

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 26.09.2019

CORAM

THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.1110 of 2018 &
Crl.M.P.No.12993 of 2018

Marie Stella Rene

.. Petitioner

Vs

The State represented by
Inspector of Police,
CBI, SCB, Rajaji Bhavan,
Besant Nagar,
Chennai-90

.. Respondent

Prayer: Criminal Revision Case filed under Section 397 of Cr.P.C., praying to call for the entire records pertaining to Crl.Appeal No.18 of 2017 arising out of C.C.No.71 of 2015 in R.C.No.6(S)/2014 pending on the file of the II Addl. Sessions Judge, Puducherry and set aside the impugned judgment dated 13.08.2018 and acquit the petitioner .

For Petitioner: Mr. V.S. Venkatesh

For Respondent :Mr. K. Srinivasan
Special Public Prosecutor, CBI Cases

ORDER

The petitioner has preferred the present Criminal Revision Petition to call for the entire records pertaining to Crl.Appeal No.18 of 2017, arising out of C.C.No.71 of 2015 in R.C.No.6(S)/2014, pending on the file of the II Additional Sessions Judge, Puducherry and set aside the impugned judgment dated 13.08.2018 and acquit the petitioner.

2. The case of the prosecution is as follows;

(i) During the period 2006 and 2007, at Pondicherry and other places, A1 to A3 along with the split up case accused persons namely Danasu @ Danassou impersonated as B.Charles and J. Baskar, entered into criminal conspiracy and in furtherance of conspiracy P.Danusu @ Dannassou impersonated as B.Charles, furnished fake School Record Sheet purported to have been issued by K. Mannavan, Government Middle School, Karaikal and Puducherry

Civil Supplies Ration card as genuine documents before the French Consulate DE France authorities and obtained Passport bearing No.07CV30181 by means of cheating. Further, in pursuance of the said conspiracy, the split up case accused Danasu impersonated as B.Charles created fake Date of Birth Certificate purported to have been issued by Deputy Tahsildar, Nagapattinam by mentioning his name as Charles , S/o. Baskar (the split up case accused) and mother's name as Marie Stella Rene (A3) and date of Birth as 20.01.1989 and born at Kuttalam. But the fact is that his original date of birth is 27.12.1977, born at Condarettu Paleom, Puducherry, his original father being Patchiyappan (A) and mother's name is Rany. Further the split up case accused Baskar and A3 in their Ration card bearing No.001763 had shown only two children namely Ms.S.Sherly (Daughter), aged 7 years and Master Thanesh Cardzen (Son), aged three years and the name of split up case accused P.Danasu @ Danassou impersonated as B. Charles was found to have been inserted in the Ration card at a later point of time.

(ii) In furtherance of the conspiracy, the split up case accused namely Baskar and A3 executed their Marriage Registration Deed on 21.6.2006 at Oulgaret Municipality, Puducherry wherein they have willingly shown the split up case accused P.Danasu @ Danassou as B.Charles as their biological son knowing fully well that, he is not their real son and he is only the Biological son of A1/Patchiyappan.

(iii) In furtherance of the conspiracy, A1 and A2 signed as witnesses in the Marriage deed executed between the Split up case accused Baskar and A3, knowing fully well that the split up case accused Danasu @ Danassou had impersonated as B.Charles and declared falsely as the son of A3 and her husband. Thus, A1 to A3 and split up case accused entered into criminal conspiracy and in furtherance of the same, submitted fake and forged documents as genuine, gave false statement on oath before the Registrar, Oulgaret, Municipality, Puducherry and indulged in cheating by impersonation and the split up case accused Danasu @ Danassou as Charles, obtained passport from French Consulate DE France, Puducherry. Therefore A1 to A3 appears to have committed the offences punishable u/s.120-B IPC and 419, 468, 471, 420 and 181 IPC r/w.34 IPC.

(iv) On filing of charge sheet by the Inspector of Police, CBI/SCB, Chennai, the case was taken up for trial in C.C.No.71 of 2015 by the learned Chief Judicial Magistrate, Puducherry. The petitioner /A3 is charged for the offences under sections 120B, 419 r/w.34, 468 r/w.34, 471 r/w 34 IPC, 420 r/w.,IPC, 34 and 181 r/w.34 IPC.

(v) Before the trial court the prosecution examined witnesses PW1 to PW18 and marked exhibits Ex.P.1 to Ex.P.31. On

behalf of the defence side, neither a witness has been examined, nor a document has been produced.

(vi) On appreciation of witnesses and documentary evidence, the trial court has convicted and sentenced the petitioner/A3 as below;

array of rank	conviction	sentence
A3	u/s.120-B IPC	to undergo SI for 6 months
	u/s.419, r/w.34 IPC	to undergo SI for one year
	u/s.468 IPC r/w.34 IPC	SI for one year and to pay fine of Rs.500/-, in default, to undergo one month each
	u/s.471 IPC r/w.34 IPC	SI for one year , and to pay a fine of Rs.500/-, in default, to undergo one month
	u/s.420 IPC r/w.34 IPC	to undergo SI for one year and to pay a fine of Rs.500/- each, in default, to undergo one month
	u/s.181 IPC r/w.34 IPC	to undergo SI for one year and to pay a fine of Rs.500/-, in default, to undergo one month.

The detention period already undergone by A3 from 2.4.2015 to 08.4.2015 in set off u/s.428 Cr.P.C.

3. Against the conviction and sentence passed by the trial court, the petitioner/A3 preferred appeal in C.A.No.18 of 2017 before the II Additional Sessions Judge, Puducherry, who dismissed the appeal and confirmed the conviction and sentence of the trial court. Aggrieved against the judgment of conviction and sentence passed by the lower appellate court, the present Criminal Revision has been preferred by petitioner/A3.

4. Heard Mr.Venkatesh, V.S., learned counsel for the petitioner and Mr.K.Srinivasan, learned Special Public Prosecutor, CBI Cases for respondent.

5. The contention of the petitioner is that the petitioner is made as a scape goat in this case. The said Danasu is

happily settled in France who is the main accused in this case. Despite the respondent knowing about the whereabouts of Danasu they have not taken any steps to secure him. Initially there were five accused in this case, out of which, two accused are still absconding. The petitioner who came to visit her ailing mother who was in death bed was arrested by the respondent on 1.4.2015 and she underwent incarceration from 2.4.2015 to 8.4.2015 initially during the period of investigation. From the date of dismissal of appeal ie. from 13.08.2018 to till date she is in confinement.

6. The primordial contention of the petitioner is that the petitioner was not in India on 21.6.2006, when the marriage is said to have been registered. The petitioner has made no declaration. It is further submitted that the signature found in Ex.P.7-marriage certificate and other documents is not that of the petitioner as it is apparent by comparing the signature found in 313 question and Ex.P.7 and other documents. It is apparent that the petitioner is not the signatory in Ex.P.7.

7. Further the passport which is lying before the trial court namely Chief Judicial Magistrate, Pondicherry was summoned and the signature found in the passport was also verified in this regard. The further contention of the petitioner is that though the petitioner had a good case and points in her favour to show that the petitioner was not present on 21.06.2006 and registered her marriage. Further on evidence of the witnesses PW12 and 13 from the registration office, it is seen that they have not identified the petitioner as the person who appeared before them on 21.6.2006 and signed the marriage register in their presence. There is no evidence to show that the petitioner had submitted the documents before the authorities and none of the witnesses of Registration Department at Pondicherry and Nagapattinam and the school authorities from Karaikkal, the Assistant from the Tagore Arts College have spoken about the petitioner's presence in any of these places along with the other accused and further on the available evidence, it cannot be stated that the petitioner had shared any common intention in commission of the offence.

8. It is also submitted that the petitioner is still in confinement from the date of dismissal of the appeal namely C.A.No.18 of 2017 on 13.8.2018. He further submitted that while the accused was arrested, she was having four year old son. Further, she is a French citizen and her presence in France is important for the well being and welfare of her children.

9. Despite, she had got valuable points in her favour. Hearing and disposal of revision would take time, hence, she had

filed a petition for fixation of early date on the ground that she is under confinement. Learned counsel for the petitioner further submitted that the trial court as well as the lower appellate court without properly appreciating the evidence, had wrongly convicted and sentenced the petitioner and prayed for clemency and confined his appeal with regard to sentence alone.

10. The learned Special Public Prosecutor, CBI Cases submitted that in this case, the petitioner along with four others had created forged documents and they have participated with each other in a well orchestrated manner by active participation by all the accused and committed the offence. The petitioner knowing that she is not the biological mother of absconding accused Danasu had parted with documents such as Family card, family particulars with the other accused connived in creation of school certificate, birth certificate knowing that these documents are false, and she along with the other accused had appeared before the Registration authorities and registered her marriage on 21.6.2006 with false particulars. It is further submitted that from the evidence of PW12 and 13, it is clear that prior to the registration of marriage, documents have to be submitted for scrutiny, thereafter the parties to the marriage are has to appear before the registration authorities and oath would be administered. They should be physically present and read out the oath in the presence of the authorities and thereafter they have to sign the register and other documents. Only after proper scrutiny of documents submitted and verification of appearance of the parties, marriage would be registered. Ex.P.7-marriage certificate has been executed in such a manner and hence now the statement of the petitioner that she was not present on 21.6.2006 cannot be countenanced.

11. Further on perusal of the passport, it is seen that the passport has been issued only in the year 2007 and the contention of the petitioner that on 21.6.2006, she was not present is not sustainable. The petitioner has not produced any other document even during investigation, trial, or before the lower appellate court any such document to prove the said statement and it is the petitioner's duty to prove this fact, once she pleads alibi. In this case, the petitioner has not proved so. Further on the available materials, the trial court and the lower appellate court, on appreciation of the evidence had rightly convicted and sentenced the petitioner. The evidence of PW1-Anbazhagan, Assistant in the Mannadipet Commune Panchayat and PW2 - Clerk, Tagore Arts College would go to show that the absconding accused date of birth is 27.12.77 and not 20.11.1989 as projected. PW3 the Tahsildar of Civil Supplies was examined and in his evidence, he had stated that the Family Card bearing No.099273 pertains to A1 namely Pachiyappan 's family, in which the name of Danasu is available. In the family card of the petitioner

bearing No.001763, only two children have been shown which has to be seen from Ex.P.3-Ration card. The school certificate Ex.P.4 issued by Karaikal Government School and the evidence of PW4 and PW11 would prove the fact that the absconding accused had not studied in that school during the relevant period. The admission number mentioned in the record sheet in the name of the accused is 6820, but in the school original record sheet, it pertains to one Anthonisamy.

12.PW6 and PW8 are father and mother in laws respectively of the absconding accused Danasu. They had categorically stated that Danasu is married and the marriage between Danasu and his daughter Chandikadevi was registered on 18.01.2013 and the marriage had taken place on 23.1.2013 at Mailam temple and the absconding accused Danasu is the son of A1.

13. PW7- Kumar had arranged the marriage of Danasu with the daughter of A6 and A8. PW14, 15 and 17 are the witnesses for obtaining the signature of A1 and A2 in this case and PW16 is the hand writing expert. As regards this petitioner, these witnesses is of no consequence.

14. PW9 is the Assistant from Home Department who verified the document submitted for French Passport and thereafter forwarded the same to French Consulate and in this case, on the request of CBI, he had collected the documents and forwarded to the same through Ex.P.6-letter.

15. PW18 is the Investigating Officer, who had registered the case, conducted investigation, seized the documents, sent the documents for Forensic study and thereafter filed charge sheet. Both the trial Court and the lower appellate Court, on proper analysis of the evidence and documents had rightly convicted the petitioner.

16.Using forged documents while registering the marriage included Danasu as her son and she has three children though she had only two children. Danasu's name had been entered in the marriage certificate using the forged documents, made public authorities to issue public document, using the same, the said Danasu applied for French Passport and also obtained the passport from French Consulate DE France authorities, Pondicherry.

17. This court finds that the petitioner had been convicted mainly on the charges of conspiracy and with the aid of section 34 IPC along with offence of forgery of documents and for using forged documents. The lower appellate court had rightly convicted and sentenced the petitioner as stated above.

18. Learned counsel for the petitioner submits that the petitioner being a lady is under confinement from the date of dismissal of the appeal by the appellate court. He would further submit that she is a French citizen and her family is settled in France and she is having two children. Further she is a heart patient and she is regularly visiting the Doctor in prison. In this regard, he prayed for clemency while imposing sentence on her.

19. Considering the submission of learned counsel for petitioner, this Court considering the fact that the petitioner being a lady, a French citizen, her children are in France, she is a heart patient and also the petitioner is in confinement for 78 days as on date, taking a lenient view in this regard, this court without going into the merits of the case feels that it would be appropriate that the period of incarceration already undergone by the petitioner so far would be sufficient with regard to sentence. It is also seen that the occurrence pertaining to the case is of the year 2006 and it is 13 years since now. The petitioner has not come into any adverse notice of the law enforcing authorities, which fact is also considered for reducing the sentence.

20. At this stage, learned counsel for the petitioner submits that the petitioner was arrested on 1.4.2015. Her French Passport was produced by the investigating officer before the Chief Judicial Magistrate, Pondicherry in the above case and the passport is now under the custody of Chief Judicial Magistrate, Pondicherry. Passport has not been marked as Exhibit and it is not relied on document. Further the petitioner being a French citizen after her release she has to go back to France to join her children who are longing for her, for which passport is necessary which is now under the custody of Chief Judicial Magistrate, Pondicherry has to be handed over to the petitioner. The passport of the petitioner is not subject matter of this case and its genuineness is not questioned.

21. In view of the same, the Chief Judicial Magistrate, Pondicherry is directed to hand over the passport of the petitioner to her on filing appropriate memo.

22. In fine, the conviction passed by the courts below against the petitioner is confirmed and treat the period of 78 days undergone by the accused as an appropriate sentence in the particular circumstances of the case.

23. This Criminal Revision is disposed of with the following modification:

"i) the finding of conviction arrived at by the Courts below is confirmed. However, the sentence of

imprisonment against the petitioner/accused shall be treated as already undergone."

ii)The Chief Judicial magistrate, Pondicherry is directed to hand over the passport of the petitioner to her on filing appropriate memo.

Consequently, the connected miscellaneous petitioner is closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

msr

To

- 1.The II Additional Sessions Judge,
Puducherry.
- 2.The Principal Sessions Judge,
Puducherry.
- 3.The Chief Judicial Magistrate,
Pondicherry.
4. Inspector of Police,
CBI, SCB, Rajaji Bhavan,
Besant Nagar,
Chennai-90
5. The Superintendent,
Central Prison,
Puducherry.
- 6.The Special Public Prosecutor (CBI Cases),
Madras High Court,
Chennai 104.

+2cc to Mr.V.S.Venkatesh, Advocate, S.R.No.82545

+1cc to Mr.Mr. K. Srinivasan, Advocate, S.R.No. 82927 (17/10/19)

CrI.R.C.No.1110 of 2018 &
CrI.M.P.No.12993 of 2018

NM(CO)
GN(30/09/2019)