



Bail Slip

The Appellants / Accused 1 & 2 namely 1) S. Murugesan, aged 52 S/o. Somasundara Mudaliar, 2) M. Poomari, aged 47, W/o. Murugesan, were directed to be released on bail as per the order of this Court dated 20/12/2013, in MP(MD)No.1/2013 in Crl.RC(MD)No.886/2013 on the file of this Court.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.08.2019

CORAM:

THE HONOURABLE MR. JUSTICE **G. R. SWAMINATHAN**

Crl.R.C(MD).No.886 of 2013

1. S. Murugesan

2. M. Poomari

... Revision Petitioners /
Appellants / Accused Nos. 1 & 2
Vs

State Through
The Inspector of Police,
District Crime Branch, Tirunelveli,
In Crime No. 268 of 2004
of Puliyangudi P.S.
Tirunelveli District.

... Revision Respondent /
Respondent / Complainant

PRAYER: Petition filed under Section 397 (1) r/w 401 Code of Criminal Procedure, to call for the records from the lower Courts and to duly set aside the Judgment passed by the III Additional Sessions Judge, Tirunelveli, Tirunelveli District in her C.A.No.166 of 2010, dated 30.10.2013 in confirming the Judgment passed by the District Munsif-cum-Judicial Magistrate, Sivagiri in C.C.No.66 of 2006.

For Petitioners : Mr. V. Kathirvelu
Senior counsel for Mr. K. Prabhu
For Respondent : Mr. A. Robinson
Government Advocate (Crl. side)

ORDER

The petitioners were convicted for the offence under Section 420 of IPC and sentenced to undergo one year rigorous imprisonment and to pay a fine of Rs.10,000/- each, vide Judgment dated 29.09.2010 in C.C.No.66 of 2006, on the file of the learned Judicial Magistrate, Sivagiri. The petitioners herein filed C.A.No.166 of 2010, before the learned III Additional Sessions Judge, Tirunelveli, Tirunelveli District. The Appellate Court by Judgment dated 30.10.2013, confirmed the Judgment of the trial Court and dismissed the appeal. Challenging the same, this revision case came to be filed.

2. Heard, the learned Senior counsel appearing for the revisions petitioners and the learned Government Advocate (Crl. Side) appearing for the respondent.

3. I carefully considered the rival contentions and adduced the evidence on record.



4.The case of the de-facto complainant is that he purchased the property in S.No.1376/15B in T.N.Pudukudi and put up a Rice Mill. The de-facto complainant had availed the loan from TIIC. On 13.05.1998, the de-facto complainant sold half share in the property in favour of the revision petitioners herein. The de-facto complainant alleges that the accused had represented to him that they would clear the half of the loan liability of P.W.1. On 13.05.1998, the de-facto complainant owed to pay a sum of Rs.8,00,000/-. The revision petitioners, even though had agreed to pay a sum of Rs.4,00,000/- representing the de-facto complainant's liability to TIIC, did not pay and as a result, the loan liability of the de-facto complainant mounted and TIIC took recovery measures.

5.The TIIC official was examined as P.W.4 and he had stated that on 19.11.2002, they had taken possession of the mortgage property under Section 29 of the State Financial Corporation Act. Even the de-facto complainant-Sivasubramanian and his wife Balammal were given notice for clearing the loan liability, since they did not come forward to clear the loan liability, on 27.02.2003, the auction was conducted and in the said auction, 13 persons have taken part. The de-facto complainant himself offered for a sum of Rs.16,70,000/-. As per the auction norms, on the auction date itself, 10% bid amount, will have to be paid. But, the de facto complainant, Sivasubramanian, did not pay so. Therefore, auction could not be confirmed in favour of Thiru.Sivasubramanian. Hence, second auction was conducted on 26.03.2003. On the said date, only 7 persons took part. Among them, the first revision petitioner, herein, Thiru.Murugesan was one of them and he offered a sum of Rs.10,67,000/- and that was said to be the highest. He remitted the amount on the same date and therefore, the auction was confirmed in his favour and on 18.07.2003 the Rice Mill was handed over to Murugesan. On 06.08.2003, the sale deed was also executed in his favour. The auction proceedings were challenged by the Sivasubramanian before the High Court, but then, the interim application was dismissed on 16.12.2003.

6.The learned Senior counsel would now submit that the writ petition suffered dismissal.

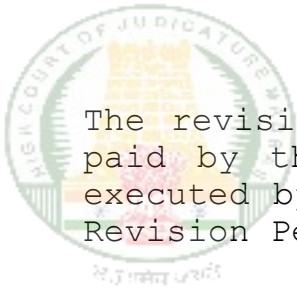
7.While so, the de-facto complainant filed a private complaint before the learned Judicial Magistrate, Sivagiri. The same was forwarded under Section 156(3) of Cr.P.C. and based on the same, a case in crime No.268 of 2004 was registered for the offence under Section 420 of IPC. A final report came to be filed before the learned Judicial Magistrate, Sivagiri. The accused denied the charge and claimed to be tried and the prosecution examined 7 witnesses and marked Ex.P.1 to P.4. On the side of the accused, no evidence was adduced. As already pointed out, the learned Trial Magistrate found the revision petitioners/appellants guilty and



sentenced them. This was also duly confirmed by the appellate Court.

8.As rightly pointed out by the learned Senior counsel appearing for the revision petitioners, the elementary ingredients of Section 420 of IPC, are wholly absent in this case. A charge of cheating will be made out only if it is established that the accused held out a false assurance to the victim and as a result, one of them suffered wrongful loss and other suffered wrongful gain. It must be established that there was dishonest intention. At the very outset, in this case, the de-facto complainant had sold half share in the property in favour of the accused as early as in the year 1998. According to the de-facto complainant, the accused had agreed to clear 50% of the loan liability of the de-facto complainant. The auction proceedings had taken place only in 2003. If TIIC would have been sending the loan statements periodically, in any event, the de-facto complainant as a borrower, ought to have ascertained from TIIC, if the accused had fulfilled their part of the assurance. On behalf of the prosecution, what was marked, was only the sale deed in favour of the de-facto complainant executed in the year 1992 and the sale deed executed by P.W.1 and P.W.2 in favour of the accused in the year 1998. Ex.P.4 series are the receipts issued by TIIC. The de-facto complainant did not issue any communication or notice calling upon the accused, as to why they have not acted as assured to him. The absence of any communication from the de-facto complainant to the accused from the date of their sale in the year 1998, clearly, falsifies the prosecution theory. The de-facto complainant was the participant in the first auction held by TIIC, but he could not fulfil the auction terms. Therefore, his bid could not be confirmed. Thereafter, when auction was held for the second time, the first accused herein/first revision petitioner took part and on his fulfilling the auction terms, the property was delivered to him. The private complaint itself came to be filed only in March 2004. The auction was held on 26.03.2003. The property came to be delivered in the very same year. The gross delay in filing the complaint, would show the complete lack of good faith and *bonafide* on the part of the defacto complainant. This Court can safely come to the conclusion that the de-facto complainant was unable to come to the terms to the fact that his erstwhile co-owner had taken over the property. Thus, the prosecution itself is vitiated by *malafide*. It is unfortunate that the Courts below did not even notice that the basic ingredients of the offence of cheating, are not present in this case.

9.In this view of the matter, I have to necessarily hold that the prosecution has not at all established its case against the revision petitioners. In fact, I would go to the extent of observing that there was no case against the revision petitioners. A disappointed and failed businessman has taken revenge on the successful auction purchaser. The impugned Judgments are set aside.



The revision petitioners are acquitted. The fine amounts, if any, paid by them, shall be refunded forthwith. Bail bonds, if any, executed by them, shall stand cancelled. Accordingly, the Criminal Revision Petition is allowed.

Sd/-

Assistant Registrar (Cr1 side)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

sj
To

- 1.The III Additional Sessions Judge,
Tirunelveli, Tirunelveli District.
- 2.The III Additional Sessions Judge, Tirunelveli.
- 2.-Do-Thro The Principal District and Sessions Judge, Tirunelveli.
- 4.The District Munsif-cum-Judicial Magistrate, Sivagiri.
- 5.-Do-thro' The Chief Judicial Magistrate, Tirunelveli.
- 6.The Inspector of Police, District Crime Branch,
Tirunelveli of Puliyangudi Police Station,
Tirunelveli District.
- 7.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to: The Section Officer, Criminal Section, (2 copies)
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.K.PRABHU, Advocate (SR-79672[F] dated 05/08/2019)

Cr1.R.C(MD).No.886 of 2013
02.08.2019

sma/04/06/2020/4p/11c