IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2019

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.64 of 2019
and
Crl.M.P.Nos.537 & 540 of 2019

Selvaraj
.. Petitioner

Vs.

State rep. by
The Inspector of Police,
Coimbatore City Police Station,
Coimbatore.
.. Respondent

Criminal Revision filed under Sections 397 and 401 Cr.P.C., praying to set aside the judgment passed in C.C.No.133/2017 on the file of the Judicial Magistrate-III, Coimbatore dated 12.06.2018 confirmed in C.A.No.283 of 2018 on the file of the learned IV Additional District and Sessions Judge, Coimbatore dated 07.12.2018.

For Petitioner : Mr.C.Deivasigamani

For respondent : Mr.R.Suryaselvaraj
Government Advocate (Crl.Side)

O R D E R

This Criminal Revision has been filed against the Judgment dated 07.12.2018 in Crl.A.No.283 of 2018 on the file of the IV Additional District and Sessions Court, Salem, confirming the judgment dated 12.06.2018 in C.C.No.133 of 2017 on the file of the Judicial Magistrate Court No.III, Coimbatore.

2. The case of the prosecution is that the defacto complainant Nagarajan had worked as a Production Manager at Gordon Woodroff Ltd., Chennai and retired in VRS and residing at Namakkal. The accused Selvaraj is residing at Pappanaickenpalayam, Coimbatore had given attractive advertisement in the newspaper “Daily Thanthi”. On seeing the said advertisement, the defacto complainant approached the

accused to purchase a machine for preparing paper cups and the accused after receiving Demand Draft Nos.718402 and 718403 for Rs.13,65,000/- drawn on Indian Overseas Bank, Namakkal Branch, has not bought the machine to the defacto complainant, instead he used the abovesaid amount for his own use and cheated the defacto complainant. Hence, the respondent police registered a case in Crime No.65 of 2016 for the offence under Section 406 IPC and after investigating the case, laid charge sheet before the learned Judicial Magistrate-III, Coimbatore and the same was taken on file in C.C.No.133 of 2017. After trial, under judgment dated 12.06.2018, the learned Magistrate found the revision petitioner/accused guilty for the offence under Section 406 IPC and sentenced him to undergo 3 years Rigorous Imprisonment and to pay the cheque amount of Rs.12,40,000/- alongwith 9% interest from 14.10.2015 till the disbursal of the entire amount to the defacto complainant as compensation, in default, 6 months Simple Imprisonment. Challenging the said judgment of the learned Magistrate, the accused preferred an appeal in Crl.A.No.283 of 2018 before the learned Sessions Judge, Coimbatore. The learned Sessions Judge made over the case to the learned IV Additional District and Sessions Judge, Coimbatore for disposal. The learned IV Additional District and Sessions Judge, after hearing the arguments and perused the records placed before it, under judgment dated 07.12.2018, came to the conclusion that the appellant therein has committed the offence under Section 406 IPC and dismissed the appeal by confirming the judgement of the learned Magistrate. Challenging the said judgment, the accused has filed the present revision before this Court.

3. The learned counsel for the petitioner would submit that the prosecution has not proved its case beyond reasonable doubts. The prosecution has not proved the signatures found in the documents viz., Exs.P2, P3 and 4 are that of the petitioner. The learned counsel would further submit that the prosecution has not established that the revision petitioner is the proprietor of AGS Traders and there was an agreement between the revision petitioner and PW-1 for purchasing Automatic Paper cup machinery and a sum of Rs.13,65,000/- was given by to the revision petitioner. The defacto complainant in order to avoid any proceedings against him under SARFAESI Act or any other law in force, had availed loan from by Indian Overseas Bank, Namakkal, for a sum of Rs.10,24,525/-, by pledging the house property belonging to him. The defacto complainant foisted a false case against the revision petitioner/accused and an offence under Section 406 IPC has not been proved by the prosecution. Though the respondent has not proved its case beyond reasonable doubts, both the Courts below wrongly held that the appellant has committed the offence under Section 406 IPC and convicted him, which warrants interference.

4. The learned Government Advocate (Crl.Side) appearing for the respondent would submit that the revision petitioner/accused and PW-1 entered into Memorandum of Understanding for purchasing a automatic paper cup machinery and paid a sum of Rs.13,65,000/- by way of Demand Draft drawn on Indian Overseas Bank, Namakkal Branch. PW-1 availed Bank loan from the above said Bank for a sum of Rs.10,40,721/- and the remaining amount was arranged by the defacto complainant. PW-4, Bank Manager has issued two Demand Drafts, viz., one for 9,00,000/- and the other for Rs.4,65,000/- in the name of Selvaraj of AGS Traders viz., the revision petitioner and the same was handed over to him, who also issued receipt of Ex.P2 to the defacto complainant/PW-1 in the name of AGS Trader signing the receipt as Proprietor. Subsequent to that he did not supply the machineries as promised, but he had given evasive answers whenever the defacto complainant/PW-1 approached him through phone and in person for supply of the said machine. On getting suspicion, the defacto complainant went to B4, Race Course Police Station and lodged a complaint on 19.11.2015 and in pursuance of which, the Inspector called the revision petitioner/accused and conducted inquiry on 20.11.2015, where the accused along with his Advocate promised to repay the amount with interest and issued a post-dated cheque dated 20.02.2016 for a sum of Rs.13,65,000/-, which was marked as Ex.P4. After three months, when the cheque was presented for collection, it was dishonoured for the reason "Account Blocked". Therefore, the defacto complainant went to B4 Police Station and approached the Commissioner of Police on 21.06.2016 and lodged a complaint/Ex.P5 and when the revision petitioner/accused called upon for enquiry, he was dodging, however, he gave a sum of Rs.1,25,000/- to the defacto complainant/PW-1, but later refused to give the balance sum of Rs.12,40,000/-. Thus, the revision petitioner/accused committed breach of trust. Hence, an FIR was registered against the revision petitioner/accused on 25.10.2016 based on the complaint given by the defacto complainant/PW-1. In order to prove the case, the prosecution examined as many as 6 witnesses and marked 15 documents and the prosecution proved its case through PW-1/defacto complainant, PW-4/Bank Manager, who issued Demand Drafts in favour of the revision petitioner/accused and also the receipts given by the revision petitioner/accused. Both the Courts below rightly came to the conclusion that the revision petitioner/accused has committed the offence. Hence, there is no reason to interfere with judgment of the Appellate Court.

5. Heard the learned counsel appearing for the revision petitioner, the learned Government Advocate (Crl. Side) appearing for the respondent as also perused the materials on records.

6. The case of the prosecution is that the revision petitioner is the proprietor of AGS Traders, who entered into a legal contract with PW-1/defacto complainant by way of Memorandum of Understanding for supply of two Automatic Paper cup making machineries, and in pursuance of the agreement, the revision petitioner/accused has paid a sum of Rs.13,65,000/- by way of two Demand Drafts drawn on Indian Overseas Bank, Namakkal Branch, one for Rs.9,00,000/- and the other for Rs.4,65,000/-. The revision petitioner/accused without supplying the machineries to the PW-1/defacto complainant has misappropriated the money given to him, by acting in violation of the agreement entered into between the revision petitioner/accused and the defacto complainant/PW-1, has committed criminal breach of trust and hence he is liable to be punished under Section 406 IPC.

7. PW-1/defacto complainant has stated that the events when he saw the advertisement through email and as per the quotation, he entered into Memorandum of Understanding and paid a sum of Rs.13,65,000/- by way of two demand drafts and the revision petitioner/accused also accepted the said drafts. Thereafter, the revision petitioner/accused has not supplied the machineries and hence, the defacto complainant approached B4 Police Station and lodged a complaint on 19.11.2015 and in pursuance of which, the Inspector called the revision petitioner/accused and conducted inquiry on 20.11.2015, where the accused along with his Advocate promised to repay the amount with interest and issued a post-dated cheque dated 20.02.2016, for a sum of Rs.13,65,000/-, which was marked as Ex.P4 and after three months, when the cheque was presented for collection, it was dishonoured for the reason "Account Blocked". Therefore, he went to B4 Police Station and approached the Commissioner of Police on 21.06.2016 and lodged a complaint/Ex.P5 and the revision petitioner/accused when called upon for enquiry, he was dodging, however, gave a sum of Rs.1,25,000/- to the defacto complainant/PW-1, but later refused to give the balance sum of Rs.12,40,000/- and thus, the revision petitioner/accused committed breach of trust.

7. From the evidence of PW-1, it is seen that there was a transaction between PW-1 and the revision petitioner/accused regarding the purchase of the Automatic Paper Cup machineries and also PW-4/Bank Manager, who sanctioned the loan to the defacto complainant/PW-1, issued a cheque, on the instruction of the defacto complainant, in favour of the petitioner for a sum of Rs.13,65,000/- by way of two Demand Drafts. On reading of the evidence of Pws-1 and 4 and also the Memorandum of Understanding reveal that the revision petitioner/accused admitted that he has received the said Demand Drafts for supplying the paper cup making machineries. Once the revision petitioner/accused admitted the transaction and receiving the

amount, it is for the revision petitioner/accused to prove that either he has supplied the machineries or he repaid the amount received from the defacto complainant. In this case, the revision petitioner/accused has not established his case. Therefore, it is sen that the accused received the money and he has not supplied the machine or repaid the said amount and issued the cheque with dishonest intention and subsequently, blocked his accounts and he has not properly explained the same.

8. In the circumstances, this Court is of the view that both the Courts below rightly appreciated the evidence of PW-1 and PW-4 and the documents and convicted the accused. While exercising the revisional jurisdiction, this Court cannot re-appreciate the entire evidence but it has to find out as to whether any perversity in appreciation of evidence by the Courts below. On reading of the entire materials, especially the deposition of PWs-1 and 4, this Court does not find any perversity in the finding given by both the Courts below and there is no reason to interfere with the judgment of the Courts below.

9. This Criminal Revision Case stands dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Judicial Magistrate No.III,
Coimbatore.

2.The IV Additional District and Sessions Judge,
Coimbatore.

3.The Inspector of Police,
Coimbatore City Police Station,
Coimbatore.

4.The Public Prosecutor,
High Court, Madras.

Crl.R.C.No.64 of 2019

srg 30/08/2019