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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.08.2021

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.1245 of 2019

R.Raja

...Petitioner/Appellant/Accused

Vs.

Stated represented by
The Inspector of Police,
Pallappatty Police Station,
Salem.

...Respondent/Respondent/Complainant

The Criminal Revision filed under Section 397 read with 401 of Code of Criminal Procedure seeking to set aside the order passed by the learned I Additional District and Sessions Judge, Salem, in Criminal Appeal No.69 of 2018 dated 23.04.2019 confirming the order of the learned Judicial Magistrate No.II, Salem, in C.C.No.138 of 2008 dated 27.03.2018 and allow the above criminal revision case.

For Petitioner : Mr.C.Selvaraju, Senior Advocate
for M/s.C.S.Associates

For Respondent : Mr.S.Sugendran
Government Advocate (Crl.Side)

ORDER

This criminal revision is preferred against the order passed by the learned I Additional District and Sessions Judge, Salem, in Criminal Appeal No.69 of 2018 dated 23.04.2019 confirming the order of the learned Judicial Magistrate No.II, Salem, in C.C.No.138 of 2008 dated 27.03.2018

2. The respondent police registered a case in Crime No.2020 of 2007 against the petitioner for the offence under Sections 420 and 506(ii) of IPC. After investigation laid a charge sheet



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before the learned Judicial Magistrate No.II, Salem, which was taken on file in C.C.No.138 of 2008. On completion of trial and hearing the arguments advanced on either side, the learned Magistrate not found the petitioner/accused guilty for the offence under Section 506(ii), however, found guilty for the offence under Section 420 IPC and convicted and sentenced him to undergo simple imprisonment for a period of two years with fine of Rs.1000/-, in default, to undergo simple imprisonment for a further period of three months. Challenging the same, the petitioner has filed an appeal before the learned Principal District and Sessions Judge, Salem, which was taken on file in C.A.No.69 of 2018 and the same was made over to the learned I Additional District and Sessions Judge, Salem. The learned Sessions Judge, after hearing both the parties, by judgment dated 23.04.2019, dismissed the appeal and confirmed the judgment of conviction and sentence passed by the trial Court. Aggrieved against the same, the petitioner is now before this Court with the present criminal revision case.

3. The learned counsel appearing for the petitioner would submit that the petitioner never received any amount and he never promised to get a Mini Bus Permit to the defacto complainant. There is no ingredients attracting Section 420 IPC. Even though, the trial Court and the lower appellate Court have not found the petitioner guilty for the offence punishable under Section 506 (ii), but erroneously come to the conclusion that the petitioner has committed offence under Section 420 IPC. The defacto complainant made allegation against the petitioner that he gave Rs.4,60,000/- believing the promise said to have made by the petitioner to get a Mini Bus Permit. There is no single piece of proof for the payment of Rs.4,60,000/- by the petitioner. It is to be noted that no person will pay such a huge sum of money without getting any document authorization. Hence the very payment itself is not proved by the prosecution and there is no question of committing offence under Section 420 IPC. Both the Courts below have wrongly convicted the petitioner without any proof and only based on the interested witnesses, conviction has been recorded against the petitioner, which warrants interference.

4. The learned Government Advocate (Crl.Side) appearing for the petitioner would submit that P.W.1 is complainant and the petitioner received a sum of Rs.4,60,000/- from P.W.1 and P.W.5 and promised to get a Mini Bus Permit and based on such assurance only P.Ws.1 & 5 have paid the amount. But, the petitioner has not given any Permit as promised by him and hence when P.Ws.1 and 5 demanded the money, the petitioner threatened them with dire consequence and cheated the defacto complainant. In fact the petitioner admitted that he received money from the



defacto complainant, but he took a defence that he repaid the amount, but there is no proof for the same. Both the Courts below have rightly appreciated the evidence on record and convicted the petitioner for the offence under Section 420 IPC, which does not call for any interference of this Court.

5. Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Crl.Side) appearing for the respondent police and perused the materials available on record.

6. It is the case of the prosecution that the petitioner on a false promise in order to cheat the defacto complainant has received a sum of Rs.4,60,000/- from P.W.1 and P.W.5. The petitioner did not get any permit for P.Ws.1 & 5 as promised by him and when P.W.1 demanded money, the petitioner threatened him with dire consequences. Hence the present case has been registered against him.

7. This Court, while exercising revisional jurisdiction, cannot exercise power of the Appellate Court and this Court, being a revisional Court, cannot sit in the arm chair of appellate Court and it has no power to re-assess the evidence and substitute its views on findings of fact. Further, while deciding the revision, the Court can only see whether there is any perversity in appreciation of evidence by the Courts below.

8. It is seen that charges were framed against the petitioner for the offence under Section 420 and 506(ii) of IPC and after trial, the trial Court not found the accused guilty for the offence under Section 506(ii) of IPC and found guilty for the offence under Section 420 of IPC. A perusal of the records show that the main allegation against the petitioner is that he received a sum of Rs.4,60,000/- from P.Ws.1 & 5 and assured to get Mini Bus Permit. P.Ws.1 & 5 during examination as witness have clearly deposed that the petitioner received a sum of Rs.4,60,000/- for getting Mini Bus Permit, but the petitioner neither got a Permit nor repaid the money. When P.Ws.1 & 5 asked to repay the money, since the petitioner could not get a Permit as promised by him, but he did not repay the amount fully and he paid only Rs.1.00 lakh. It is seen that during cross examination, the petitioner did not dispute the fact of receiving of money and also did not dispute the fact that he is working President of Mini Bus Operators Association. During cross examination, the petitioner has put a suggestion that P.Ws.1 & 5 are Financiers and they are lending money for exorbitant interest and in order to extract money, false case has been foisted, but, however, the petitioner in cross examination has admitted that he received money from the defacto complainant. From the evidence of P.Ws. 1 & 5, prosecution has



proved its case beyond all reasonable doubts. Hence this Court does not find any perversity in appreciation of evidence by the Courts below.

9. Accordingly, this criminal revision case is dismissed. The trial Court is directed to secure the petitioner to undergo remaining period of imprisonment, if any.

Sd/-

Assistant Registrar(CS III)
//True Copy//

Sub Assistant Registrar

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To

- 1.The I Additional District and Sessions Judge, Salem.
- 2.The Judicial Magistrate No.II, Salem.
- 3.The Inspector of Police, Pallappatty Police Station, Salem.

+1CC to M/s.C.S.Associates, Advocate, Sr.No.42345

CrI.R.C.No.1245 of 2019

PVS (CO)

K.RK. (04.10.2021)