BAIL SLIP

The Appellants/Accused sole namely A.R.Manjula, W/o.Singaravelu, were directed to be released on bail as per order of this Court dated 05.07.2012 in Crl.M.P.No.1/2012 in Crl.RC.350 /2012 oN THE FILE OF THIS COURT.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.04.2019

PRONOUNCED ON :16.04.2019

CORAM:

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

CRIMINAL REVISION CASE NO.350 OF 2012

A.R.Manjula .. Petitioner /Appellant/Accused

/Versus/

State by Inspector of Police,
CBCID, Control Room,
Chennai 600 002. .. Respondent/Respondent /Complainant

Criminal Revision Case filed under Section 397 & 401 of the Criminal Procedure Code praying to call for the records of the learned Additional District and Sessions Judge(FTC.V), Chennai and set aside the judgment passed by her made in C.A.No.42 of 2010 dated 29.01.2011 confirming the conviction and sentence passed by the learned II Metropolitan Magistrate, Egmore, Chennai-8, made in C.C.No.6111 of 2003, dated 26.03.2010 convicting the petitioner for the offence under Sections 467,468,471 and sentencing her to undergo two years R.I.each and to pay fine of Rs.1000/- each and also convicting her for the offence under Section 420 IPC and sentencing her to undergo one year RI and also convicting her for the offence under Section 120B IPC and sentencing her to undergo six months RI and sentences to run concurrently.

For Petitioner :Mr.B.K.Singh

For Respondent :Mr.T.Shunmuga Rajeswaran,GA

O R D E R

The revision petitioner herein is the accused before the trial Court in C.C.No.6111 of 2003. She along with other two others were tried for the offence under Sections 120(B), 419, 420, 467, 471 and 468 of IPC.

2. The specific case of the prosecution is that this revision petitioner A.R.Manjula along with one G.Karunamoorthy conspired to sell a house site bearing plot No.204/A, Bhuvaneswari Nagar, Velachery, Chennai which stood in the name of D'Souza of Perambur. In pursuant to the conspiracy, A1 represented the defacto complainant Kalyani Balakrishnan that the house site is available for sale and produced photocopy of the title deed to her during the month of December 1999. In furtherance of the false statement to the defacto complainant, a sum of Rs.50,000/- on 16.02.2000 and a sum of Rs.1,00,000/- in 06.03.2000 received by A1 and A2. Also agreement in favour of the defacto complainant executed as if the said agreement is executed by D'Souza the title holder of the property. By the time, D'Souza has already died. Knowing fully well D'Souza is dead but to cheat and fraudulently misappropriate, the document was fabricated and the complainant was made to believe that the deed is a genuine one. Further, in pursuant to the said conspiracy, on 04.04.2000, A2[Karunamoorthy] arranged one Rameshkumar[A3] to impersonate as D'Souza. After collecting the balance sale consideration of Rs.2,25,000/-, the sale deed was registered in favour of the complainant. When the defacto complainant, based on the sale deed, intended to sell the property, she went to the site where she saw some construction work was going on. When she enquired with the neighbouring land owners, she came to know that the said D'Souza expired on 22.08.1992 itself and his legal heirs have alienated the property to one Vivian. After she came to know about the fraudulent act of A1 and A2 in connivance with A3 and fraudulently received Rs.3,75,000/- by impersonation executed the sale deed, she lodged a complaint. On completion of investigation on her complaint, final report has been filed.

3. To prove the guilt, the prosecution has examined 31 witnesses 39 exhibits were marked. On the side of the defence, 5 exhibits were marked.

4. The trial Court, considering the evidence let in by the prosecution as well as the defence, has held that the property which originally belonged to D'Souza, after demise of D'Souza on 22.08.1992 was sold by his legal heirs to Vaithi Venkatesan (PW-17) through Muralidaran (PW-13) and Geetha (PW-16), whereas A1 and A2 had made the defacto complainant to believe that the said property is available for sale and entered into the sale agreement (Ex.P6) dated 20.03.2000 in the name of D'souza. A sum of Rs.1,50,000/- has been received by A1 and she has given receipts (Exs.P3 and P5) to PW-1. Later, the sale deed was executed by A2. The sale deed (Ex.P7) dated 04.04.2000 in

favour of the defacto complainant as if executed by D'Souza was attested by A1. Through the evidence of PW-1 to PW-3, the prosecution have proved that A1 has actively participated along with A2 in negotiating with PW-1 the fraudulent sale of D'Souza property. When the fraudulent act had come to light, A1 has repaid a sum of Rs.20,000/- on 03.09.2000 and Rs.45,000/- on 14.09.2001 and further agreed to sell her property and pay the balance money. Since she has not paid the balance amount, the cheated defacto complainant had initiated the criminal prosecution. The delay in lodging the complaint, being fully satisfactorily explained by the defacto complainant, the trial Court, on cumulative assessment of evidence, held that A1 and A2 guilty for the offence under Sections 120(B), 420, 467, 468 and 471 of IPC. Since pending trial, the impersonator A3 (Ramesh Kumar) died, the case against A3 got abated.

5. The trial Court, taking note of the ailment of A1, who was suffering from brain tumour had imposed two years Rigorous Imprisonment and fine of Rs.1,000/- for the offence under Sections 467,468 and 471 IPC and one year Rigorous Imprisonment for the offence under Section 420 of IPC and six months Rigorous Imprisonment for the offence under Section 120 (B) of IPC. The period of sentences were ordered to run concurrently.

6. Aggrieved by the judgment of conviction and sentence, the revision petitioner herein preferred the appeal before the Additional Sessions Judge, Fast Track Court-V, Chennai in C.A.42 of 2010. The lower appellate Court, on re-appreciating the evidence, found that there is no material worth interfering the trial Court judgment in the appeal. So, dismissed the appeal and confirmed the conviction and sentence passed by the trial Court in C.C.No.6111 of 2003.

7. The learned counsel appearing for the revision petitioner would submit that the Courts below have totally erred in appreciating the evidence properly. The discrepancies in the testimony of the prosecution witnesses were not properly appreciated by the Courts below. The document at the Registrar Office indicates that D'Souza was identified by PW-3, who is none other than the brother of PW-1. Till the undertaking (Ex.P8) given by the accused to the defacto complainant, no criminal prosecution was initiated. Relying upon the photocopy of the sale deed(Ex.P7), the Courts below have proceeded against the revision petitioner. When there is no document to link the accused to the alleged crime, she ought to have been acquitted by the Courts below. The signature of this revision petitioner was not sent for handwriting expert for comparison and opinion to ascertain whether the signature alleged to have been signed by this revision petitioner was really signed by her.

8. Besides making the above submission, the learned counsel appearing for the revision petitioner would contend that the petitioner believed A2 and she has bona fidely participated in the negotiation with the defacto complainant. She never had any culpability that is why immediately after she came to know about the fraud committed by A2 in connivance with A3, she agreed to repay the money and also paid a total sum of Rs.65,000/- and promised to pay the balance. However, the defacto complainant has rushed to the police and caused disgrace to her. He also submitted that due to brain tumor the revision petitioner has lost her faculty and is living as vegetable. Therefore, considering her present health condition as well as the bona fide attempt to repay the money, her case has to be considered sympathetically,

9. The perusal of the judgments of the Courts below and exhibits does not indicate any improper appreciation of evidence or illegality as contended by the learned counsel appearing for the revision petitioner. The very same contention raised in this revision petition has been canvassed before the trial Court as well as the lower appellate Court. In fact, the lower appellate Court in judgment paras 21 to 23 given detailed reasoning for holding the revision petitioner guilty. The defacto complainant, who has parted away a sum of Rs.3,75,000/- for purchase of the property, had clearly implicated this revision petitioner, who was a party to the entire transaction starting from negotiation, identification of the property, execution of the sale agreement and execution of the sale deed. She has received a portion of the money and given receipts. When she was exposed of her culpability, she agreed to repay the money and executed document and she has also paid the portion of the money. Some of the money paid by A1 has been deposited in the account of the revision petitioner and the same is reflected in the bank statement of this revision petitioner, which are marked as Exs.P38 and 39. For execution of the fraudulent sale deed, the stamp papers were purchased jointly by A1 and A2. The stamp vendor (PW-4) has identified both A1 and A2. This revision petitioner has identified the copy of the sale agreement and the same is marked as Ex.15. A1 and A2 are close friends and their association is spoken by the prosecution witnesses to prove prior meeting of mind between the accused. From the evidence, the prosecution has proved the revision petitioner was instrumental for selling the property of D'souza fraudulently through forgery and impersonation. Thus, the evidence of the prosecution, on cumulative assessment, clearly indicates the conspiracy between the accused to do an illegal act by illegal means. This Court finds no error in the finding of the Courts below. Hence, the Criminal Revision Case is liable to be dismissed.

10. In the result, this Criminal Revision Case is dismissed. The conviction and sentence passed by the learned Additional District and Sessions Judge(FTC No.V), Chennai in C.A.No.42 of 2010 dated 29.01.2011 are confirmed. The period of sentence is ordered to be run concurrently. The period of sentence already undergone by the accused shall be set off. Bail bond, if any executed by the accused shall be cancelled. The respondent police is directed to secure the accused and commit her to Prison to undergo the remaining period of sentence.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
1. The Additional District and
Sessions Judge(FTC.V), Chennai.

2. The II Metropolitan Magistrate,
Egmore, Chennai-8.

3.The Chief Metropolitan Magistrate,
Egmore, Chennai.

4. The Inspector of Police, CBCID,
Control Room,
Chennai 600 002.

5.The Public Prosecutor, High Court,
Madras.

Copy to:-

The Section Officer,
Criminal Section,
High Court, Madras - 104.

+2cc to Mr.B.K.Singh, Advocate, SR.No.37544/19

Crl.R.C.No.350 of 2012

Kak(02/07/2019)