



BAIL SLIP

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i) The Petitioner/A1 viz., Purushothoman aged 67 years, S/o.Ellappan, was directed to be released on Bail on 08.03.2012 made in Crl.M.P.No.1/2012 in Crl.R.C.No.270/2012.

ii) The Petitioner/A2 viz., E.Sundaram, aged 67 years, S/o.Ellappan, was directed to be released on Bail on 20.02.2012 made in Crl.M.P.No.2/2012 in Crl.R.C.No.217/2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.07.2019

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.Nos.270 and 217 of 2012

Purushothaman ...Petitioner in Crl.RC.No.270/2012/A1

E.Sundaram ...Petitioner in Crl.RC.No.217/2012/A2

-Vs-

State represented by  
Sub-Inspector of Police,  
District Crime Branch,  
Tiruvallur District.  
(Crime No.4/2004)

.. Respondent in both Cases

Criminal Revision Cases filed under Sections 397 and 401 Cr.P.C., praying to call for the records and set aside the judgments dated 09.02.2012 made in Crl.A.Nos.1 and 2 of 2012 respectively passed by the learned District and Sessions Judge, District and Sessions Court No.2, Kancheepuram confirming the judgment dated 02.09.2010 made in C.C.No.309 of 2007 passed by the learned Judicial Magistrate-I, Tiruvallur.

For Petitioner  
in Crl.RC.No.270/2012 : Mr.R.John Sathian  
for Mr.R.Rajasekaran

For Petitioner  
in Crl.RC.No.217/2012 : Mr.R.John Sathian

For respondent  
in both petitions : Mr.T.Shanmugarajeswaran  
Government Advocate  
(Crl. Side)



## O R D E R

These Criminal Revision Cases have been filed to set aside the judgments dated 09.02.2012 made in CrI.A.Nos.1 and 2 of 2012 respectively passed by the learned District and Sessions Judge, District and Sessions Court No.2, Kancheepuram, confirming the judgment dated 02.09.2010 made in C.C.No.309 of 2007 passed by the learned Judicial Magistrate-I, Tiruvallur

2. The case of the prosecution is that the defacto complainant's father Varadhan purchased lands from the father of the first accused and one Ponnan consisting of 0.43 cents on 21.7.1958 through a Sale Deed and another 0.43 cents on 25.03.1958 through a Sale Deed from the father of the first accused and his brother/PW-3 purchased 0.31 cents from the father of the first accused through a sale deed on 17.08.1969, in total consisting of 117 cents in Survey No.186/9. By knowing all those facts, A1 sold the land of 1.26 acre having Survey No.186/9 in the same village (including the above said lands of 117 cents) wilfully to A2 through a registered sale deed. A case in Crime No.04 of 2004 was registered by the respondent police against the revision petitioners/A1 & A2 for the offence under Sections 420, 465, 468 r/w 34 IPC. After completing investigation, the respondent police filed final report before the learned Judicial Magistrate No.1, Tiruvallur and the same was taken on file in C.C.No.309 of 2007. After trial, the learned Judicial Magistrate, convicted the accused by judgment dated 02.09.2010 and sentenced them as follows:-

| Accused | Offence         | Sentence                                                                                                                                                                                                                                                                    |
|---------|-----------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| A1      | 420 and 468 IPC | 2 years Simple Imprisonment and fine of Rs.1,000/-, in default, 3 months Simple Imprisonment for the offence under Section 420 IPC and 2 years Simple Imprisonment and fine of Rs.1,000/-, in default, 3 months Simple Imprisonment for the offence under Section 468 IPC . |



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| Accused | Offence                   | Sentence                                                                                                                                                                                                                                                                  |
|---------|---------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| A2      | 420 and 468 r/w 34<br>IPC | 2 years Simple Imprisonment and fine of Rs.1,000/-, in default, 3 months Simple Imprisonment for the offence under Section 420 IPC and 2 years Simple Imprisonment and fine of Rs.1,000/-, in default, 3 months Simple Imprisonment for the offence under Section 420 IPC |

Trial Court directed the sentences to run concurrently. Challenging the said judgment, the accused filed the appeal in CrI.A.Nos.1 and 2 of 2012 before the learned District Sessions Judge, District Sessions Court No.2, Kancheepuram. After hearing the arguments, the learned Sessions Judge dismissed the appeals on 09.02.2012 by confirming the judgment of the trial Court. There against, A1 preferred the CrI.RC.No.270/2012 and A2 preferred the CrI.RC.No.217/2012 before this Court.

3. The learned counsel for the petitioners would submit that there are so many variations in Survey numbers regarding the lands in the village and civil suits are pending in respect of the same and there is no mens rea for A1 to create such false documents with false claim and there is no evidence to show that A2 is not a bona fide purchaser. Further, he would submit that PW-1 has admitted that the survey numbers in the S.L.R would clearly show that the lands conveyed by the father of A1 to the father of defacto complainant with pymash numbers are not that the lands claimed by the defacto complainant S.No.186/9 and the same clearly proved that the defacto complainant's family is not having 117 cents upon the land in S.No.186/9 and therefore, it cannot be held that A1 wilfully conveyed the land of 1.26 acres of land in S.No.186/9 to A2 and it is clearly proved that there is some dispute in the title and right over the property. So, it cannot be concluded that A2 was having common intention. Both the Courts have failed to consider that the prosecution has not proved its case that A1 and A2 created the false document and A1 sold the property, which he does not having title over the property and A2 knowing fully well that the property is not belonged to A1. A2 purchased the property, whereas, he is not the bona fide purchaser without giving any notice. The conviction of the revision petitioners under Section 468 of IPC is not sustainable under law, which warrants interference.

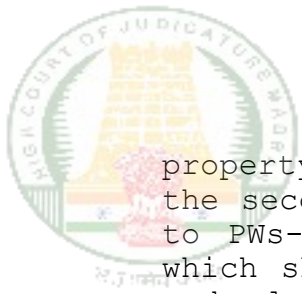
4. The learned Government Advocate (CrI.Side) appearing for the respondent would submit that the first accused, knowing fully well that the property is not belonged to him, has created



the forged document and sold the property to the second accused. A2 also knowing fully well that the property belongs to the defacto complainant's family, purchased the property, which shows that he is not the bona fide purchaser. A2 is residing in the same village and he was acting as President in the said village and also he knows very well about the property. Therefore, the contention of the learned counsel for the petitioners that without knowing the fact, A2 purchased the property cannot be accepted. Both the Courts have rightly appreciated the entire evidence and convicted the accused, which does not warrant interference.

5. Heard the learned counsel for the petitioners and the learned Government Advocate (Crl. Side) appearing for the respondent and also perused the materials available on record.

6. A reading of the evidence of PWs-1 to 3, it is seen that the property mentioned in the sale deed executed by the first accused in favour of the second accused belongs to the family of the defacto complainant and in the said sale deed, survey number has been mentioned. The survey number is not tallied with the pymash number as stated by the revision petitioners. There is discrepancies in the Revenue records and knowing fully well about the property, the petitioners/accused have created the false documents. PWs-1 to 3 categorically stated that property in S.No.186/9 belongs to the family of the defacto complainant, the first accused forged the document and executed the sale deed in favour of the second accused. PWs-1 to 5 have stated in their evidence that how they acquired the property in Survey No.186/9. The father of PWs-1 to 3 viz., Varadhan purchased the said property under sale deed dated 21.07.1958 vide document No.2786 of 1958, sale deed dated 24.03.1958 vide document No.1120/58 and PW-1 purchased portion of the property in S.No.186/9 under Sale deed dated 17.08.1969 vide document No.2730 of 1969. PWs-7 to 10 have clearly stated that the suit properties belong to PWs-1 to 3 and they are only in possession of the said property. The patta for Survey No.186/9 is shown as 666 and 667 in the joint patta book. When the revision petitioners/accused created the forged documents, there is no pymash number in the said period and they have not stated that how they have mentioned the pymash number in the disputed document and how they are in possession. PWs-1 to 3 only paying the property tax. From the evidence of PWs-1 to 5, the land owners and also PWs-7 to 10/official witnesses have clearly stated that the property covered under the sale deed belong to PWs-1 to 3 and they are in possession of the said property. The revision petitioners/A1 & A2 also knew very well about the said property. Since the second accused was the Ex-President of the said Village Panchayat, he very well knew about each and every property of the said village. The first accused sold the



property to the second accused through a sale deed (Ex.P7) and the second accused, knowing fully well that the property belongs to PWs-1 to 3, purchased the property from the first accused, which shows that A1 and A2 have cheated the defacto complainant and also forged the documents. The prosecution has proved its case beyond reasonable doubts through the prosecution witnesses and the knowledge of the revision petitioners/accused 1 and 2 about the property was also established. The Trial Court has rightly appreciated the evidence of the prosecution witness and found that the revision petitioners have committed the offence under Sections 420 & 468 IPC. The lower Appellate Court, being a final Court of fact finding, has independently re-appreciated entire oral and documentary evidence and came to the conclusion that the revision petitioners have committed the offence under Sections 420 and 468 IPC and hence, confirmed the conviction made by the trial Court. This Court, while exercising revisional jurisdiction, can not re-appreciate entire evidence and interfere with the judgments of the Courts below, unless there is perversity in appreciating the evidence in deciding the case. In this regard, it is pertinent to refer the decision of the Honourable Apex Court in the case of State of Kerala Vs. Putthumana Illath Jathavedn Namboodri, reported in AIR 1999 SC 981 held as follows:-

".... In its revisional jurisdiction, the High court can call for and examined the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of Supervisory Jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of Second Appellate Jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to re-appreciate the evidence and come to its own conclusion on the same when the evidence has already be appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of Justice..."

7. In this present case also, this Court, being the Revisional Court, cannot sit in the arm chair of the Appellate Court and re-appreciate the entire evidence. This Court does not find any perversity in the appreciation of evidence. There is no merit in these revisions and the same are liable to be dismissed.

8. In the result, these Criminal Revision Cases are dismissed. The judgment dated 09.02.2012 in CrI.A.Nos.1 and 2



of 2012 passed by the learned District and Sessions Judge, District and Sessions Court No.2, Kancheepuram, is hereby confirmed.

KMI

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1. The District and Sessions Judge,  
District and Sessions Court No.2,  
Kancheepuram.
2. The Judicial Magistrate-I,  
Tiruvallur.
- 3.-Do- Thro' The Chief Judicial Magistrate,  
Tiruvallur.
- 4.The Sub Inspector of Police,  
District Crime Branch,  
Tiruvallur District.
- 5.The Public Prosecutor,  
High Court,  
Madras-104.

+1cc to Mr.R.Rajasekaran, Advocate, SR.No.65224/19

+1cc to Mr.John Sathyan, Advocate, SR.No.65223/19

Cr1.R.C.Nos.270 and 217 of 2012

Kak(05/08/2019)