



Crl.R.C.[MD]Nos.91 & 136 of 2015

Bail Slip

The Petitioner/Accused namely Alaguraja and Mohan were released on bail as per order of this Court dated 26.12.2015 and made in MP(MD).NO.1 of 2015 in Crl.RC(MD). No.91 of 2015, and made in MP(MD).No.1 of 2015 in Crl.RC.(MD).NO.136 of 2015 on the file of this Court.

BEFORE THE MADURAI BENCH OF THE MADRAS HIGH COURT

DATE : 11.03.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL.R.C. [MD]Nos.91 & 136 of 2015

Alaguraja : Petitioner in Crl.R.C.[MD]No.91/2015
Mohan : Petitioner in Crl.R.C.[MD]No.136/2015

Vs.

State Rep. by,
The Inspector of Police,
District Crime Branch,
Thoothukudi,
(Crime No.14/2004)

: Respondent in both revisions

PRAYER in Crl.R.C.[MD]No.91 of 2015: Criminal Revision Case filed u/s 397 r/w 401 of the Code of Criminal Procedure, praying to call for the records and set aside the judgment made in C.A.No.49 of 2014 dated 10.02.2015 on the file of the II Additional District and Sessions Judge, Thoothukudi, confirming the judgment made in C.C.No.238 of 2005, on the file of the learned Judicial Magistrate No.I, Thoothukudi dated 22.07.2014, sentencing the petitioner to undergo three months rigorous imprisonment and Rs.1000/- as fine for each offence u/s.467, 468, 471, 420 & 120(b) IPC.

PRAYER in Crl.R.C.[MD]No.136 of 2015: Criminal Revision Case filed u/s 397 r/w 401 of the Code of Criminal Procedure, praying to call for the records and set aside the judgment made in C.A.No.48 of 2014 dated 09.02.2015 on the file of the II Additional District and Sessions Judge, Thoothukudi, confirming the judgment made in C.C.No.238 of



2005, by the learned Judicial Magistrate No.I, Thoothukudi dated 22.07.2014 and allow the petition.

For Petitioner : Mr.C.Muthusaravanan
[in Crl.RC[MD]No.91/2015]

For Petitioner : Mr.Antony S.Prabhakar
[in Crl.RC[MD]No.136/2015]

For Respondent : Mrs.S.Bharathi
Government Advocate [Crl. Side]
[In both Crl.R.Cs]

COMMON ORDER

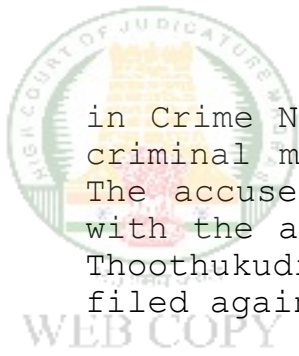
The challenge before this Court in these revision cases are to the judgments dated 09.02.2015 and 10.02.2015, passed by the II Additional District and Sessions Judge, Thoothukudi, in C.A.Nos.48 & 49 of 2014.

2.Originally the petitioners were ranked as A8 and A6, respectively before the trial Court. Since Accused Nos.3 and 4 died and A5 was tried separately, the petitioners herein were ranked as A5 and A3, respectively. The trial Court convicted and sentenced the petitioners for the charges levelled against them. The sentence of imprisonment were ordered to run concurrently. The lower appellate Court also confirmed the judgment of the trial Court. The petitioners, aggrieved by the concurrent findings of the trial court as well as the lower appellate Court, have filed the present revisions challenging its sustainability.

3.The brief facts necessary for the disposal of these revision cases could be stated as under :-

3.1.The petitioners and other accused persons namely A6 to A8 projected as brokers introduced themselves to P.W.1 / de-facto complainant as if A1 to A5 owned a land in Naduvakkuruchi, Sathangulam. When the de-facto complainant questioned whether any document is available, in reply, the petitioners and other brokers stated that no sale deed is available. However, the owners namely, A1 to A5 have the patta passbook based on which they will alienate the property in favour of P.W.1. Believing the sugar quoted words of A6 to A8, the de-facto complainant parted Rs.1 Lakh to A7 in the presence of A6 and A8, who are the petitioners herein. Thereafter, A1 to A5 executed 3 power of attorneys in favour of P.W.1 on 27.11.2002 and 18.12.2002. P.W.1 paid Rs.5 Lakhs as consideration.

3.2.Later, on verification, it came to light that all the pattas produced by A6 to A8 are forged ones. Hence, he lodged a complaint before the Sub-Inspector of Police, P.W.5 and registered a complaint Ex.P.16. On the basis of Ex.P.16, given by P.W.1, a case



in Crime No.14/04 was registered by preparing FIR, Ex.P.26, and the criminal machinery was set in motion by the law enforcing agency. The accused were placed under arrest and the case properties along with the accused were produced before the Judicial Magistrate No.I, Thoothukudi. On completion of investigation, a final report was filed against the accused.

3.3.The accused were furnished with the relied upon documents u/s 207 Cr.P.C. and the case was tried framing charges u/s 467, 468, 471, 420 and 120(B). When questioned, the accused pleaded not guilty.

3.4.To prove the case, the prosecution examined P.W.s 1 to 6 and marked Exs.P-1 to P-27. Neither any oral nor any documentary evidence was marked on the side of the defence. The trial court, after hearing either side and after considering the materials, both oral and documentary, on record, convicted and sentenced the accused for various offences, aggrieved by which the petitioners have preferred appeals before the II Additional Sessions Judge, Thoothukudi and the learned Judge confirmed the judgment of the lower Court. As against the concurrent findings of the trial Court as well as the lower appellate Court, the petitioners herein have preferred the present revision cases.

4.Learned Counsel for the petitioners would submit that during trial, A3 and A4 passed away and A2 and A7 have not preferred any appeals before this Court. Further, the case of A5 was split up and is being tried separately. Learned Counsel would further submit that A6 to A8 are not involved in any offence as alleged by the prosecution. Further A6 and A8 have made endorsements in the payment receipt Ex.P.4 and A6 stood as the witness in the power of attorney. Except this allegation, no other allegation was made against the petitioners. Further, in the prosecution case, no allegation was made against the petitioners and the petitioners have not forged any document as alleged by the prosecution and with regard to the conspiracy, forgery was not established before the trial Court. However, the trial Court and the lower appellate Court wrongly convicted the accused which are liable to be interfered with.

5.Further, learned Counsel for the petitioners would submit that initially P.W.1 made a complaint Ex.P.16 before the law enforcing agency claiming Rs.7 Lakhs and thereafter, Ex.P.17 complaint was made before the law enforcing agency claiming Rs.6 Lakhs. The said contradiction itself is sufficient to disprove the prosecution witness. Further, there are material contradictions and expert opinion is not obtained as to whether the document is forged one or not. However, P.W.3, Tahsildar who was examined as prosecution witness clearly deposed that out of three documents one is genuine and others are forged. Hence, convicting the petitioners without obtaining expert opinion is highly unsustainable.



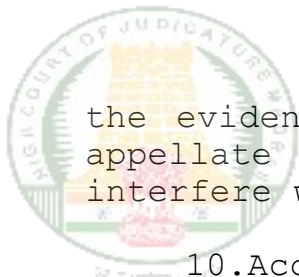
6.Learned Government Advocate [Crl. Side] for the State would submit that in the present case the petitioners are projected as **brokers** and they introduced themselves to the de-facto complainant and they stood as witness in the payment voucher and these petitioners and other accused persons collected money from the de-facto complainant. Thereafter, the de-facto complainant came to know that based on a forged patta, the amount was obtained and in the present case, the petitioners are the main accused and they induced the de-facto complainant to pay a sum of Rs.6 Lakhs to the other accused A1 to A5. Therefore, no interference is warranted with the well considered judgment recorded by the trial court, which was rightly confirmed by the lower appellate Court.

7.This Court paid its undivided attention to the submissions advanced by the learned counsel for the parties and also perused the materials available on record to which this Court's attention was drawn.

8.P.W.1 in his evidence clearly deposed that one Esakki and the petitioners A6 and A8 met the de-facto complainant as if a huge land is available in Sathankulam Naduvakkuruchi and the land owners are prepared to sell the property. Believing their words, he paid Rs.1 Lakh on 20.03.2002 and further another Rs.5 Lakhs on 27.11.2002 and he clearly deposed that the petitioners are witnesses to the said payment. In order to corroborate his evidence, payment voucher is marked as Ex.P.4 and power of attorneys are marked as Ex.P.5 and Ex.P.8. Hence, the evidence of P.W.1 is clearly corroborative with the material evidences. Further, in the present case, this Court has to consider whether necessary ingredients required under Section 420 is established or not. It is relevant to refer to Section 420 of I.P.C:

"420.Cheating and dishonestly inducing delivery of property:- Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

9.In the present case, the petitioners know that the document is a forged one and they projected forged patta as genuine and introduced the de-facto complainant to part his money to the accused persons A1 to A5. Hence, the ingredients required under Section 420 is clearly established. Further, the concurrent findings of the trial Court as well as the lower appellate Court cannot be interfered with unless there are some infirmities. Admittedly, exercising the revisionable powers, this Court cannot re-appreciate



the evidences, unless the order of the trial Court and the lower appellate Court is perverse. Hence, this Court is not inclined to interfere with the orders of the Courts below.

10. Accordingly, these Criminal Revision Cases stand dismissed. It is reported that the petitioners are on bail pursuant to the suspension of sentence granted by this Court. The trial court is directed to take steps to secure the presence of the accused/petitioners herein and commit them to prison to serve the remaining period of sentence imposed upon them. Bail bonds, if any, executed by the accused/petitioners shall stand terminated.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

MR

To

1. The II Additional District and Sessions Judge,
Thoothukudi.
2. The Judicial Magistrate No.I,
Thoothukudi.
3. The Inspector of Police,
District Crime Branch,
Thoothukudi.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
5. The Section Officer,
Criminal Section [Records],
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.C.MUTHUSARAVANAN, Advocate (SR-11835[F] dated 16/03/2020)

CRL.R.C.[MD]Nos.91 & 136 of 2015

11.03.2020

KG (CO)

NR (21/12/2020) 5P : 7C

<https://hcservices.ecourts.gov.in/hcservices/>