

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Cr1.R.C.No.338 of 2019

Srinivasalu

...Petitioner

-Vs-

State by

Inspector of Police,
District Crime Branch (Crimes),
Coimbatore, Coimbatore District
(Crime No.06 of 2015)

...Respondent

This Criminal Revision Case is filed under Sections 397 read with Section 401 of Cr.P.C. to call for the records of the I Additional District and Sessions Judge, Coimbatore, Coimbatore District and set aside the judgment passed by him in C.A.No.339 of 2017 dated 11.04.2018 preferred against the order of the Judicial Magistrate No.1, Coimbatore, dated 28.09.2017 in CC NO.163/2015.

For Petitioner : M/s.V.Yamuna Devi

For Respondent : Mr.R.Ravichandran
Government Advocate (Cr1. Side)

O R D E R

This criminal revision has been filed against the order dated 11.04.2018 made in C.A.No.339 of 2017 on the file of the learned I Additional District and Sessions Judge, Coimbatore, Coimbatore district.

2 The facts leading to prefer this revision are as follows:

The case of the prosecution is that the respondent police registered a case against the revision petitioner in Cr.No.06 of 2015 for the offence under Sections 420 r/w. 511 of IPC. After investigation, the respondent police has laid a charge sheet before the learned Judicial Magistrate No.I, Coimbatore. Before the trial Court, in order to prove the case of the prosecution, P.W.1 to P.W.6 were examined and Exs.P1 to

Ex.P3 were marked. On the side of the defence, no one was examined and no documents were marked. The learned Magistrate after completing the trial, found the accused persons guilty of the offence under Sections 420 r/w. 511 of IPC and convicted and sentenced to undergo Rigorous Imprisonment for 6 months each and to pay a fine of Rs.1,000/- each, in default to undergo Simple Imprisonment for two months each, against which, the revision petitioner preferred the Criminal Appeal in C.A.No.339 of 2017 before the learned First Additional District and Sessions Judge, Coimbatore.

3.The learned Sessions Judge after hearing the arguments and perusing the materials available on record, found that there was no merit in the appeal. Therefore the judgment of the trial Court was confirmed and the appeal was dismissed, against which, the revision petitioner preferred this present criminal revision before this Court.

4. The learned counsel for the petitioner would submit that a false case has been foisted against the revision petitioner. There is no document produced to link that the present complaint was filed against the petitioner and there are material contradictions between the evidence of the prosecution witnesses and the case of the prosecution. The learned Magistrate as well as the lower Appellate Court have failed to consider the fact that P.W.1 has foisted a false complaint against the appellant and the FIR was filed belatedly and there is no proper explanation given for delay in filing the complaint. Though P.W.1 has stated in the complaint that amount was given by him to the revision petitioner and the same was received back from the revision petitioner by the Sub Inspector of police and after verifying the serial numbers in the said currency notes, he has taken the revision petitioner to the station, but during his chief examination P.W.1 stated that when the revision petitioner was questioned by the Sub Inspector of police as to why he has received the amount, the revision petitioner threw it away on the table and the Sub Inspector has taken it and given to P.W.1 and both of them were taken to Thudiyalur Police Station and the said contradiction is a material contradiction in the light of what has been stated in the complaint given by P.W.1. Both the Courts below had failed to see the seizure of photo album and amount of Rs.5,000/-. P.W.1 has deposed in his chief examination that the photos relating to his social services were published in the newspaper, but during the investigation by the police, he has stated that he has not filed those photographs. These material contradictions have not been considered by the Courts below. Further, he submitted that the revision petitioner has not cheated the complainant and he has not committed any offence as alleged by the prosecution. In this case, both the Courts below

failed to see that the prosecution has failed to prove the said facts. Therefore, the benefit of doubt should have been extended to the revision petitioner and the judgment of the Lower Appellate Court warrants interference.

5. The learned Government Advocate (Crl. Side) appearing on behalf of the respondent submitted that the charge against the accused was that both the accused have approached P.W.1, the defacto complainant and have stated that they were procuring the Doctorate Degree from American University for the service rendered by P.W.1 in the field of social work. They have showed several albums and that Doctorate degree would be conferred on 28.02.2015 at a function organized at Chennai. The revision petitioner and the other accused pressurized P.W.1 for getting the Doctorate Degree and demanded Rs.3,00,000/- and gradually they reduced the amount and agreed to receive a sum of Rs.55,000/-. The defacto complainant stated that he would give token advance of Rs.5,000/- on 22.02.2015. Accordingly, P.W.1 asked the revision petitioner to come to a specific place. At the same time, he has informed the police about the plan. The Sub Inspector was present at the spot and watching the incident. The revision petitioner herein has gone there to collect the money. At that time the police intervened and on seeing the police the revision petitioner tried to escape but he was apprehended by the police and he was produced before the police station. But no FIR has been registered. Subsequently, complaint was given to District Crime Branch and the respondent police has registered the First Information Report. P.W.1 has narrated the sequence of events that happened from 17.02.2015 to 20.02.2015. The evidence of P.W.1, P.W.2 and P.W.4 are corroborated with each other. Both the Courts below rightly appreciated the evidence of prosecution and the contradictions pointed out by the learned counsel for the petitioner would not go to the root of the matter and vitiate the case of the prosecution. The main allegation against the revision petitioner is that this petitioner and the other accused promised to get the Doctorate Degree for defacto complainant's social service, for which they demanded a sum of Rs.3,00,000/- and gradually they reduced the amount to Rs.55,000/-. The defacto complainant had given a token advance of Rs.5,000/- on 22.02.2015. The main contention raised by the learned counsel for the petitioner is that the revision petitioner has not promised to pay the amount by giving any specific letter which is not acceptable. The petitioner has proved its case beyond reasonable doubt. Therefore, the judgment of the Court below does not warrant any interference.

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

7. A reading of the evidence of P.W.1, P.W.2 and P.W.4 shows that they are corroborated by each other. The discrepancy pointed out by the accused does not vitiate the case of prosecution. Both the Courts below rightly appreciated the prosecution witnesses and convicted the accused for the offence under Sections 420 r/w. 511 of IPC. This Court cannot exercise the power of the appellate Court and reassess the evidence. Since the appellate Court is final court of fact findings and re-appreciated the entire evidence has come to the conclusion that the petitioner has committed the offence as stated above, this Court does not find any infirmity or perversity in the order passed by the learned I Additional District and Sessions Judge, Coimbatore, Coimbatore District. In this regard, it is pertinent to refer the judgment of the Hon'ble Supreme Court in the case of State of Kerala Vs. Putthumana Illath Jathavedan Namboodri, reported in AIR 1999 SC 981 held as follows:

"... In its revisional jurisdiction, the High Court can call for and examine 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 an Appellate Court nor can it be treated even as a 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 been 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..."

8. In the result, this Criminal Revision is dismissed. Consequently, connected Miscellaneous Petitions are closed.

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Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1. The Judicial Magistrate No.I,
Coimbatore.
2. The I Additional District and Sessions Judge,
Coimbatore.
3. The Section Officer,
Criminal Section (Records),
High Court, Madras.

+1cc to Mr.S.Mohanavadivelan, Advocate, SR.No.31332

Crl.R.C.No.338 of 2019
and
Crl.M.P.Nos.4559 & 4560 of 2019

Kak(16/07/2019)



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