

BAIL SLIP

Ramasamy @ Ramar

The above petitioner was directed to be released on bail as per order of this Court dated 15.03.2012 made in CRL MP No.1 of 2012 in CRL RC No.300 of 2012 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 03.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.300 of 2012

Ramasamy @ Ramar

... Petitioner

vs.

The Sub Inspector of Police,
Vellodu Police Station,
Erode District.
Cr.No.200/2004

... Respondent

The Criminal Revision Case has been filed under Section 397 r/w 401 of Cr.P.C, to admit the revision on file, call for the records in C.A.No.212 of 2009 on the file of the Additional District Court, Fast Track Court No.1, Erode, and C.C.No.173 of 2005 dated 09.10.2009 on the file of the learned District Munsif-cum-Judicial Magistrate, Perundurai and set aside the same.

For Petitioner : Mr.D.Selyam

For Respondent : Mr.T.Shanmugarajeswaran
Govt. Advocate (Crl.Side)

ORDER

The criminal revision has been filed by the accused against the concurrent judgment of conviction made by both the Courts below.

2 The respondent police registered a case against the petitioner and one another in Crime No.200 of 2004 and after investigation laid a charge sheet before the jurisdictional

Magistrate and the same was taken on file by the learned District Munsif-cum-Judicial Magistrate, Perundurai, in C.C.No.173 of 2005. Before the trial Court, in order to prove the case of the prosecution, P.Ws.1 to 6 were examined and Exs.P1 to P10 were marked besides Material Objects 1 to 11. On the side of the defence, no one was examined and no document was marked. During trial, the other accused arrayed as A2 died and hence trial was conducted against the petitioner/A1. The learned Magistrate, after completing trial and considering the materials, found the petitioner/accused guilty for the offence punishable under Sections 420 and 120(b) of IPC and by judgment dated 09.10.2009 convicted and sentenced him to undergo rigorous imprisonment for a period of two years with fine of Rs.2,000/-, in default, to undergo rigorous imprisonment for a further period of two months for the offence under Section 420 and to undergo rigorous imprisonment for a period of three months with fine of Rs.500/-, in default, to undergo rigorous imprisonment for a further period of one month for the offence under Section 120(b). Aggrieved against the judgment of conviction, the petitioner/A1 has filed an appeal before the learned Additional District and Sessions Judge (Fast Track Court No.1) Erode, in C.A.No.212 of 2009. The learned Additional Sessions Judge, after hearing both the parties, dismissed the appeal and confirmed the judgment of conviction made by the trial Court, against which, the accused has preferred this revision before this Court.

3 Case of the prosecution is that P.W.1 was running Looping Workshop. One Rajandran had borrowed money from father of P.W.1 and did not repay the same. When P.W.1 went to house of the said Rajendran and asked to repay the money, which was borrowed from P.W.1's father, at that time the petitioner also present and the Rajendran said he will give money through the petitioner and given the telephone number of P.W.1 to the petitioner and thereafter on the day of occurrence, the petitioner/A1 called P.W.1 to come and collect money. When P.W.1 reached the place, there was one other person present along with the petitioner and P.W.1 took them into his house as per the request made by the petitioner. After reaching the house of P.W.1, when P.W.1 demanded money, the petitioner said that they have black money and if P.W.1 gives Rs.50,000/- they will give Rs.1.00 each and P.W.1 also gave Rs.1000/-. Before P.W.1, the petitioner demonstrated how the black color paper turned to Rs.50/-. The petitioner put some solution on the black color paper and some solution in the bucket of water and dipped the black color paper into the water and suddenly the paper turned into Rs.50/-. P.W.1, on hearing the whisper of the petitioner that after obtaining Rs.50,000/- from P.W.1, have to escape from the place, P.W.1 demanded Rs.1000/- which was given by him, but the accused persons had refused to return the money and ran away

from the place. Therefore P.W.1 had filed a case and the same was ended in conviction.

4 According to learned counsel appearing for the petitioner/ A1, there was previous enmity between the petitioner and the defacto complainant P.W.1. P.W.1 was running Looping Workshop. One Rajendran had borrowed money from father of P.W.1 and did not repay the same. When P.W.1 went to house of the said Rajendran and asked to repay the money, which was borrowed from P.W.1's father, at that time the petitioner also present. P.W.1 in order to recover the money from one Rajendran had implicated the petitioner, since he is a friend of Rajendran and prosecution has failed to prove its case beyond reasonable doubt. It is not believable that the alleged offence would have taken place in the house of P.W.1. P.W.2 and P.W.3 are none other than the wife and child of P.W.1 and they are interested witnesses and there is no independent witness. The arrest and recovery has also not proved in the manner known to law. Due to the motive that to recover the money from the said Rajendran, since the peti is friend of the Rajendran, one who borrowed money from the father of P.W.1, P.W.1 foisted false case against the petitioner. The learned Magistrate as well as the lower appellate Court had failed to consider the motive attributed against the defacto complainant and prosecution has failed to establish its case as projected by it, which warrants serious interference of this Court.

5 The learned Government Advocate (Crl.Side) appearing for the respondent police would submit that when P.W.1 went to house of the said Rajendran and asked to repay the money, which was borrowed from his father, at that time the peti also present and the Rajendran said he will give money through the petitioner and given the telephone number of P.W.1 to the petitioner and thereafter on the day of occurrence, the petitioner called P.W.1 to come and collect money. When P.W.1 reached the place, there was one other person present along with the petitioner and P.W.1 took them to his house as per the request made by the petitioner. After reaching the house of P.W.1, when P.W.1 demanded money, the petitioner said that they have black money and if P.W.1 gives Rs.50,000/- they will give Rs.1.00 each and P.W.1 also gave Rs.1000/-. Before P.W.1, the petitioner demonstrated how the black color paper turned to Rs.50/-. The petitioner put some solution on the black color paper and some solution in the bucket of water and dipped the black color paper into the water and suddenly the paper turned into Rs.50/-. P.W.1, on hearing the whisper of the petitioner that after obtaining Rs.50000/- from P.W.1, have to escape from the place, P.W.1 demanded Rs.1000/- which was given by him, but the accused persons had refused to return the money and ran away from the place. The respondent police recovered the materials which were

marked as M.Os.1 to 11 and produced the same before the Court. P.W.1 has clearly spoken about the chain of occurrence and involvement of the petitioner/accused, which corroborated with the evidence of P.Ws.2 and 3. Both the Courts below had rightly appreciated the entire records and made concurrent judgment of conviction, which does not call for any interference.

6 Heard the learned counsel appearing on either side and perused the materials available on record.

7 It is seen prosecution has stated that one Rajandran had borrowed money from father of P.W.1 and did not repay the same and when P.W.1 went to house of the said Rajendran and asked to repay the money, which was borrowed from P.W.1's father, at that time the petitioner also present and the Rajendran told that he will give money through the petitioner and given the telephone number of P.W.1 to the petitioner and thereafter on the day of occurrence, the petitioner called P.W.1 to come and collect money and when P.W.1 reached the place, the petitioner/A1 requested to take him to his house and they all went to the house of P.W.1. It is not believable that if at all the petitioner planned to cheat P.W.1, he might not have chosen the house of P.W.1, which would naturally be dangerous to the cheating persons. Further it was contended that after reaching the house of P.W.1, when P.W.1 demanded money, the petitioner and other accused told that they have black money and if P.W.1 gives Rs.50,000/- they will give Rs.1.00 each and P.W.1 also gave Rs.1000/- and before P.W.1, the petitioner demonstrated how the black color paper turned to Rs.50/-. The petitioner put some solution on the black color paper and some solution in the bucket of water and dipped the black color paper into the water and suddenly the paper turned into Rs.50/-. P.W.1, on hearing the whisper of the petitioner that after obtaining Rs.50,000/- from P.W.1, have to escape from the place, P.W.1 insisted to return the money, but the accused persons had refused to return the money and ran away from the place and it was stated by the prosecution that they caught the appellant at the next day of occurrence along with Rs.1000/- which was given by P.W.1. It is highly unbelievable that the petitioner, being a cheating person, till next day, had kept the same Rs.1000/- with him. Because, it is natural that if the accused person got money illegally, he will immediately spend the same and he will not keep the money with him.

8 Further, it is stated by P.W.1 that the petitioner put the black papers into the water, which added some solution, but prosecution has failed to recover either the solution or the water containing some solution, which will affect the root of the case. They would have very well recovered the same, since the occurrence taken place in the house of P.W.1 as per the case of

the prosecution. Therefore, it creates doubt in the recovery and in the case of the prosecution.

9 Both the Courts below have failed to appreciate the evidence on record and erroneously convicted the petitioner. It is true that the revision Court cannot interfere with the concurrent judgment of Courts below, unless there is perversity in appreciating the evidence. It is pertinent to refer the decision of the Hon'ble Supreme Court reported in AIR 1999 SC 981 (State of Kerala Vs. Putthumana Illath Jathavedan Namboodri), 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..."

On reading of the entire materials, this Court finds that there is glaring feature in this case to interfere with the judgment of conviction made by both the Courts below and the petitioner/accused is entitled for acquittal. Therefore this Court is inclined to set aside the conviction made by both the Courts below, since there is perversity in appreciating the evidence as stated supra.

10 Accordingly the conviction made by both the Courts below is set aside and the criminal revision case is allowed. Bail bond, if any, executed by the petitioner, shall stand cancelled. The petitioner shall be released, if he is not required for any other case and fine amount, if any, paid by him, shall be refunded to the petitioner.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Additional District Court, Fast Track Court No.1, Erode.
 2. The District Munsif-cum-Judicial Magistrate, Perundurai.
 3. The Sub Inspector of Police, Vellodu Police Station,
Erode District.
 4. The Chief Judicial Magistrate,
Erode.
 5. The Superintendent,
Central Prison, Coimbatore.
 6. The Additional Public Prosecutor,
High Court of Madras.
- +1 cc to Mr.D.Selvam, Advocate, Sr.No. 55292

CrI.R.C.No.300 of 2012

CSL/04.07.2019



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