



BAIL SLIP

The Petitioner/Accused namely C.Thanuskodi,
S/o.Chinnaiyah, was directed to be released on bail vide order
dated 27.01.2015 made in CrI.MP.No.1/2014 in CrI.RC.1307/2014.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 06.12.2021

Judgment Pronounced on : 09.12.2021

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

CrI.R.C.No.1307 of 2014

C.Thanuskodi
S/o.Chinnaiyah .. Petitioner/Accused

Versus

State by
Sub-Inspector of Police,
Central Crime Branch (Team-4)
Egmore, Chennai - 8.
Now in Vepery
(Crime No.295 of 2007) .. Respondent/Complainant

Prayer : Criminal Revision Case is filed under Section 397 and
401 of Cr.P.C., against the judgment passed by the learned XVII
Addl. Sessions Judge, Chennai in C.A.No.196 of 2014 dated
05.12.2014 confirming the sentence passed in C.C.No.3073 of 2009
dated 05.07.2014 by the learned Chief Metropolitan Magistrate,
Egmore, Chennai and seeks to set aside the same.

For Petitioner : Mr.C.P.Palanichamy

For Respondent : Mr.L.Baskaran
Government Advocate
(Criminal Side)



ORDER

This Criminal Revision Case has been filed by the petitioner/accused, aggrieved by the judgment dated 05.07.2014 of the learned Chief Metropolitan Magistrate, Egmore, Chennai in C.C.No.3073 of 2009, thereby, finding the petitioner/sole accused guilty of the offence under Section 420 of Indian Penal Code and imposing a punishment of six months rigorous imprisonment and fine of Rs.5,000/- in default of payment of fine, to undergo six months simple imprisonment and the judgment of the learned XVII Additional City Civil Judge, Chennai dated 05.12.2014 in CrI. A. No. 196 of 2014, thereby, confirming the conviction and sentence imposed by the Trial Court.

2. On 13.06.2007, P.W.1 Maadhavan @ Maadhu, appeared before the Central Crime Branch, Chennai and lodged a complaint alleging that the petitioner/accused had taken a total sum of Rs.9,95,000/- and two sovereigns of gold jewel in all totally to a value of Rs.10,00,000/-, promising to sell the plot belonging to him by redeeming it from mortgage, but, however, vanished and absconded after receipt of the amount and thus cheated him. P.W.8 namely, Shankar, Inspector of Police, Central Crime Branch, Chennai received the same, registered a case in Crime No.295 of 2007 for an offence under Section 420 of Indian Penal Code, took up the case for investigation and filed a final report on 10.09.2009, proposing the accused guilty of the offence under Section 420 of Indian Penal Code.

3. The case was taken on file as C.C.No.3073 of 2009 and upon issuance of summons and copies to the accused, the accused denied the charges and stood trial. Thereafter, the prosecution examined the defacto complainant Maadhavan @ Maadhu as P.W.1; his friends Jayaraman, Ezhumalai, Damodaran as P.W.2 to P.W.4, who are said to have contributed Rs.2,00,000/- each towards the said amount of Rs.10,00,000/-; one Varadarajan, Manager of the Karnataka Bank as P.W.5; one Palani, the witness to the confession statement as P.W.6; one Veluchamy who is also witness to the confession statement as P.W.7; Shankar, the investigating officer in this case as P.W.8.

4. The prosecution also marked the complaint given by P.W.1 as Ex.P1, the statement of accounts of the bank account of P.W.4, Damodaran as Ex.P2, the First Information Report as Ex.P3 and the copies of the cheques issued by P.W.4 in the name of Welcome Hospital belonging to the accused as Ex.P5 and the prosecution rested its case.



5. Upon questioning the accused about the material evidence on record and the incriminating circumstances under Section 313 of Cr.P.C., the accused denied them as false. No evidence was let in on behalf of the defence. The Trial Court proceeded to hear the learned Assistant Public Prosecutor on behalf of the prosecution and the learned Counsel for the accused and by judgment dated 05.07.2014 found the accused guilty of the offence under Section 420 of Indian Penal Code.

6. The Trial Court has given its reasoning only in paragraph No.15. The Trial Court reasoned that P.W.1, the complainant, has deposed in his evidence that the accused received the money and thereafter, absconded. P.W.2 to P.W.4 have corroborated this statement. P.W.5, Bank Manager has stated that the cheque which was given by the accused in return of the amount to P.W.4, Damodaran, that the the same had returned dishonoured and therefore, held that the prosecution proved the charge of cheating and convicted the accused and imposed the above sentence.

7. Aggrieved by the said findings and conclusions, the petitioner herein filed CrI.A.No.196 of 2014 and by judgment dated 05.12.2014, the Appellate Court reasoned that firstly, the accused had issued Ex.P4 cheque in favour of P.W.4, the same must have been given by him only towards due repayment of the above sum and the accused has failed to explain why he issued the cheque. Further, the Appellate Court held that there was no defer petition which is on record and therefore, it is only the accused, who is in default in not cross-examining, therefore, the evidence of P.W.1 can be taken as such. The first Appellate Court also reasoned that even though there is no documentary proof, no prudent human being will go to the Police Station to lodge a vexatious complaint and held that the finding of the Trial Court as to the guilt of the petitioner/accused as correct and confirmed the sentence. Aggrieved by the same, the present Revision is before this Court.

8. Heard Mr.C.P.Palanichamy, learned Counsel for the petitioner and Mr.L.Baskaran, learned Government Advocate (Criminal Side) on behalf of the prosecution.

9. The contentions of the learned Counsel for the petitioner are that as per the complaint and statement of P.W.1, it may be seen that the accused received money for selling his plot and if he subsequently failed to sell the same, only a suit for specific performance would be the remedy and therefore, it is a case where criminal colour is sought to be given for civil



dispute. In any event, it is the submission that there is no express statement or evidence to show that the petitioner/accused had the intention to defraud from the inception of the transaction and therefore, the ingredients of Section 415 of Indian Penal Code and consequently Section 420 of Indian Penal Code are not made out.

10. It is his further contention that this is a case where absolutely there is no evidence for advancing such a huge sum of Rs.10,00,000/-. As a matter of fact, the investigating officer had also accepted the same. It is his further submission that the prosecution had also not placed any evidence that it is only the accused, who had been running Welcome Hotel. The learned Counsel for the petitioner further submitted that the version of P.W.1 that on account of trust, he did not obtain any receipt for payment of such a huge sum of Rs.9.95 lakhs, is totally unbelievable, especially, when there is no agreement of sale executed.

11. It is also contended that it is very unnatural for P.W.2 to P.W.4, who had funded P.W.1 to go to the house of the accused and hand over the money. Further, in the cross-examination, P.W.2 to P.W.4 admitted that they did not personally hand over the money and therefore, they are not at all in the knowledge whether the amount was paid to the accused or not. As far as the evidence of P.W.5 is concerned, there is no nexus between the offence and the alleged cheques and the bank statement of P.W.4, especially, when P.W.4 has not stated anything about the repayment by the accused by way of the cheque. The money transaction between P.W.4 and the accused totally dislodges prosecution case and finally, evidence of P.W.1 cannot also be taken for its face value as P.W.1 was not subjected to cross-examine, as he died before cross-examination. His evidence though cannot be discarded and should be of very little value and therefore, according to the learned Counsel for the petitioner, the finding of the Trial Court and the lower Appellate Court are absolutely perverse so as to be interfered by this Court.

12. The learned Counsel also relied upon the judgment of the Hon'ble Supreme Court in Dalip Kaur and Ors. Vs. Jagnar Singh and Ors.¹, for the proposition that if the dispute between the parties is the civil dispute resulting from a breach of contract for non-refunding the amount of advance the the same would not constitute an offence of cheating.

¹ (2009) 14 SCC 696



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13. The learned Counsel relied on the judgment of the Hon'ble Supreme Court in *Mitesh Kumar J. Sha Vs. The State of Karnataka and Ors.*², for the proposition that there is distinction between mere breach of contract and offence of cheating.

14. The learned Counsel relied upon the judgment in *Hridaya Ranjan Pd. Vema and Ors. Vs. State of Bihar and Ors.*³, again for the proposition that breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction.

15. The learned Counsel also relied upon the judgment of this Court in *Crl.O.P.No.28002 of 2019*, wherein the learned Judge of this Court has pointed out that there is a growing trend in business circles to convert the civil dispute into criminal so as to apply process.

16. He also relied upon the judgment of this Court in *Sunder Vs. State of Tamil Nadu*⁴ in *Crl.O.P.No.21519 of 2017* etc., to bring home the point that P.W.1 was not subjected to cross-examination and his evidence, though cannot be totally discarded, has to be given due probative value, by considering facts and circumstances of the case.

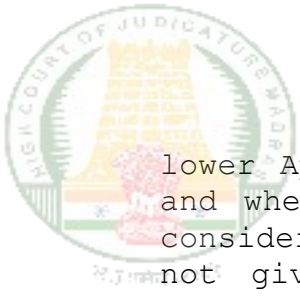
17. Per contra, the learned Government Advocate (Criminal Side) appearing on behalf of the respondent submitted that when the petitioner has chosen not to cross-examine P.W.1 to P.W.4, at the earliest opportunity, P.W.1, thereafter, passed away and only because of his default, he could not be cross-examined and therefore, the petitioner cannot take advantage of his own default. The action of the petitioner in absconding after receipt of money clearly amended to cheating and therefore, the offence under Section 420 of I.P.C is made out and this cannot be termed as a civil transaction. He would further submit that the well considered judgment of the Trial Court and the first Appellate Court need not to be interfered with.

18. I am afraid that I can agree with the learned Government Advocate (Criminal Side). This Court, in exercise of limited judicial review, can only see if the Trial Court and the

² MANU/SC/0986/2021

³ (2000) 4 SCC 168

⁴ MANU/TN/4182/2019



lower Appellate Court have rendered their findings on evidence, and whether such conclusion is in accordance with law. In my considered view, except for paragraph No.15, the Trial Court has not given any reason whatsoever for convicting the accused. This is a case where there is no proof for the agreement of sale as the same is said to be oral and there is no proof for the payment of money and the same is said to have been given as cash.

19. As a matter of fact, only the corroborative evidence comes from P.W.4, Damodaran, wherein he had stated that he had given his part of Rs.2,00,000/- as cheques. He, in this case, has deposed as follows:

“.....நான் ரூ.2 லட்சம் எதிரிக்கு கர்நாடகா பாங்க் காசோலையாக தலா 1 லட்சம் வீதம் ரூபாய் 2 லட்சம் கொடுத்தேன். 2005 ஆண்டுதான் கொடுத்தேன். எதிரியானவர் அதைபணமாக பெற்று கொண்டார்.....”

20. The said fact can also be seen in Ex.P2, statement of accounts and therefore, the entire case of P.W.1 that he paid the money on 19.02.2004 falls to ground. It is in this context, the judgment of this Court in Sunder Vs. State of Tamil Nadu, in respect of evidence of P.W.1, who was not cross-examined becomes relevant. In paragraph No.17 of the said judgment, the Court has categorically held that though the evidence of the witness, who is not cross-examined, will not get totally wiped out, its evidentiary value will depend upon the facts and circumstances of each case. In this case, in the absence of any agreement of sale, the receipt of payment, material contradiction between P.W.1 and P.W.4 as to the date of payment, the probative value of P.W.1's evidence is very less and to find the guilt of the petitioner on the basis of such evidence of P.W.1 would be a great risk, which may lead to miscarriage of justice.

21. Therefore, in my view, both the Trial Court did not even consider these vital aspects and therefore, committed serious flaw so as to be interfered with in the revisional jurisdiction. Similarly, the first Appellate Court has rendered two findings. Firstly, it has stated that there is no defer petition filed by the accused, which is factually incorrect. The further two reasons, that (i) the accused should have issued cheques only in repayment of the amount, and (ii) even though no documentary proof is there, no prudent man will lodge a vexatious complaint are mere presumptions. These stereotypical presumptions and surmises, cannot form basis from convicting the accused.



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22. Therefore, in my considered view, both the Trial Court and the lower Appellate Court erred in these vital aspects and a perusal of the evidence on record would show that there is absolutely nothing else on the record so as to point towards the guilt of the accused.

23. Therefore, this Criminal Revision Case is allowed. The Judgement of the learned XVII Additional City Civil Judge, Chennai dated 05.12.2014 in CrI.A.No.196 of 2014 and the learned Chief Metropolitan Magistrate, Egmore dated 05.07.2014 in C.C.No.3073 of 2009 are set aside. The petitioner/accused is acquitted of the charge by giving the benefit of doubt. Fine amount if any paid by the petitioner/accused shall be refunded to the petitioner/accused.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

grs

To

- 1.The XVII Addl. Sessions Judge,
Chennai.
- 2.Do Thro The Principal Sessions Judge,
Chennai.
- 3.The Chief Metropolitan Magistrate,
Egmore, Chennai.
- 4.The Sub-Inspector of Police,
Central Crime Branch (Team-4)
Egmore, Chennai - 8.
Now in Vepery.
- 5.The Public Prosecutor,
High Court of Madras.
- 6.The Section Officer,
Criminal Section,
High Court, Madras.

CrI.R.C.No.1307 of 2014

RSI (CO)
GN(29/12/2021)