IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.M.P.No.5143 of 2020

in

Crl.R.C.No.719 of 2020

B.Gunasekaran ... Petitioner

Versus

State Represented by its,
Inspector of Police,
Kovai City Crime Branch,
Coimbatore,
Crime No.89 of 2009. ... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 389(1) of the Code of Criminal Procedure, to suspend the sentenced imposed in C.A.No.60 of 2019 on the file of the 1st Additional District and Sessions Judge, Coimbatore, dated 26.06.2020 and confirming the orders passed in C.C.No.265 of 2011, dated 29.01.2020 on the file of learned Judicial Magistrate No.3, Coimbatore, pending disposal of this Criminal Revision Petition.

For Petitioner : Mr.S.R.Sumathy

For Respondent : Mr.C.Iyyappa Raj,
Additional Public Prosecutor

ORDER

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed by the learned I Additional District and Sessions Judge, Coimbatore in Crl.A.No.60 of 2019, dated 26.06.2020, confirming the judgment dated 29.01.2019 in C.C.No.265 of 2011, passed by the learned Judicial Magistrate No.III, Coimbatore.

2.The petitioner was convicted for offence under Sections 120-B, 419 r/w 120-B, 467 r/w 120-B and 471 r/w 120-B IPC and sentenced to undergo for three years Rigorous Imprisonment and to pay a fine of Rs.5,000/- for each offence, in default, to undergo nine months Simple Imprisonment for each offence.

3.The gist of the case is that the petitioner along with three accused had created forged power of attorney and used the same had executed a sale deed pertaining to the land which was given as security to A1 while the petitioner's mother had taken loan of Rs.20,000/- in the year 2000. Using the same on 26.12.2008, a forged document was created by giving a power of attorney to one Srinivasan, who on the same day had executed the sale deed in favour of PW6. Later, the sale was cancelled and subsequent sale was executed in favour of PW10, who in turn re-conveyed the property to PW6. The property of 5 ¼ cents in site No.48 at Velathur, is valued around Rs.9 lakhs and the transaction was done for Rs.3 lakhs for the purpose of creating encumbrance and thereby looted the land of PW1.

4.A1 is the person, with whom the parent document of the property of PW1's mother was given, A2 is the impersonator, A3 and A4 are the brothers, who are relatives of A1 and they had conspired with A1 and the absconding accused one Prabhu Sundar. The petitioner had conspired with the other accused in creation of forged document and he was present when the document was prepared in the document writer office and when the document was registered in the Sub Registrar Office. The witnesses PW6, PW10, PW16 and also the document writer/PW8 had categorically stated about the presence of the petitioner during the commission of forgery.

5.The trial Court on examination of 19 witnesses and 35 documents, had convicted the petitioner/A3, A1 and A2 and acquitted A4, against which the convicted accused preferred an appeal before the Court of Sessions. The lower appellate Court confirmed the judgment of the trial Court, against which A3 preferred the present revision, in which he has filed the above suspension of sentence.

6.The learned counsel for the petitioner submitted that the petitioner/A3 was convicted only on the charge of conspiracy from the evidence and materials produced. The learned counsel further submitted that there is no evidence against the petitioner that he played active role and conspired with the other accused in commission of offence. The trial Court on the same set of evidence, had acquitted A4, who is similarly placed as that of the petitioner/A3. Hence, the petitioner ought to have been acquitted from the case. In this case, A2 is said to have impersonated PW1 and executed a forged power of attorney in favour of PW16. PW16, on the same day, executed a sale agreement to PW6, who in turn re-conveyed the property to PW16. Later, PW16 executed a sale deed in favour of PW10. These are the persons, who were created and executed forged sale agreement, sale deed [Exs.P6 to P8] and used the same as genuine. In none of the said documents, the petitioner neither shown as witness nor he singed any document. The only evidence of PW16 is that the petitioner was seen in the office of the Sub Registrar, but he was not there along with other accused when the documents were executed. The trial Court had convicted the petitioner without stating on what basis the petitioner had conspired with the other accused in commission of the offence.

7.The trial Court had merely proceeded on surmises and conjectures without any tangible evidence. The lower appellate Court had given finding based on the confession given by the co-accused. Thus, the appeal dismissed by the lower appellate Court is bad in law. Hence, he prayed to suspend the sentence of petitioner.

8.The learned Additional Public Prosecutor appearing for the respondent Police submitted that PW1 is the defacto complainant, who lodged a complaint to the respondent Police. The property of PW1 was given as collateral security for availing loan from A1. A1 taking advantage of the possession of the original document of the petitioner, had created forged power of attorney by impersonation with the help of A2. A2 created a power of attorney and executed the same in favour of PW16 on 26.12.2016. On the same day, PW16 had executed a sale deed in favour of PW10. Thereafter, the sale deed was cancelled and another sale deed in favour of PW10 was executed. PW6, PW10 and PW16 have categorically stated about the role played by each of the accused that A2, being a impersonator, along with A3 and A4 and absconding accused Prabhu Sundar had conspired together, prepared forged document [Exs.P6 to P8]. PW8, the Document Writer, prepared the document on the instructions of the accused and he has stated that the petitioner was present on the date of registration of power of attorney. PW13, the another document writer has prepared document subsequent to the registration of the forged power of attorney. PW9 is the Sub Registrar who made available the certified copies of the documents Exs.P10 to P20. PW15 is the Sub Registrar who had registered the document on 26.12.2008 when A2 had executed the power of attorney in favour of PW16. PW6 and PW7 are the brothers. PW11 and PW14 are the witnesses for arrest and confession of A2. PW16 is the friend of A2 and A3 and the absconding accused Prabhu Sundar, who introduced the Broker/PW10. PW10 advanced the loan for Prabhu Sundar by receiving the property as security. PW17 is the Hand Writing Expert, PW18 is the Finger Print Expert and PW19 is the Investigating Officer.

9.Thus, the prosecution had examined PW1 to PW19 and marked Exs.P1 to P35 and the trial Court on the evidence and materials had rightly convicted the petitioner. The lower appellate Court on reappraisal dismissed the appeal of the petitioner.

10.This Court on considering the rival submissions and on perusal of the materials, it is seen that in this case A2 is the person who had impersonated PW1. It is admitted by PW1 that his mother handed over the original document of the property to A1 while availing loan in the year 2000. Thereafter, she was paying the interest for a period of three years. After the demise of his mother, PW1 did not make any payment. Thus, the handing over the property to A1 is not in dispute. In the year 2008, A1 along with his friends A2 and A3 and the absconding accused by using A2 as impersonator, had created a forged power of attorney and executed in favour of PW16. PW16 on the same day executed a sale deed in favour of PW6 and later, the sale deed executed to PW6 was cancelled and thereafter, it was executed in favour of PW10. The only allegation against the petitioner is that the petitioner being the friend of the other accused was present in the Registration Office when the forged power of attorney came to be registered on 26.12.2008.

11.It is also seen that the document writer/PW8 stated that A2 had come to his office and asked him to prepare a power of attorney in favour of Srinivasan and had also given identify proof and other particulars. Based on which, Ex.P6 was prepared. Along with A2, 4 to 5 persons had come, but PW8 did not identify them. PW8 saw PW16, who obtained power of attorney on the same day and executed the sale deed in favour of PW10, which was marked as Ex.P7. Later, the sale deed came to be cancelled and PW16 executed the sale deed in favour of PW6. In these documents, one Ramanathan and Ashok Prabhu signed as witnesses and the petitioner is not a witness in any of these documents.

12.PW8, the document writer, who was present during the registration has not whispered anything about the petitioner. The only witness, who speaks about the petitioner is PW6. PW6 stated that the petitioner along with the other accused had come and asked for financial help for their friend Prabhu Sundar, who is absconding accused in this case, for which the security document was given and the petitioner was present in the document writer office, but PW8/the document writer does not say so. Further, the other witnesses including PW17/Hand Writing Expert and PW18/Finger Print Expert does not say anything with regard to the petitioner. The persons, who were shown as accused in FIR, were cited as witnesses in the final report without following the procedure of Tender of Pardon under Section 306 Cr.P.C.

13.Thus, the prosecution on its own, transposed taken the persons, who were cited as accused in FIR as witnesses, which is against the law and the accused have been falsely implicated in this case with a motive. The other witnesses have not stated anything about the petitioner/A3. The lower Court as well the lower Appellate Court failed to consider these vital aspects that PW6, PW10 and PW16 are all motivated witnesses and to escape from their misdeeds, implicated the petitioner in this case. A4, who is placed similar as that of the petitioner, was acquitted by the trial Court. Admittedly, there is no appeal preferred against A4 by the prosecution. Finding several infirmities in the prosecution case and arguable points involved in the revision. The revision is not likely to be taken up for final hearing in the near future, hence, this Court is of the considered view that the petitioner herein entitled to the relief of grant of suspension of sentence.

14.Accordingly, the substantive sentence of imprisonment alone is suspended and the petitioner is directed to be enlarged on bail on condition that the petitioner shall execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand Only) with two sureties each for a likesum to the satisfaction of the learned Judicial Magistrate No.III, Coimbatore within a period of 15 days from the date of receipt of a copy of this order and on further condition that the petitioner shall appear before the said Court on the first working day of the every English Calender Month at about 10.30 a.m., till the disposal of the revision. The petition is ordered.

-sd/-
23/11/2020

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE I ADDITIONAL DISTRICT
AND SESSIONS JUDGE, COIMBATORE.

2 THE JUDICIAL MAGISTRATE,NO.III, COIMBATORE.

3 THE CHIEF JUDICIAL MAGISTRATE
COIMBATORE [FOR INFORMATION]

4 INSPECTOR OF POLICE,
KOVAI CITY CRIME BRANCH,COIMBATORE.

5 THE PUBLIC PROSECUTOR,HIGH COURT, MADRAS.

6 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE.

7 THE SECTION OFFICER,
CRIMINAL SECTION, HIGH COURT,MADRAS.

C.C. to S.R.SUMATHY Advocate on payment of necessary charges

Order
in
CRL MP.5143/2020
in
CRL RC.719/2020

Date :23/11/2020

From 7.2.2001 the Registry is issuing certified copies of the BAIL/Anti.BAIL Orders in this format

RVR 01/12/2020