

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.06.2021

CORAM

THE HONOURABLE MR.JUSTICE. M.NIRMAL KUMAR

Crl.M.P.No. 6092 of 2021

IN

Crl.R.C.No. 359 of 2021

Sriman @ V.Narayanan

... Petitioner/Petitioner

Vs.

State represented by
The Inspector of Police,
EOW Police - II,
Villupuram District.
(Crime No.2 of 2014)

... Respondent/Respondent

Prayer: Criminal Miscellaneous Petition filed under Section 397(1) Cr.P.C. against the Judgment dated 21.04.2021 made in C.A.No. 3 of 2021 confirmed by the learned Principal & Sessions judge at Villupuram made by the learned Chief Judicial Magistrate Court at Villupuram made in C.C.No. 23 of 2015 dated 04.02.2021 convicted the petitioner/appellant.

For Petitioner : Mr. M.Vimal B. Crimson

For Respondent : Mr. Damodharan
Counsel for Government (Crl.Side)

ORDER

The petitioner stands convicted for the offence u/s. 420 IPC and Section 4 read with 76 Chit Fund Act and sentenced to him to undergo Rigorous imprisonment for 7 years and to pay a fine of Rs.10,000/-, in default to undergo simple imprisonment for one month; by the learned Chief Judicial Magistrate, Villupuram, in C.C.No. 23 of 2015 by Judgment dated 04.02.201, which was confirmed by the learned Principal Sessions Judge, Villupuram in C.A.No. 3 of 2021 dated 21.04.2021 has come forward with this petition seeking for the relief of suspension of his sentence, pending revision.

2. The gist of the case is as follows:-

The petitioner along with another accused was running a monthly Chit Fund in the name of "Sriman V.Narayana yadav Chits (Pvt.) Ltd., in Gingee, which was unregistered company. PWs-1 to 11 have joined the Chit as subscribers and paid substantial amount towards chit. Later they were cheated and chit amount was not paid. Thus, the petitioner had cheated a sum of Rs.11,15,950/-. PW-1 the subscriber to the chit, lodged a complaint. The respondent police registered a case and investigate the same and filed a charge sheet. Before the trial Court, PWs-1 to 16 were examined. Exs. P-1 to P-27 were marked after full pledged trial.

3. The contention of the learned counsel for the petitioner is that the petitioner has been falsely implicated in this case. Admittedly none of the subscribers to the chit, namely, PWs-1 to PW-11, had paid any amount to the petitioner directly. The petitioner had also not issued any receipt for acknowledging the payments. PW-14, the Sub Registrar had admitted that an application for registration of Chit had been made but the license was not granted. PW-3 had admitted that he had handed over the chit amount to one Elumalai, likewise PW-4 had admitted that he had paid only to one Murugan. Thus there had been lot of discrepancy by the witness to whom they paid the chit amount. PW-15 was examined, to show that the chit amounts collected by him was handed over to the petitioner. PW-15 had not supported the case of the prosecution. PW-16 the Deputy Superintendent of Police, EOW, Gingee had registered the case on 10.10.2014 and filed the charge sheet within a period of two months, which would go to show that there was no proper investigation in this case and within a short period of two months and in a hurried manner, final report had been filed. The oral evidence, are contrary to the documentary evidence. None of the documents have been produced, prove that the petitioner had received money. Likewise, the Lower Appellate Court without independently analysing the evidence and considering the evidence and materials had mechanically confirmed the trial Court Judgment. He further submitted that the petitioner is a permanent citizen residing in Town of Gingee and he has got two sons and a daughter residing with family, got deep social roots will not evade Justice.

4. The learned Counsel for Government (Cr1. Side) submitted that in this case the petitioner had cheated 11 persons, namely Pws-1 to 11. The subscribers to the unauthorized chit has been clearly spoken by PW-14 the District Registrar. PWs-12 and 13 are the witnesses to the observation mahazar. PW-15 relative to the petitioner had not supported the case of the prosecution. PW-16 the Investigating Officer states about the registration of the case, conducting investigation, examination of witness, collection of documents and filed the final report.

5. The trial court examined all the witness on their evidence and finding that the petitioner had cheated 11 persons to the tune of Rs.11,15,950/-, had convicted the petitioner. The chit card under Exs.P-1, 4, 6, 8, 10, 12, 14, 16, 18, 21 and 22 confirmed to the evidence of the corresponding witnesses. Thus, the finding of the Lower Court and the Lower Appellate Court are proper since the petitioner had suffered two concurrent findings and the suspense of sentence is opposed.

6. Considering the submissions and perused all the materials, it is seen that the Exhibits mentioned above, none of the above exhibits, the petitioner's signature is found. The exhibits has been in the name of "Sriman V.Narayana yadav Chits (Pvt.) Ltd. Further PW-14 District Registrar admits that an application for running chit has been submitted but the license has not been granted. The witness had stated that they are subscribers to the various chit, have not furnished the particulars about the dividends received and admittedly in this case, some of the witnesses have admitted that they have paid the amounts to Elumalai, Murugan and PW-15 finding that the petitioner has got arguable points in the revision and the revision would take sometime to be taken for final hearing. Further, the petitioner undertakes to deposit a sum of Rs.5/- lakhs to the credit of this case and further undertakes that within a period of 6 months the balance amount of Rs.6,18,950/- to be deposited on or before 08.12.2021. In the meanwhile, after coming out bail, the petitioner would take earnest efforts to compromise and compound the offence and settle the issue, with PWs-1 to 11, the subscribers of the chit.

7. Considering the grounds raised in the memorandum of grounds of criminal revision. The Revision is admitted, further on considering the fact that the petitioner has made out a case for suspense of sentence, this Court is of the considered view that the substantive sentence of imprisonment alone could be suspended pending revision.

8. Accordingly, it is ordered that the petitioner shall be released on bail on his executing a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties each for a like sum to the satisfaction of the learned Chief Judicial Magistrate, Villupuram, and the time of execution of sureties, the petitioner is directed to deposit a sum of Rs.5/- lakhs to the credit of C.C.No. 23 of 2015. It is made clear that no extension of time will be granted for payment of balance amount of Rs.6,18,950/- by 08.12.2021. The petitioner shall report before the said Court on the first working day of every English Calendar month at 10.30 a.m. pending revision.

9. In the meanwhile, if there is any compromise, it is free for the petitioner and PWs 1 to 11 to file appropriate petition before this Court seeking for withdrawal of the deposited amount.

-sd/-

08/06/2021

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 PRINCIPAL SESSIONS
JUDGE, VILLUPURAM

2 THE CHIEF JUDICIAL MAGISTRATE
VILLUPURAM

3 THE INSPECTOR OF POLICE,
EOW POLICE-II, VILLUPURAM DISTRICT,

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

5 THE SUPERINTENDENT,
CENTRAL PRISON, CUDDALORE

C.C. to M/S.M.VIMAL BOBBY CRIMSON Advocate on payment of
necessary charges

Order
in

CRL MP.6092/2021

IN

Crl.R.C.No. 359 of 2021

Date :08/06/2021

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RVR 15/06/2021