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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.04.2021

PRONOUNCED ON : 08.09.2021

CORAM :

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.Nos.394 of 2015 and 371 of 2015

M.Balasubramaniam ..Petitioner in Crl.R.C.No.394 of 2015

K.Venugopal Raju ..Petitioner in Crl.R.C.No.371/2015

Vs

Jayakumari @ Sabeeha Banu ..Respondent in Crl.R.C.394/2015
& 371/2015.

Crl.R.C.No.371/2015:- Revision filed against the Judgment dated 07.03.2015 passed by the learned Principal Sessions Judge, Chennai in C.A.No.44/2001 by which the learned Judge, confirmed the conviction recorded against the petitioner by the Chief Metropolitan Magistrate, Egmore, Chennai, in judgment dated 12.02.2001 in C.C.No.10882/1991.

Crl.R.C.No.394 of 2015: Revision filed praying to set aside the judgment of conviction and sentence passed in C.A.No.50 of 2001 on the file of the Principal Sessions Judge, Chennai, dated 07.03.2015 confirming the judgment passed in C.C.No.10882 of 1991 on the file of the Chief Metropolitan Magistrate, Egmore, Chennai, order dated 12.02.2001.

For petitioner
in Crl.Rev.394 of 2019 : Mr.Sunder Mohan

For respondent
in Crl.Rev.394 of 2019 : Mr.P.L.Narayanan



For Petitioner
in CrI.Rev.371/2015 : Mr.D.Veerasekaran

For respondent
in CrI.Rev.371/2015 : Mr.P.L.Narayanan

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COMMON ORDER

Criminal Revision Nos.394 of 2019 and 371 of 2015 are filed by the Revision Petitioners who are appellants in C.A.No.44/2001 and 50/2001 respectively against whom conviction and sentence imposed by the trial court are confirmed by the learned Principal Sessions Judge, Chennai.

2. Revision petitioners are the accused. Respondent is the complainant. The respondent filed a private complaint under Section 200 Cr.P.C., against the petitioners herein for the offence under Section 365, 369, 344, 347, 384 and 167 IPC before the Chief Metropolitan Magistrate, Egmore, Chennai. The learned Magistrate, after taking cognizance of the complaint in C.C.No.10882 of 1991, after completing the formalities, conducted enquiry.

3. During the enquiry, on the side of the respondent, 19 witnesses were examined as P.W.1 to P.W.19. 90 documents were marked as Ex.P.1 to P.90. On the side of the Revision Petitioners herein/accused, one witness was examined as D.W.1 and 26 documents were marked. After enquiry, trial court found the guilt of the petitioners herein/accused for offence under Sections 344, 347, 384 and 365 IPC and convicted and sentenced them as under:-

" (i) One year R.I. Each and to pay a fine of Rs.1000/- each, in default, to undergo simple imprisonment for 3 months each for the offence u/s.344 IPC.

(ii) one year R.I. each and to pay a fine of Rs.1000/-, in default to undergo simple imprisonment S.I., for 3 months each for the offence u/s.347 IPC.

(iii) Three years R.I., each and to pay a fine of Rs.1000/- each in default to undergo simple imprisonment for 3 months each for the offence u/s.365 IPC.

(iv) one year R.I., each for the offence



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u/s.384 IPC.

The sentence undergone if any by the accused 1 and 2 are ordered to be set off u/s.420 Cr.P.C. The sentences are ordered to be run concurrently. The total fine amount payable by the accused 1 and 2 is Rs.6000/- (Rs.3000/- each)."

4. Challenging the said judgment of conviction and sentence, the petitioners herein filed appeals before the Principal Sessions Judge, Chennai, in CrI.A.Nos.44 of 2001 and 50 of 2001. The learned Principal District Judge, after hearing the arguments advanced on either side and considering the materials facts and also judgment of the Magistrate, dismissed the appeals and confirmed the judgment of the Magistrate. Therefore, now again, challenging the dismissal of the appeals passed by the Principal Sessions Judge, Chennai, the present Revisions are filed before this court.

5. The learned counsel for the Revision Petitioner in CrI.R.C.No.391 of 2015 would submit that the complaint filed by the complainant in C.C.No.10882 of 1991 is that the revision petitioner in CrI.R.C.394/2015 (first accused) threatened the complainant family members and put them in trouble with the help of the higher police official known to him. On 24.03.1988, one Baskaran said to be the driver of 1st accused gave a complaint against the complainant's husband and 2 others that her husband has cheated Baskaran and 11 others to the tune of Rs.6,00,000/- promising to secure them employments in Middle East countries. The complaint was registered by the revision petitioner (second accused) in CrI.R.C.No.371 of 2015 in Crime No.7 of 1988 under Sections 120-B, 420 IPC. The second accused who was working as the Deputy Superintendent of Police, CBCID, had taken the complainant and her husband under illegal custody from 28.03.1988 till the date of remand.

6. The allegation in the complaint further reads that the complainant and her husband were detained at various hotels in and around Madras by the accused. They were not produced before any Magistrate till 3rd week of June 1986. The complainant's husband was produced before the Additional Chief Metropolitan Magistrate on 21.6.1988. During the time of their illegal custody, the accused made complainant's husband to sign several blank papers, forms and vakalats. The second accused threatened



and coerced the complainant and her husband thereby her husband was made to execute a Power of Attorney in favour of the first accused. The Power of Attorney was registered by the first accused without free consent of the complainant and her husband. A sale agreement was also executed between the first accused and his son B.Senthil Kumar regarding the same properties at Nagapattinam for which, the Power of Attorney was executed. The complainant's husband was threatened by the accused to sign as a witness to the deed. The first accused used all the above forged documents to get a consent decree on 07.10.1988, in O.S.No.3389 of 1988 before the City Civil Court, Madras, as against the interest of complainant's husband.

7. Further allegation in the complaint is that the accused kidnapped all the members of the complainant's family from Nagapattinam and they were kept under the custody of the accused in a lodge at Madras. After detaining in the lodge at Madras, they were forcibly removed from the lodge and 1st accused sent them to Bangalore.

8. It is also the allegation of the complainant that second accused (Revision Petitioner in CrI.RC.371 of 2015) was hand in glove with the first accused to kidnap the complainant's family members and her minor children from their native place, Nagapattinam to Madras and thereby, committed offence under Section 365 and 369 IPC.

9. The complainant further alleged that by keeping her and her husband under illegal custody from 28.03.1988 to till date of remand i.e., on 21.08.1988 and 18.06.1988, and obtaining signatures on various blank forms, vakalat and executing power of attorney and other documents by coercing them, the first and second accused have committed offence punishable under Section 344, 347 and 384 IPC.

10. The complainant also stated that the second accused detained the complainant and her husband and obtained signatures in various forms, vakalats and executed power of attorney in favour of one Balasubramaniam and caused injury to the complainant and her husband and their properties.

11. The Revision Petitioners raised several grounds questioning the conviction for the offences under Sections 344,



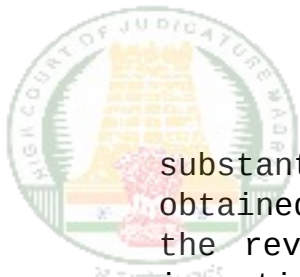
347, 364 and 384 IPC. The respondent produced several xerox copies and got marked through P.W.6 and the statement of witnesses whose statement recorded under Section 161 Cr.P.C., did not even appear before the trial court to give evidence. The present complaint was actually a second one and the legal position is that there cannot be two complaints as regards one incident. The prime witness in the case M.A.M.Abdullah had also not deposed to support the case of P.W.1. The learned Magistrate and learned Sessions Judge erroneously found A-1 and A-2 guilty.

12. The Revision Petitioner in criminal revision No.371/2015 was working as Deputy Superintendent of Police, crime Branch CID. Since the case in Crime No.7/88 under Section 120-B read with 420 IPC was registered by one Bhaskaran and in respect of detaining the complainant and her husband in Hotel Admiralty, Mandaveli, Madras-28, from 28.03.1988 to 31.03.1988, for four days illegally, the Police Department framed charge against him.

13. The Submission of the Revision Petitioner in CrI.RC.371/2015 is that as per the complaint, loan was obtained for Rs.1,00,000/-, however only Rs.25,000/- given to the complainant's husband. If the case is admitted, the complainant's husband ought to have received Rs.85,000/- however, complainant pleaded only Rs.25,000/- was paid. There appears to be a fabrication of the complainant undertaking letter date 20.03.1988 was given by complainant's husband. However in the sworn affidavit filed in W.P.539 of 1989 dated 10.01.1989, it is sworn that Rs.1,30,000/- was received.

14. The complainant's allegation that her husband repaid the loans and obtained receipts, but such receipts were neither produced nor marked as document before the court. Even though the complainant has stated in her complaint that 1st accused agreed to relinquish his rights over his negative rights under a letter dated 20.03.1983 on behalf of his wife, no such document is produced and the said averment is not proved.

15. As regards the allegation that A-1 wanted to marry the complainant's younger sister as his 2nd wife and that A-1 threatened the complainant family members and put them in trouble with the help of police official known to him and A-1 cheated Baskaran promising to secure employment in abroad are not



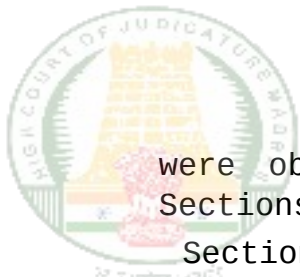
substantiated with material evidence. Loan was said to be obtained in 1983 but the complaint was given on October 1988. But the revision petitioner in RC.371/2015 registered the case and investigated the matter but the complainant filed HCP by swearing false affidavit and diverted the investigation.

16. It is submitted that the complainant husband M.A.K.Abdullah has neither filed the complaint nor reported to the Magistrate about any ill treatment when he was produced for remand. As far as illegal custody of the complainant and her husband from 28.03.1988 to 21.06.1988 is concerned, it is submitted that it is highly unimaginable and impracticable to keep the accused person illegally for 3 months and 5 months respectively. There is no logic or reasonableness in the allegation. The allegation is a cooked up story and none reported or complained to the Magistrate about the illegal detention or period of detention or any agreement.

17. The allegation that Power of Attorney was registered by the 1st accused without the free consent of the complainant's husband is concerned, the registered power of attorney by the complainant's husband in favour of 1st accused is an official act, exercised by the Sub-Registrar complying with the provision of Stamp Act and Registration Act and so official acts are deemed to be valid and the same was not disproved and no document was filed about the result of Civil Suit. Therefore, no cognizance can be taken based on allegation in the complaint.

18. The allegation that complainant's sister Indra have kept in the out skirts of Bangalore and after a week, she managed to contact her husband by phone and taken by him to Nandhi Hills are concerned, this would establish that they were all touring and Indira's husband taking all of them to Nandhi Hills. Further HCP was withdrawn. So the averments made in complaint and W.P.No.539 of 1989 are purely concocted story only to harass the petitioners. Further oral evidence given by the said witnesses are contrary to each other.

19. The learned counsel for the petitioner further argued that the complaint in Crime No.7 of 1988 was investigated and the complaint was closed as mistake of fact. Therefore, the complainant alleged that there were illegal custody and documents



were obtained by force which would attract the provision of Sections 344, 347, 387 of IPC. The present complaint filed under

Section 200 Cr.P.C., is the 3rd one and some of the complaints were not filed before this court. Ex.P.4 and Ex.P.5 complaint's results are not forthcoming, therefore, the present complaint is vitiated. It is also contended by the learned counsel that statements recorded under Section 161 and 162 Cr.P.C., have been marked and admitted in evidence contrary to the provisions of the Criminal Procedure Code. It is settled law that on proof of such statement, it can only be used for contradictions and corroborations as per the provision under Section 145 of the Indian Evidence Act, 1872. Such statement shall not be treated as evidence and marked as Exhibit. The trial court has recorded findings based on such statements, treating it as evidence. The courts below completely ignored the evidence given in the cross examination which is quite contrary to each other and conflicting with other evidence. Though statements recorded under Section 161 have been marked without examining the author of the statement and also without any legal authority, no opportunity was given to the petitioner to cross examine the author of those statements. Without complying with the mandatory provisions contemplated under Section 63 read with Section 65 of Indian Evidence Act, all xerox copies of arrival register and invoices Exhibits P.30 to P.39 and Exhibits P.49 and P.50 have been marked by P.W.15 and it is inadmissible and has no evidentiary value. It is pertinent to point out that the complainant Jayakumari alias Sabeena Bhanu W/o.Abdullah who alleges illegal detention of herself and her husband has neither filed a complaint nor examined as a witness and the complaint was vexatious.

20. The learned counsel for the Revision Petitioners further argued that the evidence given by constables P.W.11, 12 and 13 coupled with evidence of P.W.5 would prove that the story projected by the complainant that her husband and others were kept in lodges are false. The T.A.Bills of P.W.11, 12 and 13 and the statement recorded creates a serious doubt about the conduct of P.W.6 and P.W.12. The illegal detention alleged from 28.03.1988 to 31.03.1988 are all proved to be false and P.W.1 herself has given evidence which would prove that false complaint has been filed. P.W.18 conspired with M.A.M.Abdullah and the complainant's evidence lack bonafide and the evidence of P.W.18 and P.W.1 are unworthy of credit.



21. The learned counsel also submitted that the sanction order granting permission to lodge a complaint is not a conclusive proof of fact. The sanction order was given based on the complaint given by the complainant. As per the complainant's case, her family members and herself has been kept illegally at (1) Hotel Admiralty (2) Vijaya Mansio and (3) Ajantha Hotel. Though there are three hotels mentioned, except the manager of Admiralty Hotel, no other witnesses have been examined to prove that the complainant and her family members have been detained at Vijaya Mansion or Ajantha Hotel. Ex.P.30 to Ex.P.39 are all xerox copies of arrival register and this is not at all admissible in evidence and no witness has been examined from those hotels. Therefore, the allegation of illegal detention in the above said hotels are false. However, the courts below recorded finding based on inadmissible xerox copies violating the rule of evidence as contemplated under the Indian Evidence Act.

22. The learned counsel further argued that Abdullah has filed O.S.No.3718 of 1990 to set aside the decree dated 05.10.1988 in O.S.No.8953 of 1988 on the file of VII Assistant City Civil Court, but the results have not been placed before the courts below.

23. Per contra, the learned counsel appearing for the respondent/complainant submitted that the complainant Jayakumari has stated all the facts at the first instance in the Writ Petition in W.P.No.539 of 1989 filed before this court, for the production of her mother Jayalakshmi Bai, sister Indira and three children and on coming to know their return during the pendency of the writ petition, she had withdrawn the writ petition. The registered general power of attorney executed by the complainant's husband Abdullah in favour of the 1st accused Balasubramaniam is dated 09.05.1988 registered as document No.585/88 on 10.05.1988. According to complainant Jayakumari, she and her husband Abdullah were kidnapped and illegally detained at Vijaya Mansion, Hotel Admiralty, in a Lodge near Tiruvarur Bus stand and at Brindavan Hotel from 24.03.1988 to till they produced for remand before the Additional Chief Metropolitan Magistrate on 21.06.1988 and 16.06.1988 respectively by the 1st and 2nd accused under threat and coercion. The special general power of attorney Ex.C.5 was obtained from Abdullah by the accused on the very same day of the execution of power of attorney by using the said general power of attorney and on

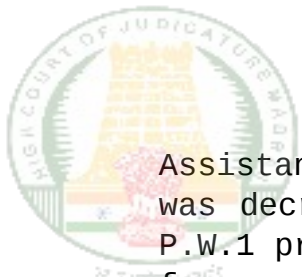


09.05.1988 an agreement of sale was entered into between the 1st accused as general power of attorney of Abdullah and his son B.Senthilkumar, agreeing to convey the properties owned by Abdullah at Manjakollai, Nagapattinam District. The trial court has gone through the entire oral and documentary evidence and came to the conclusion that complainant's mother Jayalakshmi Bai, complainant's sister Indira and her three children were kidnapped by the 1st and 2nd accused and wrongfully confined in Guptas Ajantha Hotel, Royapettah, Madras, Vijaya Mansion, Madras, in which they were kept in the opposite room where the complainant and her husband were kept and then at the outskirts of Bangalore. So, the complainant filed W.P.No.539/1989 and the averments of which appeared to be true and accordingly, the affidavit filed by the complainant Jayakumari in the said writ petition is correct and genuine. The Appellate court also gone through the entire records and the judgment of the trial court and found that Ex.D.1 clearly prove the wrongful confinement, abduction and extortion and pointed out that trial court has given detailed reasons for accepting the case of the complainant and the finding is based on the testimony of witnesses and the prosecution has proved its case beyond all reasonable doubt. The learned counsel therefore, submits that there is no merit in the revisions and the revisions are liable to be dismissed.

24. Heard and perused the records.

25. The allegation in the private complaint filed by the complainant before the Chief Metropolitan Magistrate, Madras is that the revision petitioners kidnapped the family members of the complainant, threatened them and obtained their signatures on various blank forms, vakalat and executed power of attorney and other documents by coercing them. In order to substantiate the same, on the side of the complainant/respondent, P.W.1 to P.W.19 were examined. Exhibits P.1 to P.90 were marked. On the side of Defence, one witness was examined and Court Witnesses 1 to 20 were examined. On the side of defence, Ex.D.1 to Ex.D.26 were marked.

26. Abdullah has filed a suit in O.S.No.3718 of 1990 in the City Civil Court, Chennai, to set aside the decree dated 05.10.1988 in O.S.No.8983 of 1988 on the file of VII Assistant Judge, City Civil Court, Chennai. The said O.S.No.8983 of 1988 filed by Senthil Kumar, son of 1st accused on the file of VII



Assistant Judge, City Civil Court on 23.09.1988. O.S.8983/1988 was decreed and the decree of which is Ex.C.58. The evidence of P.W.1 proved that the signature of Abdullah were obtained on some forms and blank papers. Vakalat were obtained in wrong form and the said Abdullah by Ex.P.2-Cancellation of power of Attorney cancelled Ex.P.3 Power of Attorney executed in favour of A-1 on 09.05.1988 itself. The trial court and the appellate court not believed the genuineness of the signature of Ex.P.3 Power Deed, but accepted the decree on 05.10.1988.

27. The learned counsel for the petitioners strenuously contended that the revision petitioners have not kidnapped the complainant and their family members, but they themselves admitted in their evidence and stated that they stayed in particular hotel and also particular Room Number and therefore, they have been kidnapped to various places and unknown hotels is not acceptable which clearly shows that the case of the complainant is false. A reading of the evidence of the witnesses in the private complaint would clearly show that the complainant clearly established charges and both the courts appreciated the case and convicted the revision petitioners/accused for the offence under Sections 344, 347, 384 and 365 IPC.

28. It is settled proposition of law that the revision court cannot exercise the power of the trial or appellate court while dealing with revision, by reappreciating the evidence or revisiting the entire materials. While exercising revisional jurisdiction, the court has to see as to whether there is any perversity of appreciation of evidence. While the trial court and the appellate court appreciated each and every oral and documentary evidence, satisfied with the case put forth by the complainant and the contentions raised by the learned counsel for the complainant and thereafter arrived at a finding that the revisions petitioners are found guilty to the charges under Sections 344, 347, 384 and 365 IPC and convicted and sentenced them as stated above. In the appeal filed by the revision petitioners before the appellate court, the Principal Sessions Judge, after analysing the entire records, arrived at concurrent finding. The revision court cannot substitute own reasons and its views on findings of fact of both the courts below. Unless there is perversity in appreciation of evidence by both the courts below, the Revisional court will not interfere with the findings of the courts below. A reading of the averments in the



complaint and the material evidence produced before the trial court and the findings of the trial court show that the trial court has rightly appreciated the evidence and come to the conclusion that the petitioners have committed offences under Sections 344, 347, 384 and 365 IPC and this court while going through the entire materials, not found any perversity and therefore, there is no reason to interfere with the judgments of both the courts below.

29. Considering the facts and circumstances of the case, the conviction and sentence passed under Section 344, 347, 384 IPC against the revision petitioners are confirmed. However, quantum of sentence alone is modified for the offence under Section 365 IPC from 3 years into one year Rigorous imprisonment and therefore, the revision petitioners are sentenced to undergo one year rigorous imprisonment for offence under Section 365 IPC instead of 3 years.

30. In the result, criminal revisions are dismissed with the above said modification in respect of quantum of sentence for offence under Section 365 IPC. The rest of the conviction and sentence remain unaltered. Since this court suspended the substantive sentence of imprisonment vide orders dated 24.04.2015 and 10.06.2015, the trial court is directed to take steps to secure the revision petitioners to serve the remaining period of sentence.

Sd/-

Assistant Registrar(CS-vi)

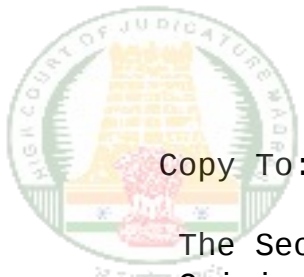
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Sub Assistant Registrar

nvsri

To

- 1.The Principal Sessions Judge,
Chennai,
- 2.The Chief Metropolitan Magistrate,
Egmore, Chennai.



Copy To:

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

+1cc to Mr.D.Veerasekaran, Advocate, S.R.No.45654

+1cc to M/s.Sunder Mohan, Advocate, S.R.No.45970

Cr1.RC.394 of 2015
and 371 of 2015

AJS(CO)
SB(27/10/2021)