

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.03.2020

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

Crl.RC.No.1618 of 2013
and
M.P.No.1 of 2013

Ekappan alias Ganesh

...Petitioner

Vs.

State rep.by the
Sub-Inspector of Police,
Shevapet Police Station,
Salem District,
(Crime No.1115 of 2007)

...Respondent

Prayer: Criminal Revision has been filed under section 397 (1) & 401 CrI.P.C. to call for the records and set aside the judgment passed by the I Additional District and Sessions Judge, Salem, in C.A.No.5 of 2012 by judgment dated 22.10.2013 by modifying the sentence ordered by the Judicial Magistrate No.3, Salem in C.C.No.122 of 2007 by judgment dated 21.12.2011.

For Petitioner : Mr.B.Vasudevan

For Respondent : Ms.S.Thankira

Government Advocate (Criminal Side)

O R D E R

The Revision petitioner/accused has been convicted under Section 420 IPC and sentenced to undergo simple imprisonment for 6 months and to pay a fine of Rs.500/- in default to undergo simple imprisonment for one month; under section 468 IPC and sentenced to undergo for simple imprisonment for 6 months and to pay a fine of Rs.500/- in default to undergo simple imprisonment for one month and under Section 471 IPC and sentenced to undergo simple imprisonment for 6 months and to pay a fine of Rs.500/- in default to undergo simple imprisonment for one month by the Judicial Magistrate No.III, Salem.

2.The Revision petitioner/accused has preferred the Criminal Appeal No.5 of 2012 on the file of the I Additional District & Sessions Judge, Salem, challenging the conviction and sentence imposed on him by the trial Court.

3.The appellate Court by judgment dated 22.10.2013 partly allowed the appeal and confirmed the conviction and sentence imposed on the Revision petitioner/accused under Sections 468 and 471 IPC and set aside the conviction and sentence imposed on him under Section 420 IPC. Challenging the same, the Criminal Revision has been preferred by the accused.

4.Briefly stated, according to the prosecution case, on 02.07.2007 at about 7 p.m. the accused came to the fruit shop viz., Salem Pazhamuthir Nilayam situated in Gugai, wherein, PW1 was working as Manager and collected the fruits of various varieties from the shop and without billing the fruits and paying the amount, went out of the shop and attempted to get into a vehicle. However, he was intercepted by the employees of the fruit shop examined as PWs 2 to 5 who directed the accused to pay the amount for the fruits purchased by him. According to the prosecution, the accused stated that he is working in the office of the Deputy Superintendent of Police and threatened them and meanwhile, the Manager, PW1 intervened and demanded the amount. However, the accused threatened that he is a police personnel by showing his identity card marked as MO1 and thereafter, PW1 after informing the owner of the shop, handed over the accused to the police station and lodged a complaint against the accused marked as Ex.P1. On the basis of the same, the Sub-Inspector of Police, attached to the concerned police station viz., Shevapet Police Station, Salem District, conducted the investigation. The accused tendered a confessional statement and produced the identity card MO1 and also driving licence and thereafter, finally concluding the investigation, the final report has been laid against the accused for the offences levelled against him.

5.To sustain the charges levelled against the accused, PWs 1 to 8 were examined and Exs.P1 to P8 were marked. MO1 has been marked. On the side of the accused, no oral and documentary evidence has been adduced.

6.As aforestated, the appellate Court finally concluded that the accused had committed the offences punishable under Sections 468, 471 IPC and found him not guilty under Section 420 IPC.

7. Considering the evidence of PWs 1 to 5 in toto, who are the manager and employees of the fruit shop, where from the accused had endeavoured to collect the fruits and left the shop without paying the amount for the fruits purchased by him, it is seen that as rightly held by the Courts below, the accused had endeavoured to leave the shop without paying any amount for the fruits purchased by him from the fruit shop. When he was confronted by PWs 1 to 5 with reference to the same, it is seen that the accused had threatened them with dire consequences on the footing that he is working in the office of the Deputy Superintendent of Police and left with no other alternative, it is seen that the complaint had been lodged against the accused by PW1. Thereafter, immediately, the law was set in motion against the accused.

8. The main argument put forth by the accused counsel that there is no evidence on the side of the prosecution that the accused has fabricated the identity card marked as MO1. No doubt, the person examined by the prosecution with reference to the same, particularly, PW6, has turned hostile and similarly, PW7, who has been examined to establish that the accused had travelled in the transport bus by misusing the identity card has also not supported the prosecution case. Be that as it may, when it is found that the identity card seized in the matter only bears the name of the accused and though the fabrication of the same by the accused as put forth by the prosecution is not made out, however the fact remains that the identity card MO1 had been collected by PW1 from the accused and in turn handed over the same to the police and therefore, when there is clear evidence on the part of the PWs 1 to 5 that the accused had misused the Identity card and endeavoured to collect the fruits from the shop without paying any amount for the same would only go to show that the accused had created a fake identity card and also endeavoured to misuse the same as if it is a genuine document.

9. The accused counsel would contend that while the accused was collecting the fruits at the shop of PW1, the employees therein picked up quarrel with him and only on that account, false case has been lodged against him. However, as rightly held by the courts below, the abovesaid theory projected by the accused is unacceptable, particularly, when it is seen that the fake identity card projected in the matter MO1 is only in the name of the accused and there is no possibility of PWs 1 to 5 to create such an identity card in the name of the accused. In such view of the matter, as held by the Courts below, it is only the accused, who had created the same and had also endeavoured to enrich himself by misusing the same. Therefore, the courts below are found to be wholly justified in coming to the conclusion that the accused had created a fake identity card and

endeavoured to enrich himself by making use of the same by taking away the fruits without paying any amount to the same and in such view of the matter, I am of the considered view that the Courts below are justified in coming to the conclusion that the accused had created a fake identity card and endeavoured to enrich himself by making use of the same by taking away the fruits without paying any amount for the same and in such view of the matter, I am of the considered view that the Courts below are justified in convicting the accused under Section 468 and 471 IPC and inasmuch as no loss as such had been caused to shop owner where from the fruits had been endeavoured to be collected by the accused without paying any amount, the offence under Section 420 IPC has been held to have been not made out.

10. In the light of the abovesaid factors, it is found that the Courts below had rightly analysed the materials placed on record both oral and documentary evidence adduced in the matter and come to the conclusion that the accused had committed the offences punishable under Sections 468 & 471 IPC and rightly sentenced him. The sentence imposed on him is not excessive. In such view of the matter, no reason is warranted to interfere with the judgment of the appellate Court dated 22.10.2013 passed in Criminal appeal No.5 of 2012.

In conclusion, the criminal revision fails and is accordingly dismissed. The trial Court is directed to secure the presence of the accused/appellant and commit him to prison to serve the rest of the sentence imposed on him as per law. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

sms

To:

1. The I Additional District and Sessions Judge, Salem.
2. The Principal Session Judge, Salem.
3. The Judicial Magistrate No.3, Salem.
4. The Chief Judicial Magistrate, Salem.

5. Sub-Inspector of Police,
Shevapet Police Station,
Salem District.

6. The Public Prosecutor,
High Court, Madras.

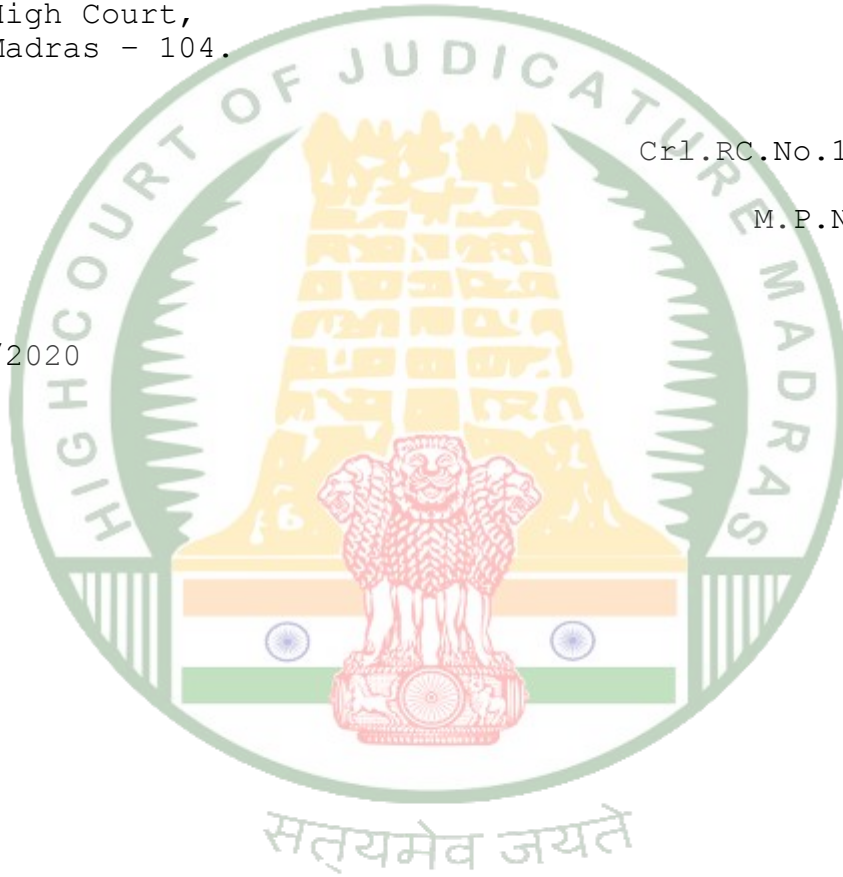
+1cc to Mr.B.Vasudevan, Advocate, S.R.No.19824

Copy To:

The Section Officer,
Criminal Section,
High Court,
Madras - 104.

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M.P.No.1 of 2013

SV(CO)
KKV/17/07/2020



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