IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.04.2021

C O R A M

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CRL.R.C.NO.203 OF 2021
&
CRL.M.P.NOS.4746 & 4747 OF 2021

Nisha
Mani ... Petitioners

Vs.

State by
The Sub Inspector of Police,
M-3, Puzhal Police Station. ... Respondent
(Crime No.563 of 2014)

Prayer:
Criminal Revision Case filed under 397 r/w 401 of Cr.P.C. to set aside the order passed in C.C.No.299 of 2015, on the file of the learned Judicial Magistrate, Tiruvotriyur, dated 12.09.2017, and the order passed by the learned Principal Sessions Judge, Tiruvallur, made in Crl. Appeal No.159 of 2017, dated 29.09.2020.

For Petitioners: Mrr.S.S.Kumar

For Respondent : Mrs.T.P.Savitha
Government Advocate (Crl.Side)

O R D E R

By consent, the Criminal Revision Case is taken up for final disposal at the stage of admission itself.

2. This Criminal Revision Case has been filed challenging the Judgment passed by the learned Principal Sessions Judge, Tiruvallur, made in Crl.Appeal No.159 of 2017, dated 29.09.2020, upholding the conviction and sentence imposed by the learned Judicial Magistrate, Tiruvotriyur, by judgment dated 12.09.2017 in C.C.No.299 of 2015.

3. The respondent-Police registered a case in Crime No.563 of 2014, against the petitioners herein /accused 3 and 4 and two

others. After completion of investigation, the respondent laid a charge sheet before the learned Judicial Magistrate , Tiruvotriyur, for the offence under Sections 420, 506 (ii) r/w 34 IPC and the same was taken on file in C.C.No.299 of 2015.

4. On the basis of the accusation made against the accused, the learned Judicial Magistrate, Thiruvotriyur, has questioned the accused with regard to offence alleged to have been committed by him under Sections 420, 506 (ii) r/w 34 IPC and the same has been read over and explained to them. On the side of the complainant, P.Ws.1 to 9 have been examined and Exs.P.1 to P.6 have been marked.

5. When the accused had been questioned under Section 313 of the Code of Criminal Procedure as respects the incriminating circumstances appearing in evidence against them, they denied their complicity in the crimes. No oral and documentary evidence had been let in on the side of the accused.

6. The trial Court after analysing the evidence available on record has found the accused guilty for the offence under Section 420 r/w 34 of IPC and convicted and sentenced them to undergo Rigorous Imprisonment for two years and pay a fine of Rs.5,000/- in default to undergo Simple Imprisonment for one month; and acquitted all the accused for the offence under Section 506 (ii) of IPC, as the prosecution has failed to prove its case for the said offence.

7. Against the conviction and sentence, the accused, as appellants have preferred Criminal Appeal No.159 of 2017, on the file of the learned Principal Sessions Judge, Tiruvallur.

8. The First Appellate Court, after reappraising the evidence, has confirmed the conviction and sentence passed by the learned Judicial Magistrate, Thiruvottriyur. Against the judgment passed in Criminal Appeal No.15 of 2017, the present Criminal Revision Case has been filed by the accused 3 and 4 / petitioners 1 and 2.

9. The learned counsel for the petitioners would submit that A3 and A4 / present petitioners are no way connected in Crime No.563 of 2014. The learned counsel for the petitioners would further submit that the allegation against the petitioners / accused 3 and 4 was that they have signed in the LIC loan application, which was submitted by the first accused, but to prove the fact, no documentary evidence is produced by the prosecution. It is further submitted that the allegation as against the second petitioner/fourth accused was that he stood as witness in the sale deed (Ex.P3) executed by the second accused to and in favour of the defacto complainant, however,

the learned trial Court and the first Appellate Court miserably failed to note that mere signing as witness to the sale deed in question Ex.P3 is not sufficient to rope into alleged case, when the ingredients of 420 of IPC is not made out against the second petitioner / fourth accused.

10. It is further submitted that the Officer of the LIC Finance Corporation, who was examined as P.W.7 has not even spoken anything about the knowledge of the present petitioners / Accused 3 and 4, with regard to the deposit of the original title deed by the accused No1, for obtaining loan from the LIC Finance Corporation and further these petitioners have suppressed the said fact the accused No.1 had approached the Registration Department for getting a certified copy and thereafter transferred property to the second accused, who in turn sold the property to P.W.1-defacto complainant. Though P.W.9-Investigating Officer has stated that the petitioners herein / A3 and A4 have signed as witness in the loan form, but the prosecution has not proved that petitioners herein / Accused No.3 and 4 have stood as witnesses in the application for getting loan by the accused No.1. The prosecution has to prove its case beyond reasonable doubt, since the prosecution has not proved that the loan document was submitted by A1 before the LIC Finance Corporation, in which, A3 and A4 have signed as witnesses, it is sufficient to acquit the petitioners herein from the alleged charges, but both the Courts below miserably failed to do the same and hence, prays to set aside the orders.

11. The learned Government Advocate (Criminal Side) would submit that A3 is none other than the daughter of A1 and A2, A4 is the husband of A3. The petitioners were knowledge about the loan obtained by A1 before the LIC Finance Corporation, by depositing the original title deeds. Subsequently, A1 obtained a certified copy, as if the original document got misplaced and thereafter, transferred the property to A2, who in turn sold the property to the defacto complainant, in which, the fourth accused stood as witness in the Ex.P3 sale deed and it clearly proves the intention of the accused persons to cheat the defacto complainant and they were knowledge about the same. P.W.1 has clearly stated that they were knowledge about the same and also the petitioners have not made any effective suggestion before the LIC Officer that they were no knowledge about loan obtained by A1 and further, during cross-examination, the Investigating Officer has clearly stated that A3 and A4 also signed in the document. Further, the Encumbrance Certificate produced by the defacto complainant, not reveals any encumber regarding the loan obtained by A1 from the LIC Finance Corporation, since it is only a deposit of title deeds, it was not registered before the Sub Registrar office and it was not reflected in the Encumbrance Certificate and as such, the prosecution has proved

its case beyond reasonable doubt. Therefore, both the Courts below have rightly appreciated the evidence and convicted the petitioners and there is no merit in the revision and the revision is liable to be dismissed.

12. Heard the learned counsel for the petitioners and the learned Government Advocate (Criminal Side) for the respondent and perused the materials available on record.

13. While exercising revisional jurisdiction, this Court need not to sit in the armchair of the appellate Court and revisit the entire evidence and also reappreciate the same. At the same time, the Court has to find out as to whether any perversity in appropriation of evidence in the order passed by both the Courts below, while appreciating the evidence on records. This Court has gone through the entire materials and also considered the submissions made by the both the counsel.

14. The case of the prosecution is that the first accused by pledging the original sale deed, obtained Loan from the LIC Finance Corporation and thereafter, A-1 lodged a complaint before Sembiyam Police Station that the original documents of the plots were missing and obtained a certified copy of the documents and executed the same in favour of the second accused, in which, the accused Nos.3 and 4 were signed as witnesses and thereafter, with an intention to cheat the complainant dishonestly, the accused wantonly did not disclose about the loan obtained in LIC to the defacto complainant and sold the flat to the complainant on 18.05.2012 and cheated and thereby dishonestly induced the defacto complainant deceived to deliver the property.

15. The defacto complainant came to know that the property was pledged by A1 only after the LIC Officials have approached the property, stating that A1 has not repaid the loan amount. Thereafter, the defacto complainant filed Ex.P1 complaint before the respondent-Police and based on the complaint, the respondent-Police investigated the matter. It is to be noted that the offence is based on documentary evidence.

16. According to the learned counsel for the petitioners that A3 has not signed and A4 only signed in Ex.P3-sale deed, executed by A2 in favour of the defacto complainant and further, the fourth accused has signed only as witness and he was no knowledge about the loan obtained by A1, by pledging the sale deed before the LIC Finance Corporation. It is settled proposition of law, the prosecution has to prove its case beyond the reasonable doubt. However, in the case on hand, it is to be noted that the property was pledged by A1 before the LIC for obtaining loan. A2 is none other than the wife of A1, A3

is the daughter of A1 and A4 is the husband of A3. From the evidence of P.W7, the Chief Manager of LIC Finance Corporation, it could be seen that the original documents were deposited by A1 before the LIC Officer, whereas, the defence has not even put a single suggestion that A3 and A4 were no way connected in the loan obtained by A1 and deposited the original title deed before the LIC Finance Corporation.

17. P.W.9, the Investigating Officer, has clearly admitted that during the enquiry, he came to know that A3 and A4 signed as witness in the loan obtained by A1 before the LIC. P.W.9 has also clearly stated regarding relationship of A1 to A4. A3 is the daughter and A4 is the son-in-law to A1. When the second petitioner/fourth accused, who is none other than the wife of the third accused, has signed as witnesses in Ex.P3 sale deed made by A2 in favour of the defacto complainant, it could not be believable that they do not aware of the loan obtained by A1 from the LIC Finance Corporation, by pledging the original document.

18. Therefore, the prosecution has proved its case that all the accused conspired together and cheated the defacto complainant, by suppressing the fact that the original documents were deposited before the LIC and subsequently, obtained a certified copy of the sale deed and A1/husband executed the settlement deed in favour of his wife/A2, and thereafter, A2, executed the Ex.P3-sale deed in favour of the defacto complainant.

19. On reading of the entire oral and documentary evidence, the trial Court, on proper appreciation of evidence, rightly convicted the petitioners/ accused 3 and 4 and others. The appellate Court, as a fact finding Court, re-appreciated the entire evidence, and dismissed the Appeal and this Court does not find any perversity, illegality or irregularity in the orders passed by the Courts below.

20. Therefore, this Court does not find any perversity in the Judgment of the both the Courts below and there is no merit in the revision. Accordingly, the Judgment passed by both Courts below are hereby confirmed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

r n s

To

1. The Judicial Magistrate,
   Tiruvotriyur.

2. The Principal Sessions Judge,
   Tiruvallur.

3. The Public Prosecutor,
   High Court, Madras.

+1cc to Mrr.S.S.Kumar, Advocate, S.R.No.24232

Crl.R.C.No.203 of 2021 &
Crl.M.P.Nos.4746 & 4747 of 2021

BS(CO)
CS/09/07/2021