

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 26.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN
Crl.R.C.No.1436 of 2018

and

Crl.MP.Nos.16720, 16721 and 16722 of 2018

V.Nagaraj

... Petitioner

Vs

State by Sub-Inspector of Police
H-5, New Washermenpet Police Station,
New Washermenpet,
Chennai
Crime No.697 of 2016

... Respondent

PRAYER: Criminal Revision Case filed under Section 397 r/w 401 of Criminal Procedure Code, to set aside the order in Crl.A.No.214 of 2018 dated 12.10.2018 on the file of the XV Additional Sessions Judge, Chennai in C.C.No.1807 of 2017 dated 13.04.2018, on the file of the 15th Metropolitan Magistrate at George Town, Chennai.

For Petitioner : Mr.L.Infant Dinesh

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

O R D E R

The respondent Police registered a case against the petitioner/petitioner for the offence under Section 406, 420, 417 of IPC. After investigating the case, the respondent police filed a charge sheet before the XV Metropolitan Magistrate, George Town, Chennai. The learned XV Metropolitan Magistrate, George Town, Chennai, taking the charge sheet on file in C.C.No.1807 of 2017 and framed the charge against the petitioner for the offence under Sections 406, 420, 417 of IPC.

2 After the trial the learned XV Metropolitan Magistrate, George Town, Chennai found guilty of the petitioner, for the offence under Section 406 IPC and sentenced him to undergo six months Simple Imprisonment and for the offence under Section 420 (2counts) IPC imposed three years Simple Imprisonment for each count and for the offence under Section 417 of IPC imposed three months Simple Imprisonment. Further, the petitioner/accused is directed to pay a sum of Rs.20,00,000/- as compensation to P.W.1 and P.W.2, as against the order of the learned XV Metropolitan Magistrate, George Town, Chennai, in C.C.No.1807 of 2017, the

petitioner herein/accused filed an appeal before the learned Principal Sessions Judge, Chennai in Crl.A.No.214 of 2018. The learned XV Additional Sessions Judge, Chennai dismissed the appeal and confirmed the order passed by the learned XV Metropolitan Magistrate, George Town, Chennai. As against the order of dismissal the petitioner has preferred the present Criminal Revision Case before this Court.

3 The case of the prosecution is that the petitioner running a company "Apple Logistic". P.W.1 is the defacto complainant in the case. She came to know the petitioner through her husband who is none other than P.W.2. The petitioner herein had directly demanded Rs.20,00,000/- for the post of Assistant Professor at Thiagaraya College and finalized for Rs.17,00,000/-. Since she was not having such a huge sum of money, she was asked to give Rs.10,00,000/- as advance Rs.6,00,000/- was received from her aunt Seethalakshmi/P.W.3 for Rs.6,00,000/- sister Vijayarani who is the wife of P.W.6 for Rs.4,00,000/- and had handed over the same to the petitioner on 21.09.2015 before H5 Police quarters. Thereafter, she borrowed Rs.1,50,000/- from her brother P.W.5 Gokin, and also pledged her jewels through her husband for Rs.3,25,000/- and on pledging her house she got Rs.1,75,000/- and further got Rs.50,000/- from her younger brother P.W.4 Gopu and gave Rs.7,00,000/- to the petitioner. On 1st week of October 2015 she found that her name was not selected and asked for return of money. The petitioner had paid Rs.1,42,600/- through State Bank of India, Washermenpet Branch, account and her brothers have signed various receipts along with the petitioner. Again 28th the petitioner demanded Rs.70,000/- again she received Rs.70,000/- from her brother and gave it to the petitioner. On 21.11.2015 on demand, the petitioner gave document and cheques to discharge the liability, but the same was returned on 18.01.2016 due to insufficient funds. On 20.01.2016 she was badly threatened by the petitioner along with other people. The petitioner had given complaint against her. After five months she gave this complaint on 18.06.2016 to P.W.9 Thiru.Ramesh Babu, Inspector of Police, New Washermenpet Police Station, Chennai, and a case has been registered under Section 417, 420 of IPC in Crime No.697 of 2016. Ex.P12 is the FIR. Then P.W.9 examined the witnesses P.W.1 and her husband P.W.2 Selvan and recorded their statements. Thereafter, P.W.9 arrested the petitioner on 16.07.2016 at about 07.00p.m., near Apollo Hospital at TH Road and on interrogation, recorded the confession statement given by the petitioner in the presence of witnesses Mani and Mohana Chandran and remanded the petitioner to judicial custody. Thereafter intimated about the arrest of the petitioner to his wife through memo, then seized the documents Form 91 and sent to the Court concerned. Then he examined the other witnesses viz. P.W.3 to P.W.8, thereafter, he examined the Principal of Thiagaraja College Thiru.Ravichandra

Babu and recorded his statement and also seized the call letter for interview of P.W.1 and the attendance register of the candidates who have participated in the interview. After completion of investigation, P.W.9 Investigating Officer filed the final report against the petitioner under Sections 417, 420, 406(2 counts)

4 In order to prove the case, on the side of the prosecution as many as 9 witnesses were examined and 9 documents were marked. On the side of the defence no oral and documentary evidence were produced.

5 The learned counsel for the petitioner would submit that he has not made any promise to get a job for P.W.1/defacto complainant and got Rs.17,00,000/-. A false case has been foisted against the revision petitioner. There was a business transaction between the petitioner and the brother of P.W.2 and in order to get over the same, they foisted false case against him. The husband of P.W.1/defacto complainant is a Police Constable and P.W.4 is the brother of the defacto complainant, P.W.5 is also the brother of the defacto complainant who is working as a honourary professor in Thiyagaraya College. Therefore the allegations against the petitioner is that the defacto complainant P.W.1 had obtained Doctorate decree in history and inorder to get a job in Thiyagaraya College, the revision petitioner promised to get a job in the Thiyagaraya College, for which he obtained Rs.17,00,000/- from defacto complainant. The defacto complainant also gave Rs.10,00,000/- which was received from various persons, but neither he got the job nor repaid the money. In this case P.W.2 is working in a police department as a Traffic Police, P.W.5 is working as a honorary Professor in Thiyagaraya College. They believed the revision petitioner and gave a sum of Rs.17,00,000/- for getting a job which is not believable, and P.W.2 the husband of the defacto complainant himself admitted during the cross examination that there is some other transactions between P.W.2, petitioner and the defacto complainant. There is a business transaction between the brother of the defacto complainant and the revision petitioner. P.W.2 clearly stated that the business transaction between the brother of the defacto complainant admitted even prior to the alleged payment for job. Both the Courts below have failed to consider the facts and appreciating the evidences placed. The prosecution has failed to establish its case beyond reasonable doubts. Therefore, both the Courts have failed to consider the facts, which warrants interference of this Court.

6 The learned Government Avocate (Criminal Side) would submit that the prosecution has established its case therefore P.W.1 to P.W.5 categorically stated that the revision petitioner

had contact with the Ministers and VIPs through them they can get a secure job for P.W.1. Since, P.W.1 had possessed Doctorate Degree, P.W.2 the husband of the defacto complainant has also clearly spoken about the transaction of P.W.3, P.W.4. P.W.1 to P.W.4 are relatives. P.W.5 is the brother of P.W.6. They have categorically stated that they extended their financial help for getting a job to P.W.1. Therefore, the prosecution has established its cases, both the Courts have rightly appreciated the evidence. There is no need to interfere, and this revision is liable to be dismissed.

7 Heard the learned counsel for the revision petitioner as well the learned Government Advocate (Criminal Side) for the respondent and perused the materials available on record.

8 The main allegation against the revision petitioner is that in order to get a job for P.W.1 he made a false averments to P.W.1 and got RS.17,00,000/-. Subsequently, neither he got a job nor repaid the amount. Therefore, they filed a case against the revision petitioner. P.W.1 possessed Doctorate Degree in History and also he applied for the post of Professor in Thiagaraya College. But there is no documentary proof to show that the revision petitioner made a false averment. There is no documents or signature of the revision petitioner and the revision petitioner is not a party in any of the document. So admittedly, P.W.1 has stated that the revision petitioner is the friend of P.W.2, the husband of P.W.1 and she came to know about him through her husband. P.W.2 has stated during the evidence that the brother of P.W.1 and the revision petitioner are doing some business. During the cross examination when the question was put before P.W.1 as to whether the brothers of P.W.1 and the revision petitioner are doing any business, she has stated that she is not aware of it. P.W.2 has stated that during the chief examination the brother of P.W.1 and the revision petitioner are doing some business, but P.W.2 during cross examination has clearly admitted that there is a business transaction between the revision petitioner and the brothers of P.W.1 and he has also working in the American College as honorary lecturer where P.W.1 allowed to attend the interview for the post of professor. P.W.1 and P.W.2 believed the same and gave money to him, they should have enquired P.W.5 whether any possibility of getting any appointment by giving money. But he has stated that the management is not getting any money. He has further stated that only through P.W.2 she came to know the revision petitioner and gave money to him. Further it is also not believable that a person going to give such a huge sum of Rs.17,00,000/-has not enquired and also when the husband of P.W.1 is working in the police department and one of the brother is working in the same college. On reading of the cross examination of P.W.1, P.W.2, P.W.5, this Court finds that the

prosecution has not established its case beyond all reasonable doubts. Even though, this Court is a revisional Court, while exercising the power of the revisional jurisdiction it cannot re assess the evidence and substitute its own view. But at the same time, the revisional Court has got power to testify the appreciation of evidence by both the Courts below.

9 In this case, as already stated that the case of the prosecution is that to get a job for P.W.1 in American College, the revision petitioner demanded a sum of Rs.17,00,000/- from P.W.1 and P.W.1 also arranged such a huge amount and gave it to him. Further P.W.1 has stated that P.W.2 husband only entrusted the revision petitioner and she denied that there is no transaction between the brother of the defacto complainant and the revision petitioner. Whereas, P.W.2 the husband of P.W.1 admitted that even prior to this alleged transaction there was a money transaction between the brothers of P.W.1. If the revision petitioner even does not have a money for providing treatment to his father and had already borrowed money and he issued a cheque in favour of the brother of the defacto complainant, but did not make the payment for the said cheque for which no complaint was filed against the revision petitioner. If that be the case it is not believable that he has made a promise to get a job and he alleged to have stated that he had a relationship with the Ministers and VIPs and he can get a job for her, therefore, they paid sum of Rs.17,00,000/-. There is no means for payment of Rs.17,00,000/-.

10 This Court finds that the prosecution has not proved its case with cogent and reliable evidence and the appellate Court has not properly appreciated the evidence. Therefore, under these circumstances this Court finds that there is a perversity in appreciating the evidence and conviction recorded by both the Courts are liable to be set aside.

11 Accordingly, the present Criminal Revision Case is allowed. Consequently, connected Criminal Miscellaneous Petitions are closed.

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Sd/-
Asst.Registrar (CS I)

/true copy/

Sub Asst. Registrar

sbn

To

1. The XV Metropolitan Magistrate,
George Town,
Chennai.

2. XV Additional Sessions Judge,
Chennai.

3.The Inspector of Police
H-5 New Washermenpet Police Station
New Washermenpet chennai

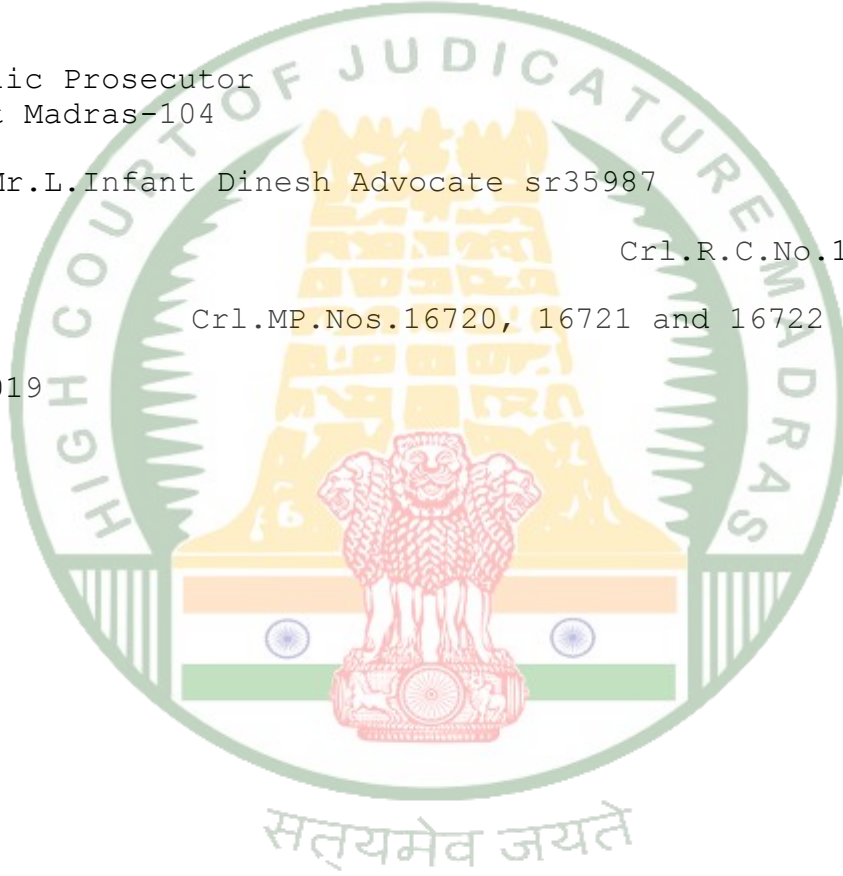
4.The public Prosecutor
High Court Madras-104

+1 cc to Mr.L.Infant Dinesh Advocate sr35987

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