : Mr.A.Robinson,

Government Advocate (Crl. Side)

ORDER

Heard the learned counsel appearing for the revision petitioner and the learned Government Advocate (Crl., side) appearing for the respondent.

2.This Revision Petition is directed against the judgment dated 22.01.2016 passed by the learned Principal Sessions Judge, Dindigul in Criminal Appeal No.28 of 2014, which was filed against the judgment dated 06.08.2014 in C.C.No.328 of 2013, on the file of the learned Judicial Magistrate, Nilakottai, Dindigul District. The conviction and sentence imposed against the revision petitioner/A.3 by the trial Court as confirmed by the lower appellate Court is as below:

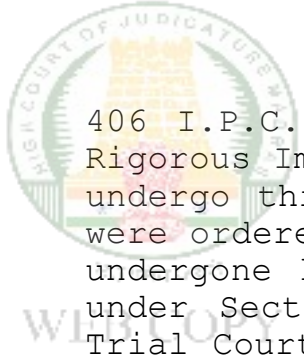


Offence பெயர்	Sentence imposed by the Trial Court in C.C.No.328 of 2013	Sentence imposed by the Lower Appellate Court in C.A.No.28 of 2014
Sections 120-B, 406 and 420 IPC	To undergo three years rigorous imprisonment for each offence and to pay a fine of Rs.1,000/- in default to undergo three months simple imprisonment for each offence.	Confirmed.

The period of sentence was ordered to run concurrently. The Trial Court has also directed the accused persons (A.1 to A.3) to pay a sum of Rs.12,00,000/- as compensation to the affected persons. The lower appellate Court has also confirmed the same.

3.The brief facts of the case are that the revision petitioner along with other two accused persons went to the Srilankan Refugee Camp at K.Pudupatti and canvassed that he will arrange for job at Australia on payment of Rs.1,20,000/-. The revision petitioner herein is an Indian National and other two accused persons are Srilankan Nationals. Believing the words of the revision petitioner and the other accused persons, 12 Srilankan Refugees parted away each Rs.1,00,000/- to Accused No.1 in the presence of Accused No.3, who is the revision petitioner herein. After receiving the money on 08.06.2013, all the twelve victims were taken to Chennai. On 10.06.2013, they reached Chennai along with the revision petitioner. Accused Nos.1 and 2 informed that they have made all arrangements to go to Australia and they will come and take them at 8.00 p.m. Thereafter, Accused Nos.1 and 2 suddenly disappeared. The victims were not able to contact the accused Nos.1 and 2 over phone. The mobile phones were switched off. Accused No.3 informed the victims that Accused Nos.1 and 2 might have been caught by the Police and asked the victims to leave from Chennai. Since the victims were made to believe the words of the accused, they came back to Batlakundu on 11.06.2013. After a period of four months, a complaint was given. The respondent Police, after due investigation, has filed a final report against three persons viz., Suganthan, Sudhan @ Petty @ Rameshkumar and Arun. The Trial Court, after considering the witnesses for prosecution, which includes the victims / Srilankan Nationals, who have parted each Rs.1,00,000/- to the third accused for the illicit transport to Australia and 29 Exhibits held that all these three accused are guilt of conspiracy, mis-appropriation and cheating. The Gold ornaments recovered from Accused No.1, were marked as M.Os.1 to 20. In defence, three witnesses were examined. But their deposition did not enhance the case of the accused persons to prove their innocence. In such

<https://hcservices.mca.gov.in/hcservices/> the Trial Court imposed three years Rigorous Imprisonment and a fine of Rs.1,000/-, in default to undergo three months Simple Imprisonment for the offences under Sections 120-B and

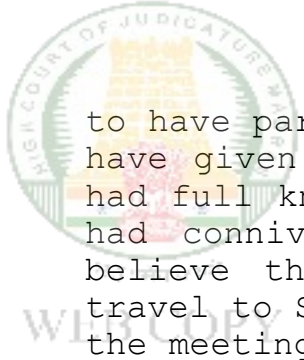


406 I.P.C. For the offence under Section 420 I.P.C, three years Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default to undergo three months Simple imprisonment. The period of sentences were ordered to run concurrently and the period of sentences already undergone by the accused were directed to be set off as required under Section 428 of the Code of Criminal Procedure, besides the Trial Court has also ordered compensation to the victims payable by Accused Nos.1, 2 and 3 for a sum of Rs.12,00,000/-. The materials were marked as M.O.1 to M.O.20 were ordered to be put to auction and confiscated to the state. Aggrieved by that, the present revision petitioner/ Accused No.3 preferred Criminal Appeal No.28 of 2014 and other two accused preferred Criminal Appeal No.32 of 2014. Both the Appeals were heard together by the Appellate Court and after appreciating the evidence, the Appellate Court confirmed the judgment of the Trial Court. Hence, the present revision petitioner/ Accused No.3 filed this present case.

4.The learned counsel appearing for the petitioner would submit that no incriminating evidences have been available against the revision petitioner which has led to his conviction, whereas, the Courts below have not considered the vital fact that though the revision petitioner was present at the time of transaction of the money from the victims, Accused No.3 is not beneficiary of the transaction. The conduct of the revision petitioner is that he was all along with the victims at Chennai with fond hope that Accused Nos.1 and 2 have made all arrangements for their transport to Australia. There is no evidence to show that he had guilty mind to cheat the victims. Since the ingredient under Section 420 I.P.C is not made out, the petitioner ought not to have been held guilt and convicted for the offences under Section 420 I.P.C. Further, the learned counsel would also submit that the charge of misappropriation against this revision petitioner would also not be attracted, in view of the fact that the prosecution can able to recover only watch and cell phone which are not proved to be recovered from the accused person or proved to have been purchased from the money given by the victims.

5.It is contented by the revision petitioner that since the revision petitioner was 18 years old at that point of time, he had acquaintance with Srilankan refugee by name Jency. He came in contact with the victims, who have been examined as prosecution witness. He *bona fidely*, believing the words of accused Nos.1 and 2, helped the victims. He believed that Accused Nos.1 and 2 could arrange some good employment for the victims at Australia and therefore, he accompanied them and he has no intention to cheat the victims.

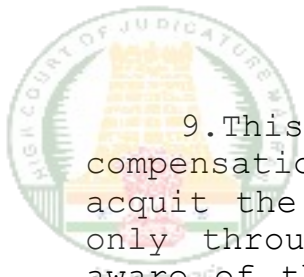
6.The learned Government Advocate (Crl. side) would submit that the prosecution witness has categorically deposed against this accused about his overt act at refugee camp in canvassing the victims. The entire money was received by him and given to Accused Nos.1 and 2. But for this revision petitioner the victims ought not



to have parted away money believing the words of Accused No.3. They have given money to Accused Nos.1 and 2. This revision petitioner had full knowledge about the antecedent of Accused Nos.1 and 2. He had connived with Accused Nos.1 and 2 and made the victims to believe that he and other accused can arrange their clandestine travel to Srilanka by ferry. Since the prosecution is able to prove the meeting of mind and charge of conspiracy between this petitioner and other two accused, it is immaterial from whom the material objects were recovered. The learned Government Advocate (Crl. side) would further submit that both the Courts below have considered the testimony of the victims and based on their testimony, Accused No.3 has been found guilty of the charges.

7.Further, the learned Government Advocate would also point out that except to suggest the motive for implicating him in the crime, which is unfounded, Accused No.3 has not placed any material or reason for being with Accused Nos.1 and 2. He actively participated in receiving the money and giving false hope to the victims. After accused Nos.1 and 2 absconding, in order to divert the victims from getting alarm of realizing the cheating, he has given false alarm to them that Accused Nos.1 and 2 have been caught by the Police. He has moved the victims from Chennai to Batlagundu. The entire conduct of the revision petitioner coupled with the crime alleged against him and proved by the prosecution has been well appreciated by the Courts below which requires no interference.

8.From the deposition of prosecution witnesses, this Court finds that this revision petitioner along with other two accused persons had been frequently visiting Srilankan Refugee camp during the month of May and June. P.W.1 and P.W.2 were the victims, who have spoken about the role played by the accused No.1 in a vivid fashion. After creating confidence in their mind, that they have arranged for clandestine transport of one Stephen. This revision petitioner has falsely represented that Accused Nos.1 and 2 have been licensed by Government to send the employee for work to abroad, particularly, Australia. P.W.1 to P.W.10 have also deposed about paying Rs.1,00,000/- each on 08.06.2013 at Batlagundu. The prosecution evidence reveals that on 09.06.2013, the accused Nos.1 to 3 along with PW.1 to P.W.10 have gone to Chennai and stayed at Lodge by name P.S Lodge, Koyambedu. The rooms were booked by this revision petitioner. This revision petitioner has been all along with the victims and made them to stay in these rooms. This fact is spoken to by P.W.19, the Manager of the said Lodge. P.W.19 is the occupier of the lodge. From the deposition of this witness, the factum of meeting of minds between Accused Nos.1, 2 and 3 to cheat the victims is clearly made out by the prosecution. No doubt, the witnesses have spoken that the money was given to Accused Nos.1 and 2, who later absconded. They along with Accused No.3 returned to Batlagundu.



9.This can only be a mitigating circumstances regarding the compensation payable to the victims and will not totally give way to acquit the accused. *Mens ria* to cheat the victims can be inferred only through the conduct. This revision petitioner being fully aware of the fact that Accused Nos.1 and 2 are not genuine persons holding any license for man power Agency, he ought not to have canvassed for them.

10.Therefore, this Court from the material evidence found that the prosecution has proved the guilt of accused and this revision petitioner for the offences under Sections 120(b), 406 and 420 I.P.C, even though no much money has been recovered from these accused persons.

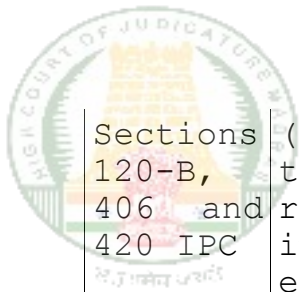
11.However, as contended by the learned counsel appearing for the revision petitioner at the time of occurrence, this revision petitioner was hardly 19 years old. Therefore, while confirming the conviction, this Court modifies the sentences and compensation.

12.The learned counsel appearing for the appellant would submit that this petitioner has already been in prison for nearly eleven months.

13.Considering the said submission, the period of imprisonment already undergone, can be treated as period of sentence and accordingly, the sentence is modified as stated infra.

14.As a result, this Criminal Revision Case is partly allowed. The Judgment of conviction passed against the revision petitioner/A.3 in C.C.No.328 of 2013, dated 06.08.2014 by the learned Judicial Magistrate, Nilakottai, Dindigul District, as confirmed in C.A.No.28 of 2014, dated 22.01.2016 by the learned Principal Sessions Judge, Dindigul District, Dindigul is confirmed. However, the sentence is modified as below:

Offence	Sentence imposed by the Trial Court in C.C.No.328 of 2013	Sentence imposed by the Lower Appellate Court in C.A.No.28 of 2014	Sentence imposed by this Court in this Criminal Revision Case.



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Sections 120-B, 406 and 420 IPC	(i) To undergo three years rigorous imprisonment for each offence and to pay a fine of Rs.1,000/- in default to undergo three months simple imprisonment for each offence. (ii) The Trial Court has also directed the accused persons (A.1 to A.3) to pay a sum of Rs.12,00,000/- as compensation to the affected persons.	Confirmed.	(i) Period of imprisonment already undergone for each offence and to pay fine of Rs.1,000/-, in default to undergo 3 months simple imprisonment for each offence. (ii) In respect of compensation, the revision petitioner/A.3 is directed to pay a sum of Rs.4,00,000/- as compensation, within a period of 45 days from the date of receipt of a copy of this order. The same shall be given to the victims proportionately.
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Sd/

Assistant Registrar (CS-III)

/True copy/

Sub Assistant Registrar (CS-II)

To

1. The Judicial Magistrate, Nilakottai, Dindigul.
2. The Chief Judicial Magistrate, Dindigul.
3. The Principal Sessions Judge, Dindigul District, Dindigul.
4. The Superintendent,
Central Prison, Madurai.
5. The Inspector of Police,
Q Branch CID, Dindigul District.
6. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to:

The Record Keeper,
Criminal Section, Madurai Bench of Madras High Court,
Madurai. (2 copies)
+1cc to Mr.S.PALANIVELAYUTHAM, Advocate, SR.No.93437

Cr1.RC. (MD).No.242 of 2016

31.10.2018