**Bail Slip**

K.M.Saleem Khan, S/o.Mohamed Razid, aged about 56 years, Accused No.3 and Karuppaiah, S/o.Pandian, aged about 54 years Accused No.1, were released on bail vide order of this Court dated 17.11.2016 made in Crl.MP(MD)No.11231&11232 of 2016 in Crl.RC(MD)No.782&783/2019.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

| | |
|---|---|
| Date of Reservation | 24.04.2019 |
| Date of Judgment | 22.07.2019 |

CORAM

**THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLI**

**Crl.RC.(MD)Nos.782 and 783 of 2016**

K.M.Saleem Khan : Revision Petitioner/ Appellant/A3 in Crl RC((MD)No.782/2016

Karuppiah : Revision Petitioner/ Appellant/A1 in Crl RC((MD)No.783/2016

Vs.

State rep. By its
The Inspector of Police,
District Crime Branch,
Sivagangai.
(Crime No.15 of 2006) : Respondent/Complainant (in both cases)

**Common Prayer:** Criminal Revisions have been filed under Sections 397 and 401 of the Code of Criminal Procedure against the judgement passed by the Mahila Court (Fast Track), Sivagangai District in C.A.No.20 of 2014, dated 04.11.2016, confirming the judgement passed by the Judicial Magistrate No.2, Sivagangai, in C.C.No.40 of 2012, dated 27.03.2014.

For Revision Petitioners : Mr.R.Senthil Kumar
For Respondent : Mr.A.Robinson Government Advocate (Criminal Side)

**C O M M O N J U D G M E N T**

These Criminal Revisions have been directed against the judgement passed by the Mahila Court (Fast Track), Sivagangai

District, in C.A.No.20 of 2014, dated 04.11.2016, confirming the judgement passed by the Judicial Magistrate No.2, Sivagangai, in C.C.No.40 of 2012, dated 27.03.2014.

2.The case of the prosecution is that the accused have borrowed money from the complainant stating that they will get job in Ship at Malaysia to the de-facto complainant's grandsons, for that, the accused demanded Rs.1,30,000/- and after getting money, the accused persons failed to get job and also refused to return back the money and on 15.06.2005 when the de-facto complainant approached the accused, they threatened the de-facto complainant. The Inspector of Police attached to the District Crime Branch, Sivagangai, has filed a final report against the accused persons under Sections 420 and 506(ii) IPC.

3.In the trial court, 10 witnesses were examined and 4 Exhibits and 4 material objects were marked. When the accused were questioned about the incriminating circumstances, they denied the same. On the side of the accused, no witness was examined and no document was produced. The trial court found the accused guilty under Section 420 IPC and sentenced them to undergo simple imprisonment for a period of two years for each accused and acquitted from the charge framed under Section 506(II) IPC. Aggrieved by the judgment of the trial court, the accused preferred appeal before the Mahila Court (Fast Track), Sivagangai and the learned first appellate court had also confirmed the findings of the trial court. Hence, the petitioners/A1 and A3 are before this court.

4.The learned counsel appearing for the petitioners/A1 and A3 submitted that the learned trial Judge failed to note the very crux and sinaquanon of the offence as per Section 420 IPC is the presence of very criminal intention and the mensrea from the very inception on the part of the accused when the alleged representations and assurance were made and as a consequence of such inducement only all the alleged payment was made and there is no material or evidence to even infer that the accused had the criminal intention, when PW1 met the accused in the year 2004 and the courts below erred in taking into account the essential and crucial fact in the evidence of PW1 that he has entrusted the passports to the accused, whereas in the course of investigation PW1 has not disclosed this important fact as categorically admitted by the Investigating Officer (PW10) and in this case, PW1, PW5, PW6 and PW7 being grandfather, grand-sons and son-in-law and therefore, the testimony itself has intrinsically discarded when admittedly there is no corroboration at all and the courts below failed to note that the burden of proving the case not only lies on the prosecution, but also since admittedly the offence of cheating as laid down under Section 420 IPC is also included in the group of offences including in the province of civil law, the onus is heavy and absolute on the prosecution and this aspect has totally been overlooked resulting the jurisdiction error and the courts below without analysing all these aspects have erroneously given concurrent findings and prays for allowing the criminal revision, by setting aside the concurrent findings of the courts below.

5.On the other hand, the learned Government Advocate (Criminal side) appearing for the respondent/State submitted that both the courts below appreciated the evidence in a proper manner, and having regard to the nature of the offence, convicted the accused and passed proper sentence, which do not require any interference by this court and prays that the criminal revisions have to be dismissed.

6.Heard both sides and perused the materials available on record.

7.The main contention raised on the side of the petitioners/A1 and A3 is that the essence of mensrea being present at the very beginning and inception that as the character of the distinguishing the nature of the transaction from purely civil into a criminal one and the criminal intention from the very beginning has to be proved doubt when the accused is charged under Section 420 IPC and there is no material nor any circumstance to show even *prima facie* that the accused developed any criminal intention even subsequently and there is no material or evidence to the effect that the appellants had a criminal intention when appellants were alleged to have met PW1 in the year 2001 and PW2 to PW7 are interested witnesses and there are contradictions in the evidence of witnesses in respect of the alleged payment given by PW1 to A1 and A3 and prays that the revision petitioners/A1 and A3 are entitled to acquittal.

8.PW1 is the Siddha Doctor and he gave Ex.P.1complainant. PW1 is the father of PW5 and grand-father of PW6 and PW7. PW1 in his complaint and in his evidence stated that A1 and A3 told him that they took steps to get employment in foreign countries, on believing their words, he agreed to send his grand-sons to foreign countries and for that, he gave Rs.1,30,000/- in instalments and he gave the above amount in his mud and A1 and A3 told that they will send his grant-sons within a month to the foreign country, but in spite of repeated demands, they have not taken any steps either to send his grand-sons to foreign for employment or repay the amount already received by them and hence, he gave a complaint before the District Crime Branch and in this regard, they were called by the police for enquiry and in the enquiry, they agreed to return the entire amount and Passport to PW1, but the accused have not returned the money or Passport and then he again gave Ex.P1 complaint to the police.

9.PW1 categorically stated that A1 and A3, after receiving the money of Rs.1,30,000/- and the Passport of his grandsons, they failed to get jobs for him nor returned the money already received by them and thereby, A1 and A3 cheated them.

10.PW2, PW4 and PW5 are cited as eye witnesses. PW2, PW4 and PW5 deposed that PW1 gave Rs.1,30,000/- to A1 and A3 for getting job for the grand-sons of PW1 in the foreign country and they received the Passport of the grandsons of the PW1, but A1 and A3 neither got job for the grandsons of PW1 in foreign country nor they return the amount received from PW1 and thereby they cheated PW1. Hence, the evidence of PW1 is corroborated with the evidence of PW2, PW4 and PW5.

11.PW6 and PW7 are the grandsons of PW1. PW6 and PW7 deposed that their grandfather gave Rs.1,30,000/- to A1 and A3 for getting job for them in foreign country on believing the words of A1 and A3 P.W.1 gave Rs.1,30,000/- and their passport to A1 and A3 but, A1 and A3 failed to get job for them in foreign country and failed to return the money already received by them and when their grandfather gave complaint before the District Crime Branch and the Police called A1 and A3 for enquiry and in the enquiry, A1 and A3 agreed to return the money already received by them and their Passports but, they have not returned either the money already received by them or their Passports. Hence, PW1 gave Ex.P1 complaint to the police.

12.The learned counsel for the petitioner/A1 and A2 argued that PW1 stated in his complaint that he gave Rs.1,30,000/- on several instalments, but PW2, PW4 and PW5 stated during their evidence that in their presence, PW1 gave Rs.1,30,000/- to A1 and A3 for getting job and further, PW1 stated that he has noted the amount given to A1 and A3 in his diary, but the diary was not produced in this case and the Investigating Officer has not taken any steps to recover the Passports from A1 and A3 and hence, there are discrepancies in the testimony of the prosecution witnesses and prays that the petitioner/A1 and A3 are entitled to acquittal.

13.In this case, PW1 in his complaint and evidence categorically stated that he gave Rs.1,30,000/- to A1 and A3 in instalments and other witnesses stated that PW1 gave Rs.1,30,000/- to A1 and A3 for getting jobs for PW6 and P7. There is only a minor contradiction between the evidence of PW1 and PW2, PW4 and PW5. This minor contradiction will not affect the case of the prosecution. From the evidence of PW2, PW4 and PW5 reveals that in their presence, PW1 gave money to A1 and A3 for getting job for PW6 and PW7. PW1, PW2, PW4 to PW7 categorically stated that A1 and A3 in toto received Rs1,30,000/- from PW1 for getting job for PW6 and PW7.

14.The learned Government Advocate appearing for the respondent argued that when a person, who received money for getting job in foreign countries and afterwords, he failed to get job for the person from whom he received the money. it amounts to cheating and they are found guilty under Section 420 IPC. For that, the learned counsel relied upon an unreported judgment of this court made in Crl.R.C.No.206 of 2009, dated 27.06.2011 **(Thangavel Vs. State of Tamil Nadu)**, wherein it has been held in para 14 as follows:-

> *"14.Now, it is appropriate on the part of this Court to consider the ingredients of Section 420 IPC which are follows:*
>
> *1.Accused cheated the complainant.*
>
> *2.Accused died so dishonestly.*
>
> *3.Thereby induced the complainant.*
>
> *(i)to deliver some property to accused or to some other person.*
> *(ii)to make, alter or destroy the whole or any part of the valuable security or anything which was signed, sealed, and which was capable of being converted into valuable security."*
> *The accused should not only cheat but he must induce to deliver any property as well. Here, considering the evidence of prosecution witnesses, the accused deceived the prosecution witnesses fraudulently, dishonestly and induced them to deliver the money. The Accused has intentionally deceived P.W.1, P.W.8 and P.W.9 and make them belief that he will secure job to the persons, who paid amount to him. With an intention of fraudulent and dishonest means on the basis they paid the amount. So ingredients of Section 415 IPC. The essential ingredients of offence for cheating is dishonest and fraudulent intention. Transaction with free will is not dishonesty. A representation subsequently turning to be untrue is dishonesty. The evidence of prosecution witnesses does prove that the doubt. So the trial Court and the first appellate Court on considering the evidence of the prosecution witnesses and nature of the offence, came to the correct conclusion that the accused is guilty for the offence punishable under Section 420 IPC. The revision petitioner/ accused cheated the public, who are wandering here and there fro securing job and exploited them by way of receiving amount for each and every cadre, by taking advantage of unemployment problem in his own hand. In such circumstances, the petitioner is not entitled to any leniency in the sentence imposed by the Courts below. Therefore, the criminal revision is dismissed as devoid of merits."*

15.In this case, both the petitioners/A1 and A3 induced PW1 that they will get job for PW6 and PW7 and on believing their words, PW1 gave Rs.1,30,000/- for getting job for his grandsons PW6 and PW7. But inspite of repeated demands, A1 and A3 have not taken any steps to get job for PW6 and PW7 and failed to return the money and the passports of PW6 and PW7. From the evidence of the prosecution witnesses, it reveals that A1 and A3 deceived PW1 fraudulently and dishonestly induced him to give money and hence, there is dishonest intention on the part of A1 and A3. Hence, the offence under Section 415 IPC was made out as against A1 and A3. Further, it reveals that the petitioner/A1 and A3 cheated the public who are wandering here and there for securing job and exploited them by way of receiving amount for getting job by taking advantage of unemployment problem in their own hand.

16.The learned counsel for the petitioner/A1 and A3 submitted that there is an inordinate delay in giving the complaint and it is fatal to the prosecution and for that, the learned counsel submitted the decision reported in 2017-1-LW (Crl) 384 (***Sivakumar and others Vs. State)***. In that case, it has been held in para 9 as follows:-

> *"The Honourable Supreme Court in a judgment reported in Thulia Kali Vs. The State of Tamilnadu in (1974 (1) L.W.(Crl.) 30=1972 (3) SCC 393), has held as follows:*
>
> *First Information report in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial. The importance of the above report can hardly be overestimated from the standpoint of the accused. The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of eye witnesses present at the scene of occurrence. Delay in lodging the first information report quite often results in embellishment which is a creature of afterthought. On account of delay, the report not only gets bereft of the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation. It is therefore, essential that the delay in the lodging of the first information report should be satisfactorily explained."*

17.On coming the instant case on hand, PW1 on believing the words of A1 and A3 gave Rs.1,30,000/- for getting job to his grandsons, but in spite of repeated demands, A1 and A3 have not taken any steps to get job for his grandsons or return the money already received by them. PW1 in his evidence categorically stated that he took several steps to get back the money and Passports of his grandsons from the petitioners/A1 and A3 and already he gave a complaint before the District Crime Branch in respect of the failure on the part of A1 and A3 to get job for his grand-sons and for that, A1 and A3 were called by the police and enquired and in the enquiry, both A1 and A3 admitted to return the money and Passports to PW1 and on the basis of their request, the above petition was closed. But A1 and A3 failed to return the amount of Rs.1,30,000/- and the passports of PW6 and PW7 and afterwords, PW1 went to the police station and gave Ex.P1 complaint. Hence, the reason for the delay in giving the complaint was properly explained on the side of the prosecution. Therefore, it is held that it is not fatal to the prosecution.

18.For all the reasons stated above, this court is of the considered view that both the courts below after proper perusing the entire materials available on record, had given a concurrent findings, which does not require any interference by this court. However, considering the fact that the petitioners are the sole breadwinners of the family, the punishment imposed on the petitioners/A1 and A3 requires modification.

19.In the result, the Criminal Revisions are **partly allowed.** The punishment imposed on the revision petitioners/A1 and A3 for the offence under Section 420 IPC is reduced into 8 **months SI** for each accused. In other aspects, the findings of the courts below is confirmed. The period of sentence, if any already undergone by the revision petitioners shall be given set off under Section 428 of Cr.P.C. The revision petitioners/A1 and A3, after adjusting the period of imprisonment already undergone shall undergo imprisonment for the remaining period. The revision petitioners/A1 and A3 may be set at liberty forthwith, unless their detention is required in connection with any other case.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS )

To

1. The Mahila Court (Fast Track),
Sivagangai.

2. The Judicial Magistrate No.2,
   Sivagangai.

3. The Inspector of Police,
   District Crime Branch,
   Sivagangai

4. The Superintendent,
   Central Prison, Madurai

5. The Officer-In-Charge,
   District Jail, Salem

6. The Superintendent of Police,
   sivagangai District

7. The Additional Public Prosecutor,
   Madurai Bench of Madras High Court,
   Madurai.

8. The Section Officer,
   Criminal Section,(2 Copies)
   Madurai Bench of Madras High Court, Madurai

+2 CC to Mr.R.SENTHIL KUMAR, Advocate SR-77369, 77368

**Crl.RC(MD)No.782 and 783 of 2016**
**22.07.2019**

**vsd/er**
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