

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.03.2020

CORAM:

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM
Crl.RC.No.163 of 2020

1. Gowthaman
2. Kowselya
- 3.Vignesh

... Petitioners/ Petitioners / Appellants
Vs.

State of Tamil Nadu,
Rep by its Sub Inspector of Police,
Central Crime Branch, Salem.
(Crime No.19/2017)

... Respondent/ Respondent/ Respondent

PRAYER: Criminal Revision Petition filed under Section 397 r/w 401 of Cr.P.C, to set aside the order dated 23.01.2020 passed in Crl.MP.No.659 of 2019 in CA.No.221 of 2019 on the file of the III Additional District Judge, Salem and to allow the above Criminal Revision.

For Petitioner : Ms.N.Prema Latha
for Mr.R.Nalliyappan

For Respondent : Mr.T.ShunmugaRajeswaran
Government Advocate (Crl.Side)

ORDER

This Criminal Revision Case has been filed against the dismissal of the petition filed by the petitioners/accused in Crl.MP.No.659 of 2019 in C.A.No.221 of 2019 dated 23.01.2020 on the file of the III Additional District and Sessions Judge, Salem.

2. The learned Judicial Magistrate No.3, Salem in C.C.No.64 of 2018 by the judgment dated 19.09.2019 has convicted the first petitioner under Section 420 IPC and sentenced him to undergo three years simple imprisonment and also imposed a fine of Rs.500/- in default to undergo six months simple imprisonment and the second petitioner was convicted under Section 419 IPC and sentenced him to undergo one year simple imprisonment and imposed a fine of Rs.500/- in default to undergo three months simple imprisonment and under Section 420 r/w 109 IPC three years simple imprisonment and a fine of Rs.500/- in default to undergo six months simple imprisonment and the third accused was convicted under Section 419 r/w 109 IPC and sentenced to undergo one year

simple imprisonment and a fine of Rs.500/- in default three months simple imprisonment and under Section 420 r/w 109 IPC sentenced to undergo three years simple imprisonment and fine of Rs.500/- in default six months simple imprisonment and also ordered that the sentences shall run concurrently. As against the said judgment of conviction and sentence, the petitioners herein have filed an appeal in C.A.No.221 of 2019 on the file of the III Additional District and Sessions Judge, Salem and also filed Crl.MP.No.659 of 2019 to suspend the sentence.

3. The learned Appellate Court Judge by an order dated 25.11.2019 has dismissed the said petition as the details with regard to the payment of fine not mentioned in the said petition. As against the same, the petitioners have filed Crl.RC.No.1370 of 2019 before this Court. This Court by the order dated 13.12.2019 has allowed the said criminal revision petition and set aside the order passed by the learned Appellate Court Judge in Crl.MP.No.659 of 2019 in C.A.No.221 of 2019 dated 25.11.2019 and remanded back to the Appellate Court for passing appropriate orders.

4. In pursuance of the aforesaid order, the learned Appellate Court Judge has restored the Crl.MP.No.659 of 2019 on file and after hearing both sides, again dismissed the said petition by the order dated 23.01.2020. Aggrieved by the same, the petitioners/accused have filed the present criminal revision petition.

5. The learned counsel for the petitioners has submitted that the case of the prosecution is that one Anbazhagan had deposited a sum of Rs.1,00,000/- in the Bank of India, Shevapet Branch, Salem Town by nominating the defacto complainant Kowselya as nominee. After the death of the said Anbazhagan, the petitioners herein have taken away the said fixed deposit receipt and produced the same before the Bank and obtained the matured amount of Rs.1,93,152/- by impersonating the defacto complainant and thereby they committed the offences punishable under Section 419 and 420 of IPC. She further submitted that the petitioners herein have repaid the aforesaid amount to the concerned bank and without considering the aforesaid facts, the trial court has convicted the petitioners. As against the same, the petitioners have filed an appeal and the petitioners are having valid defence in the appeal. She further submitted that though the trial court has convicted the petitioners and awarded sentence of imprisonment and also imposed fine, the petitioners have paid the fine amount and taking into consideration of the same, the trial court itself has suspended the sentence, but, the Appellate Court has dismissed the petition by saying that if the sentence is suspended, the petitioners may abscond. She further submitted that already the petitioners have deposited the entire amount before the bank and during trial, the petitioners have regularly appeared before the trial court and therefore, the apprehension of the Appellate Court that the

petitioners may abscond is not having any basis and therefore, she prayed to allow the the criminal revision and set aside the order passed by the Appellate Court and suspend the sentence awarded by the trial court.

6. Per Contra, the learned Government Advocate (Crl.Side) has submitted that eventhough the petitioners have deposited the amount before the bank, the trial Court taking into consideration of the fact that the petitioners have cheated the other legalheirs of the deceased Anbazhagan and hence convicted and sentenced them. He further submitted that the first Appellate Court taking into consideration of the nature of the allegations made against the petitioners has rightly dismissed the petition and therefore, he prayed to dismiss the criminal revision petition.

7. Admittedly, the petitioners have re-deposited the amount before the concerned bank. Further, they have regularly appeared before the trial court through out the trial. Further, the petitioners have paid the fine amount before the trial court on the date of judgment itself and taking into consideration of the aforesaid facts, the trial court itself has suspended the sentence. Further, even if the petitioners not appeared before the Appellate Court, during pendency of the Appeal, the Appellate Court can dispose of the appeal in their absence on merits after hearing the counsel. Even if the counsel also not appeared, it can appoint an Advocate from Legal Services Authority and after hearing his arguments can dispose of the appeal. Therefore, the reasons stated by the Appellate Court cannot be accepted.

8. Accordingly, this Criminal Revision Petition is allowed. The sentence passed by the trial court shall be suspended on the following conditions:-

(i) on executing a bond by each petitioner for a sum of Rs.10,000/- with two sureties each to the satisfaction of the trial court; and

(ii) That the petitioners shall appear before the trial court on first working day of every month, until disposal of this Criminal Revision Case.

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Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

Vv

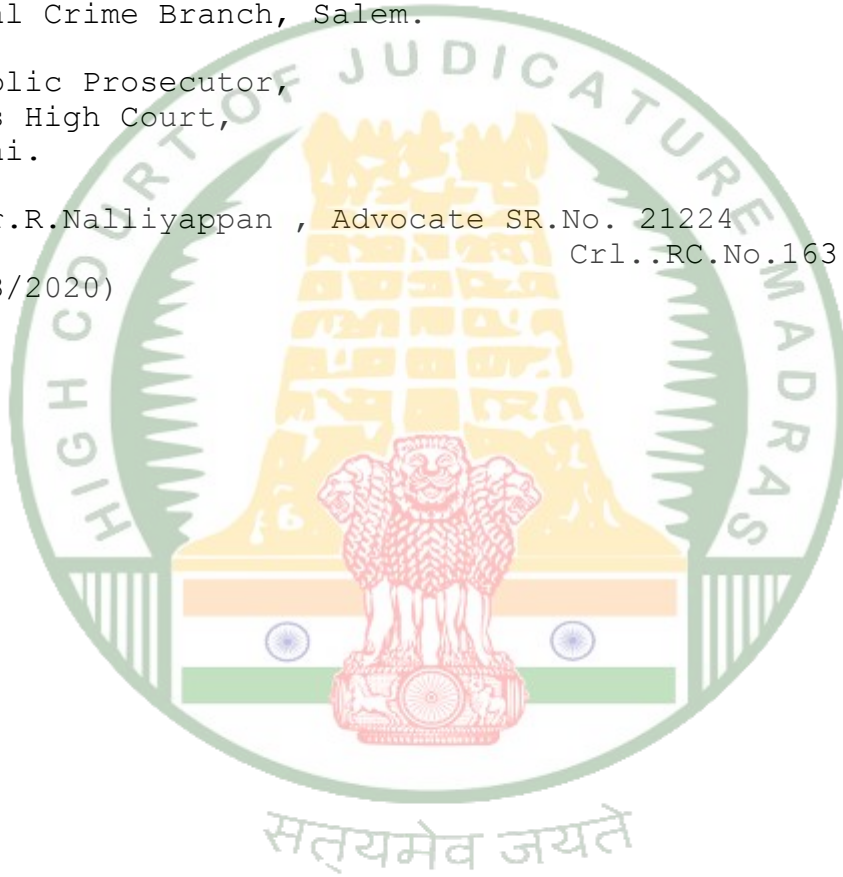
To

1. The III Additional District Judge,
Salem.
2. The Judicial Magistrate No.3,
Salem.
3. Do thro the Chief Judicial Magistrate,Salem
- 4.The Sub Inspector of Police,
Central Crime Branch, Salem.
5. The Public Prosecutor,
Madras High Court,
Chennai.

+lcc to Mr.R.Nalliyappan , Advocate SR.No. 21224

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A.SK(12/03/2020)



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