BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 31.08.2020
CORAM:
THE HONOURABLE MR.JUSTICE B.PUGALENDHI
Crl.R.C.(MD)No.56 of 2016

Murugesan ... Revision Petitioner/A1

versus

State
The Sub Inspector of Police,
District Crime Branch,
Sivagangai,
Sivagangai District.
(Crime No.8 of 2008) ... Respondent/ Complainant

Criminal Revision Case filed under Sections 397 and 401 Cr.P.C. against the Judgment dated 25.01.2016 made in C.A.No.57 of 2010 on the file of the learned Sessions Judge, Fast Track Mahalir Court, Sivagangai.

For Revision Petitioner : Mr.V.Kannan

For Respondent : Mr.A.Robinson,
Government Advocate (Crl. Side)

ORDER

This Criminal Revision Case is filed as against the Judgment dated 25.01.2016 made in C.A.No.57 of 2010 on the file of the learned Sessions Judge, Fast Track Mahalir Court, Sivagangai.

2. This revision petitioner is the first accused in C.C.No.164 of 2009 on the file of the District Munsif-cum-Judicial Magistrate, Manamadurai. He was tried along with three others for the offences punishable under Sections 120B r/w. 406, 468, 471 and 420 IPC. The trial Court, vide Judgment dated 16.06.2010, in C.C.No.164 of 2009, found this revision petitioner/accused No.1 alone guilty, convicted and sentenced him as follows:

(i) for the offence under Section 406 IPC, to undergo two years simple imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo one month simple imprisonment.

(ii) for the offence under Section 420 IPC, to undergo two years simple imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo one month simple imprisonment;

(iii) for the offence under Section 468 IPC, to undergo two years simple imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo one month simple imprisonment;

(iv) for the offence under Section 471 IPC, to undergo two years simple imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo one month simple imprisonment. The sentences were ordered to run concurrently.

Insofar as the accused No.3-Village Administrative Officer of Keelapasalai Village and the accused No.4-Zonal Deputy Tahsildhar, Manamadurai, are concerned, the trial Court though found them guilty, however, acquitted them from the charges on the ground that no sanction was obtained by the Prosecuting Agency as required under Section 197 Cr.P.C.

3. The case of the prosecution is that the wife of the revision petitioner is the Panchayat President of Keelapasalai Village and the informer Paulsamy, who was a resident of that village, was having lands in Survey Nos.280/8, 331/9, 445/11, 446/14, 467/12, 472/20 and 470/10, to an extent of 3 acres and 8 cents in Patta No.557. The said Paulsamy approached the revision petitioner/husband of the Panchayat President for availing loan to purchase milching-cows. The revision petitioner, on the pretext of arranging loan, obtained patta from the said Paulsamy and changed the patta in his name with the help of the accused No.3-Village Administrative Officer, Keelapasalai village and the 4th accused-Zonal Deputy Tahsildhar, Manamadurai, and availed Tractor loan in his name from Canara Bank, Manamadurai, on 01.12.2006. After knowing the same, the said Paulsamy gave a petition before the District Collector during the Grievance Day Meeting, i.e. on 26.11.2007, and the same was forwarded to the Superintendent of Police and then, to the Deputy Superintendent of Police, District Crime Branch, Sivagangai District and finally, a case was registered on 25.04.2008 in Crime No. 8 of 2008 by the District Crime Branch by receiving a complaint from the said Paulsamy. On investigation, the Investigating Agency found that by forging the patta of Paulsamy, the revision petitioner along with his father/Accused No.2 availed a tractor loan from Canara Bank, Manamadurai, for a sum of Rs.6,27,000/- and in conclusion of the investigation, final report was filed as against this revision petitioner (A1), his father (A2), Village Administrative Officer of Keelapasalai Village (A3) and the Zonal Deputy Tahsildhar, Manamadurai (A4).

4. Before the trial, the said Paulsamy died and therefore, he was not examined and instead of him, one Karanthalai was examined as P.W.1. The Bank Manager of Canara Bank, Manamadurai and the Agricultural Extension Officer of Canara Bank, Manamadurai were examined as P.W.7 and P.W.8. The Tahsildhars, who served at Manamadurai during the relevant period were examined as P.W.4 and P.W.5. A defence has also been taken on behalf of the accused that based on a consent letter from Paulsamy in Ex.D1, the patta was transferred in the year 2006 and thereafter, the patta was also restored in the name of Paulsamy, however, a false case has been foisted against them. In conclusion of trial, the trial Court convicted this revision petitioner/A1 alone for the offences charged, however, acquitted the accused Nos.3 and 4 on the ground that no sanction was obtained by the Prosecuting Agency for prosecuting them as required under Section 197 Cr.P.C. Aggrieved over the same, an appeal was filed by the revision petitioner, but

the same was dismissed by the Appellate Court, by confirming the conviction and sentence imposed by the trial Court.

5. Now, this Criminal Revision Case is filed by the revision petitioner as against the concurrent findings of the Courts below on the ground that there was an inordinate delay in preferring the complaint. The change of patta was effected in the year 2006, whereas the complaint was lodged only on 25.04.2008, i.e. after a period of two years. That apart, in the meantime, the patta, which was transferred in the name of revision petitioner, was also restored in the name of the defacto complainant (Paulsamy), within a period of four months, i.e. on 21.11.2006 itself and therefore, there was no wrongful loss caused to the defacto complainant. However, the trial Court wrongfully convicted the revision petitioner for the offences under Sections 406, 468, 471 and 420 IPC.

6. In support of this revision petition, Mr.V.Kannan, learned counsel for the revision petitioner submitted that the defacto complainant-Paulsamy was not examined in this case during the trial, which is a material defect on the side of the prosecution and apart from that, the Investigating Officer was also not examined during the trial. By referring Exs.D1 to D5, the learned counsel for the revision petitioner submitted that the patta was transferred based on the consent letter given by the defacto complainant (Paulsamy) and the same was also restored in the name of Paulsamy and without examining the said Paulsamy and the Investigating Officer, the trial Court has wrongly convicted the revision petitioner/accused No.1. He also pointed out that there are interpolations in Ex.D4 in different inks. Moreover, P.W.5-Tahsildhar has also admitted in his examination that he is not aware as to who has made those corrections in Ex.D4. It is further submitted that the prosecution has also failed to establish the offence of cheating that there was any fraudulent or dishonest intention at the time of making promise or representation in this case and the loan which was availed by the revision petitioner from the Canara Bank, Manamadurai, was also fully settled by the revision petitioner, which could be very much seen from the evidence of P.W.7 and P.W.8. Therefore, there was no wrongful loss to the defacto complainant. However, the said evidence was not properly appreciated by the trial Court as well as by the Appellate Court.

7. Mr.V.Kannan, learned counsel for the revision petitioner further submitted that Ex.D1 is a consent letter of the defacto complainant, based on which, the patta was transferred in the name of revision petitioner. Furthermore, Ex.D1 was made by the defacto complainant in the presence of one K.M.Arjunan, S/o.K.Mukkaiyadevar and one Mu.Vaalli Kamuppatti, Village Assistant. However, both of them were not examined by the Investigating Agency and not shown as witnesses in this case. In support of his contentions, the learned counsel also relied upon the decisions of the Hon'ble Supreme Court

in the case of ***Md. Ibrahim and others vs. State of Bihar and another***, reported in ***2010 (2) Crl.L.J. 2223*** and ***Parminder Kaur vs. State of U.P. and another***, reported in ***2010 AIR (SC) 840***.

8. Per contra, Mr.A.Robinson, learned Government Advocate (Crl. Side) submitted that there was no delay in lodging the complaint. The defacto complainant, who was a rustic villager, approached the revision petitioner/husband of a Panchayat President for availing loan to purchase the milching-cows. The revision petitioner/accused directed the defacto complainant to handover his patta on the pretext that he would arrange for loan and after getting the patta, the revision petitioner/accused changed the patta in his name with the help of the accused No.3-Village Administrative Officer and accused No.4-Zonal Deputy Tahsildhar and availed loan from Canara Bank, Manamadurai, for Tractor and also received the loan amount of Rs.6,27,000/- by mortgaging the defacto complainant's property. After some time, when it came to the knowledge of the defacto complainant, the accused have also restored the patta in the name of the defacto complainant on 21.11.2006 and only after that the defacto complainant came to know about the fraud committed by the accused. Immediately, he gave a petition before the District Collector during the Grievance Day Meeting on 26.11.2007, which was forwarded by the District Collector to the Superintendent of Police for necessary action. The Superintendent of Police, in turn, referred the same to the District Crime Branch for necessary action and then, the District Crime Branch, after obtaining a complaint from the Defacto Complainant on 25.04.2008, proceeded with the investigation and filed the final report as against the revision petitioner and other accused.

9. The learned Government Advocate (Crl. Side) further submitted that Exs.D1 and D5, filed through accused No.3, would establish the case of the prosecution and the manner in which the patta has been transferred. Ex.D1-a consent letter is said to have been given by the defacto complainant (Paulsamy) to change his patta in the name of the revision petitioner/accused No.1. This document dated 31.07.2006 has been created in a typed copy and on the same day, the patta was transferred. The condition for change of patta as stated in Ex.D5 has not been followed in that process. Similarly, the revision petitioner/accused No.1, after having availed the transferred patta for obtaining a loan from the Canara Bank, Manamadurai, had also given a letter to the Village Administrative Officer on 21.11.2006 that the patta has been wrongly transferred in his name and on the very same day, it was also restored in the name of the defacto complainant (Paulsamy). These documents Exs.D1 and D2 speak about the manner in which the offence was committed by the accused. It is evident that Ex.D1 has been created subsequently by the accused. The accused did not disclose the letter (Ex.D1) during the investigation and also did not raise any question to any of the prosecution witnesses by referring Ex.D1

and therefore, the non-examination of the attestors of Ex.D1 cannot be a ground to affect the case of the prosecution, when the prosecution has established its case through Ex.P4. Further, the evidence of P.Ws.7 and 8 would also establish the case of the prosecution that the revision petitioner/accused No.1 availed loan from Canara Bank, Manamadurai and received the loan amount of Rs.6,27,000/-. In support of his contention, the learned Government Advocate (Crl. Side) also relied upon a decision of the Hon'ble Supreme Court in the case of ***State of U.P. vs. Ranjit Singh*** reported in ***1999 (2) SCC 617***.

10. This Court paid its anxious consideration to the rival submissions and also to the materials placed on record.

11. It is seen that the trial Court as well as the Appellate Court had elaborately discussed the available evidence and found this revision petitioner guilty for the offences charged. Though both the Courts below found the accused Nos.3 and 4 guilty, they were acquitted on a technical ground that the Prosecuting Agency has failed to obtain sanction as required under Section 197 Cr.P.C. The revision petitioner cannot take any advantage out of it.

12. The learned counsel for the revision petitioner mainly relied on the inordinate delay in reporting the incident. The delay in reporting the incident is not a material defect in this case. The defacto complainant, an illiterate person, had approached the revision petitioner/accused for obtaining a loan from the Bank to purchase milching-cows. The revision petitioner/accused directed the defacto complainant to handover his patta. After receiving the patta, the same was misused by the revision petitioner by changing the patta in his name with the help of accused Nos.3 and 4 and in turn, he availed a Tractor loan to an extent of Rs.6,27,000/-, by mortgaging the property of the defacto complainant. When it came to the knowledge of the defacto complainant, it was restored in the name of the defacto complainant on 21.11.2006. The defence has relied upon Ex.D1- the consent letter of the defacto complainant and Ex.D2-letter given by the revision petitioner. These documents itself expose the commission of offence.

13. The revision petitioner/A1 who availed the loan with the defacto complainant's land by changing patta in his name, through a letter (Ex.D2) stated that the patta has been wrongly entered in his name and based on this letter (Ex.D2), on the very same day, the patta was restored in the name of the defacto complainant. The revision petitioner admits that the patta has been wrongly transferred, however, he used the land of the defacto complainant to mortgage with a Bank to avail loan of Rs.6,27,000/-. Ex.D1 and Ex.D2 are contrary to each other. Ex.D1 is a consent letter said to have been given by the defacto complainant on 31.07.2006 for changing the patta and on the very same day, the patta was transferred in the name of the revision petitioner(A1) without

following the procedures as contemplated in Ex.D5. The patta was also restored in the name of the defacto complainant on 21.11.2006, as if it was wrongly transferred. The defacto complainant reported the incident by way of a petition in a Grievance Day Meeting to the District Collector on 26.11.2007 and the same was forwarded to the concerned Superintendent of Police and to the District Crime Branch for enquiry. Thereafter, the complaint was obtained from the defacto complainant, based on which, the Investigating Agency proceeded with the investigation.

14. This is a glaring example as to how innocent, illiterate people are exploited in villages. The innocent defacto complainant, who could not approach a Bank for a loan, relied on the village head man, who misused the same. Without knowing where to lodge the complaint, he lodged the complaint before the District Collector in a grievance day. In these circumstances, the delay in reporting the incident is not a material defect in this case. There is no exaggeration, embellishment in the complaint and the entire case is based on records. The purpose of lodging a complaint is to set the law in motion. The delay in reporting the incident, no doubt, is a material defect. But, it cannot be uniformly adopted in all the cases. It depends upon the nature of offence and other intervening circumstances. What is to be seen is the circumstances, nature of offence and whether the commission of offence is established beyond any reasonable doubt. In this case, the commission of offence has been established beyond any reasonable doubt by the prosecution and therefore, this Court is not inclined to disbelieve the prosecution case on the delay in reporting the incident alone.

15. The defacto complainant died on 23.06.2009 before the trial commenced and the Investigating Officer has also deserted from service during the trial and therefore, they could not be examined by the prosecution. However, the prosecution has established the case through other witnesses. The non-examination of the defacto complainant and the Investigating Officer would not affect the case of the prosecution, when the prosecution has established its case through the evidence of P.W.7-Bank Manager and P.W.8-Agricultural Extension Officer and also through document Ex.P4.

16. As rightly pointed out by the learned Government Advocate (Crl. Side), the documents (Exs.D1 and D2) marked through accused No.3 in this case also strengthen the case of the prosecution, by revealing the manner in which the patta was transferred. Ex.D1-consent letter relied upon by the learned counsel for the revision petitioner cannot be considered, since the same has not been produced before the Investigating Agency during the investigation and not referred to the prosecution witnesses during their examination. Only after the death of the defacto complainant, Ex.D1 has been produced by taking advantage of the demise of the defacto complainant. Further, through Ex.D2, which was marked through Accused No.3, the case of the prosecution is established and

therefore, there is no reason to interfere with the findings of the trial Court and the appellate Court.

17. It is a settled position of law that the Scope of Criminal Revision under Section 397 r/w 401 Cr.P.C is very limited and this Court cannot re-appreciate the evidence, unless and until there is any illegality, perversity or impropriety in the findings of the trial Court and the appellate Court.

18. This Court in ***Anbarasu Vs. Mukanchand Bothra***, reported in ***2019 (3) MWN (Cr) DCC 1 (Mad)*** held that while exercising the revisional powers under Section 397 r/w 401 Cr.P.C, the Court is required to find out if there is any illegality or impropriety in the findings of the trial Court and the appellate Court warranting interference and it is not open to this Court to exercise the revisional power as a second appellate forum.

19. The grounds raised by the revision petitioner do not point out any illegality, perversity or impropriety in the findings of the Courts below and therefore, this Court is not inclined to interfere with the findings of the Courts below.

20. In view of the foregoing discussions, this revision petition is dismissed and the conviction and sentence imposed by the learned District Munsif-cum-Judicial Magistrate, Manamadurai in C.C.No.164 of 2009, vide Judgment dated 16.06.2010, as confirmed by the learned Sessions Judge, Fast Track Mahalir Court, Sivagangai, in C.A.No.57 of 2010, vide Judgment dated 25.01.2016, are hereby confirmed. The trial Court is directed to secure the revision petitioner/accused No.1 and confine him to prison to undergo the remaining period of sentence.

21. Considering the nature of offence levelled as against the accused Nos.3 and 4, the District Collector, Sivagangai, shall initiate appropriate departmental proceedings as against the accused No.3, namely, S.Bose, S/o.Subramanian, Vasantha Nagar, Manamadurai and accused No.4, namely, Jeeva, S/o.Raghavan Naidu, Marudhupandiya Nagar, Sivagangai, if they are still in service.

Sd/-

Assistant Registrar (PROTOCOL)

// True Copy //

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Sub Assistant Registrar(CS)

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Note: (i) In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.
(ii) The Registry is directed to mark a copy of this order to the District Collector, Sivagangai.

To

1. The District Munsif-cum-Judicial Magistrate,
   Manamadurai.

2. The Sessions Judge,
   Fast Track Mahalir Court,
   Sivagangai.

3. The District Collector,
   Sivagangai.

4. The Sub Inspector of Police,
   District Crime Branch,
   Sivagangai,
   Sivagangai District.

5. The Additional Public Prosecutor,
   Madurai Bench of madras High Court,
   Madurai.

Crl.R.C.(MD)No.56 of 2016
31.08.2020

_SS/22.03.2022 : 8P/6C