

BAIL SLIP

The Appellant herein / Accused No.1 namely V.Sivakumar, S/o.C.Veerassamy (in C.C.No.342/2008 on the file of the Judicial Magistrate No.5, Coimbatore) was directed to be released on bail by order of this Court dated 21.02.2012 and made in M.P.No.1/2012 in CRL.R.C.No.203 of 2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.10.2018

PRONOUNCED ON : 31.01.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN

CRL.R.C.No.203 of 2012

V.Sivakumar

.. Petitioner/Appellant/
Accused No.1

-vs-

State Represented by,
The Inspector of Police,
Alaandurai Police Station,
Coimbatore.

.. Respondent/Respondent/
Complainant

PRAYER: Criminal Revision Case filed under Sections 397 r/w 401 Cr.P.C., praying to set aside the judgment passed by the Judicial Magistrate No.V, Coimbatore in C.C.No.342/2008 dated 18.02.2011 and confirmed by the Additional District and Sessions Judge cum Fast Track Court No.III, Coimbatore in C.A.No.56/2011 dated 28.11.2011.

For Petitioner : Mr.A.S.Baalaji

For Respondent : Mrs.V.Sarathadevi
Government Advocate (Criminal side)

ORDER

Convicted first accused is the revision petitioner herein. This criminal revision is filed against the judgment of the Additional District and Sessions Judge cum Fast Track Court No.III, Coimbatore in C.A.No.56 of 2011 dated 28.11.2011, confirming the judgment of the Judicial Magistrate No.V,

Coimbatore in C.C.No.342 of 2008, dated 18.02.2011, who had convicted the petitioner/accused No.1 under Section 420 IPC and sentenced to undergo two years simple imprisonment and imposed a fine of Rs.5,000/-, in default, to undergo three months imprisonment.

2. Heard the learned counsel appearing for the revision petitioner, the learned Government Advocate (Criminal side) appearing for the respondent/State and perused the records.

3. The learned counsel for the revision petitioner submitted that the prosecution has not discharged its burden to prove the charges beyond reasonable doubt on the vital document Ex.D.2-agreement for sale executed between the petitioner herein and the purchaser on 03.05.2006. The prosecution has failed to produce even an iota of documentary evidence to show that the petitioner/accused No.1 has negotiated for a sale consideration of Rs.80,00,000/- for the property. He further submitted that during pendency of the partition suit, the petitioner negotiated with the defacto complainant and their family members and having accepted the terms, they came forward to execute power of attorney document dated 03.05.2006. Hence, he seeks to set aside the order of conviction passed by the Courts below.

4. Points for consideration:

1) Whether the order of the Courts below in convicting the revision petitioner/A1 under Section 420 IPC is sustainable in law? and

2) Whether the quantum of sentence granted by the Courts below is excessive?

5. After going through the documents filed before the trial Court and after hearing the submissions of both the counsels, the short facts of the case leading to the filing of the complaint by PW.1 before the Judicial Magistrate No.V, Coimbatore are as under:

(5.1). Two items of property comprise in S.No.252/1 admeasuring 4.74 acres and S.No.233 admeasuring 3.24 acres totally 7.98 acres of land in Sundakamuthur Village, Coimbatore District belonged to one Shanmugam and his brother Arumugam. After the death of Shanmugam, his legal heirs inherited their share in the above property. After the death of Arumugam, his son Velmurugan and Seerathal, wife of Arumugam filed a partition suit in O.S.No.579 of 2005 before the III-Additional Sub Court, Coimbatore against the legal heirs of Shanmugam in respect of 7.98 acres of land mentioned above. During pendency of the above suit, a deed of power of attorney was executed by the legal heirs of Shanmugam in favour of V.Sivakumar on 03.05.2006 (Ex.P2) to deal with their share of the property, viz., 6 acres of land out of 7.98 acres. Judgment and decree came to be passed six months

later in the above suit, whereby half share, i.e., 3.99 acres was allotted to Shanmugam's legal heirs and half share, i.e., 3.99 acres was allotted to Velmurugan and Seerathal. The Power of Attorney dated 09.07.2007 was executed by Velmurugan and Seerathal in favour of V.Sivakumar, with respect to their share of land, viz., 3.99 acres of land. On 11.07.2007, a Sale Deed was executed by V.Sivakumar in favour of Rathinavel Holdings (P) Ltd., Rep. by its Authorised Representative, Elangovan selling the entire 7.98 acres (Ex.P4). The sale consideration mentioned in the sale deed was Rs.80,00,000/-. The legal heirs of Shanmugam cancelled the Power of Attorney deed on 11.07.2007, which was executed by them on 03.05.2006(Ex.P3).

(5.2). The charge against the revision petitioner-A1 before the trial Court is that A1-Sivakumar approached the owners of the land, viz., PW.1 to PW.4 and two other sisters for purchase of their land, viz., 6 acres of land out of 7.98 acres. He promised to sell the land for Rs.40,00,000/- and agreed to pay an advance of Rs.12,00,000/- and settle the balance amount after the sale is completed. Based on that, they all had executed a power of attorney dated 03.05.2006 in favour of A1. Rs.12,00,000/- was paid as advance by A1 to the owners of the land, viz., PW.1 to PW.4 and two other sisters. A1 sold their share of land and the share belonging to A3 & A4 on 11.07.2007 to Rathinavel Holdings (P) Ltd., Rep. by its Authorised Representative, Elangovan. As per the sale deed, the sale consideration was fixed totally as Rs.80,00,000/-, but, A1 failed to pay the balance sale consideration of Rs.28,00,000/- to PW.1 and her sisters and cheated them.

6. As stated supra PW.1, who is the daughter of Shanmugam and herself and on behalf of her mother and sister filed petition under Section 156(3) Cr.P.C. before the learned Judicial Magistrate No.V, Coimbatore and the FIR registered in Crime No.148 of 2007 and for the alleged offence under SECTION 420, 120(b), 471 and 506(ii) IPC against A1- Sivakumar, who is the power of attorney holder, A2-Elangovan, (purchaser of the land), A3-Velmurugan, (cousin of PW.1 and her sisters) and A4 - Seerathal, (aunt (Chitti) of PW.1).

7. Before the trial Court, to prove the charges, prosecution have examined PW.1 to PW.8 and marked Ex.P1 to Ex.P6. On behalf of the accused Ex.D1(receipt dated 11.07.2007) acknowledging the payment of Rs.12,00,000/- by the defacto complainant are marked.

8. After oral and documentary evidence, the learned Magistrate had convicted the first accused for the offence under Section 420 IPC and awarded sentence of two years rigorous imprisonment and a fine of Rs.5,000/- with default clause.

9. Aggrieved over the said conviction and sentence passed by the learned Judicial Magistrate No.V, Coimbatore in C.C.No.342 of 2008, the convicted first accused preferred C.A.No.56 of 2011 before the Additional District and Sessions Court, Fast Track Court No.III, Coimbatore. It appears to be stated that during the pendency of trial, the accused has filed necessary application and marked Exs.D2 to D5. By a judgment dated 28.11.2011, the appeal was dismissed and hence this criminal revision.

10. The arguments of the learned counsel for the revision petitioner-first accused, as extracted above are taken note of.

11. After going through the documents Ex.D2 to Ex.D5, filed by the accused, during the pendency of the appeal, this Court at the outset finds that the prosecution has failed to prove the documentary evidence that Rs.40,00,000/- was fixed for the selling the share of the land as contended by PWs.1 to 4. From Exs.D2 to D5, it is seen that admittedly a partition suit was pending between PW.1 to PW.4 and their cousin Velmurugan and aunt Seerathal. While the suit was pending, the power of attorney dated 03.05.2006 was executed. At that point of time, their share itself was not conclusively determined. However, in the power of attorney document (Ex.P2), the property is mentioned as 6 acres of land out of 7.98 acres of land. While dealing with the disputed property, A1 fixed the sale consideration for 6 acres at Rs.15,00,000/- and paid Rs.12,00,000/- as advance to 6 owners (Rs.2 lakhs each) and promised to pay Rs.3,00,000/- after the sale. On 11.07.2007, the balance consideration of Rs.3,00,000/- was paid to the owners and a receipt (Ex.D1) was obtained from them. The signing of the receipt Ex.D1 is admitted by PW.1 and her husband PW.5, who signed as a witness in the receipt. The date of the receipt, i.e., 11.07.2007 has been admitted by her. After having received Rs.15 lakhs, being the total sale consideration for their property, PW.1 and others on ill-advise have filed a false complaint which resulted in conviction of A1.

12. From Ex.D3-plaint in O.S.No.2567 of 2007 and judgment and decree copy passed in the said order, which are marked as Ex.D4 and D5. It is seen that on the same day pursuant to the execution of the power of attorney dated 03.05.2006, an agreement for sale was entered into between A1 and Rathinavel Holdings (Pvt.) Ltd., in which the sale consideration has been mentioned as Rs.15 lakhs for the purchase of 6 acres of land out of 7.98 acres of land and an advance amount of Rs.12 lakhs was

paid. This documents has been marked as Ex.D.2 in the lower appellate Court. This document, viz., the agreement for sale dated 03.05.2006 would throw a clear light on the issue and falsifies the case of the prosecution. This crucial aspect was not considered by the Lower Appellate Court. Hence, the findings of the trial Court and the lower appellate Court that A1 has cheated PW.1 to PW.4 are liable to set aside.

13. At this juncture, it is relevant to state that PW1-defacto complainant has admitted the sale agreement which is marked as Ex.D2. The sale agreement is dated 03.05.2006 entered into between A1 and A2 in respect of the sale of 6 acres of land out of 7.98 acres. Ex.P5 is a receipt signed by PWs.1 to 4 and others for having received Rs.12 lakhs from A1/revision petitioner.

14. Thus a combined reading of Ex.D2 coupled with Ex.P5 as the amount agreed between A1 with that of PWs.1 to 4 is only Rs.15 lakhs and the said amount has also been paid by them under Ex.P.5.

15. PW.1 to PW.4, who are the legal heirs of the deceased Shanmugam had received Rs.12 lakhs and balance of Rs.3 lakhs was received under the receipt dated 11.07.2007, which is marked as Ex.D1.

16. Thus, this Court finds that as per Ex.D2-agreement of sale dated 03.05.2006 entered between A1 and A2 with the legal heirs of Shanmugam (PW.1 to PW.4), Rs.15 lakhs has to be paid and initial payment of Rs.12 lakhs has been paid as could be evidence from Ex.P5 and accordingly, it appears that PW.1 to PW.4 have executed Ex.D2-power of attorney in favour of A1 and after settlement of the dispute in the civil suit pending between the other branch of the owners, the property was sold by the first accused under Ex.P4.

17. Now the claim of PW1 appears to be that since a higher amount has been paid to the other branch out of the sale consideration covered under Ex.P4, they are entitled the balance of the amount over and above Rs.15 lakhs, namely, the amount agreed upon under Ex.D2.

18. It appears that both the Courts below have erroneously carried out by the fictitious claim raised by PW.1.

19. On the date of entering into agreement of sale by PWs.1 to 4 with A1 and A2, the civil case is admittedly pending between the two branches, each claiming over and above their respective share. In O.S.No.579 of 2005, though the PW1 claimed 6 acres in 7.98 acres of land, the decree was passed on 03.05.2006, whereby the extent of land entitled of the legal heirs of the said Shanmugam, viz., PWs.1 to 4 has been granted to 3.99 acres only.

20. Be that as it may, in respect of the shares of the legalheirs of the Shanmugam, namely, defacto complainant, PW.1 and her mother-PW.2 and her cousin-PW.3 and 4-other sisters of PW.3, is only Rs.15 lakhs and as per receipt-Ex.P5 and Ex.D1, Rs.12 lakhs+Rs.3 lakhs, totally Rs.15 lakhs has been duly paid and therefore, the claim of the PW.1 that they have been cheated does not arise since there was no dishonesty as pleaded by them. Rs.15 lakhs is the agreed amount between the parties and the same has been paid. It appears that they have cited the amount on sale consideration received by A1.

21. Admittedly, A1 has sold the property, which includes the share of PW.1 herein and the other portion under Ex.P.4 with regard to the entitlement of land and the share of PW.1 to PW.4. In view of the specific agreement of sale under Ex.D2, wherein PW.1 to PW.4 agreed to sell the property to A1 or his nominee. Subsequently, they have received total of Rs.15 lakhs as agreed between the parties, as could be seen from Ex.P.5 and Ex.D1 and thus this Court finds that the agreed amount between the parties have been settled and there is no ingredients of offence attracted under Section 420 IPC. This Court is of the considered view that when Ex.D2 to D5 are filed in the appeal stage, the lower appellate Court ought to have gone into the documentary evidence of Ex.D2 to D5 and without looking into the same, it appears that the order of conviction and sentence has been confirmed by the lower appellate Court.

22. Taking into consideration of the documentary evidence of Ex.D2 coupled with Ex.P5 and Ex.D1, this Court has no hesitation to hold that the ingredients of Section 420 IPC has not made out. Further, the prosecution has not even placed a iota of evidence for the agreement that A1 agreed to pay 50% of sale consideration by PW.1 to PW.4 and the evidence of PW1 to PW4 falls for want of material. In the absence of any document to show that there was an agreement between the parties to pay 50% of the sale consideration, on the contrary, in view of the specific documentary evidence under Ex.D2, D1 and P5 as discussed supra, this Court has no hesitation to hold that there is no element of cheating falls under the category of Sections 420 IPC. Accordingly, the finding of the trial Court in this regard is set aside.

23. In the result, the conviction and sentence passed by both the Courts below is set aside and the criminal revision is allowed. A1 is acquitted from the charge under Section 420 IPC. Bail bond if any, executed by A1 shall stand cancelled. Fine amount paid shall be refunded to him.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

PJL

To

1. The Additional District and Sessions Judge
cum Fast Track Court No.III,
Coimbatore.
2. - do - The Principal Sessions Judge, Coimbatore
3. The Judicial Magistrate No.V,
Coimbatore
4. - do - The Chief Judicial Magistrate,
Coimbatore
5. The Inspector of Police,
Alaandurai Police Station,
Coimbatore.
6. The Public Prosecutor,
High Court, Madras-104.

copy to: The Section Officer,
Criminal Section,
High Court, Madras.

ORDER MADE IN
CRL.R.C.No.203 of 2012

SV(CO)
SSM(28/02/2019)