BAIL SLIP

S.Thangamayan, S/o.Soundarapandiyan aged about 27(2016) Accused No.3 was released on bail vide Court order dated 21.06.2016 made in Crl MP(MD)No.4949 of 2016 in Crl Rc(MD)No.417 of 2016.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	**08.02.2021**
DELIVERED ON	**22.02.2021**

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

Crl.RC(MD)No. 417 of 2016

S. Thangamayan ...Petitioner/Appellant/Accused No.3

Vs.

State rep. By the
Inspector of Police,
Valandhur Police Station,
Madurai District.
(In Crime No. 90 of 2010) ... Respondent/Respondent/Complainant

PRAYER: Criminal Revision filed under Section 397 r/w 401 of the Criminal Procedure Code, to call for the records and set aside the conviction and sentence imposed against the petitioner by the learned Judicial Magistrate No.II, Usilampatti in C.C. No. 70 of 2011 vide order, dated 28.09.2012 and the conviction and sentence confirmed and modified by the learned V Additional District and Sessions Judge, Madurai in C.A. No. 71 of 2012, vide order, dated 15.04.2016.

For Appellant : Mr.N. Karthik Kanna

For Respondent : Mrs.M. Anantha Devi,
Government Advocate (crl. Side)

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O R D E R

This Criminal Revision Case is filed by the revision petitioner/A-3, as against the conviction and sentence passed by the learned Judicial Magistrate No.II, Usilampatti, in C.C.No.70 of 2011, dated 28.09.2012, as confirmed by the learned V Additional District and Sessions Judge, Madurai, in C.A.No.71 of 2012, dated 15.04.2016.

2. The petitioner/A-3 and the other accused persons were tried before the trial Court. The petitioner/A-3 was charged for the offences under Sections 420, 471, 294(b), 506(i) and 468 r/w 34 of IPC. The trial Court, in conclusion of the trial, by judgment, dated 28.09.2012, in C.C.No.70 of 2011, found the accused persons guilty. The petitioner herein/A-3 was convicted and sentenced to undergo Three years rigorous imprisonment and fine of Rs.2,000/-in default to undergo simple imprisonment of 15-days for the offence under Section 420 of IPC and to undergo Two years rigorous imprisonment and fine of Rs.1,000/-in default to undergo simple imprisonment of 15 days for the offence under Section 471 of IPC and fine of Rs.500/-in default to undergo simple imprisonment of 15-days for the offence under Section 294(B) of IPC and rigorous imprisonment of Three months and fine of Rs.500/-in default to undergo simple imprisonment of 15 days for the offence under Section 506(i) of IPC and rigorous imprisonment of Two years and fine of Rs.1000/-in default to undergo simple imprisonment of 15 days for the offence under Section 468 r/w 34 of IPC.

3. As against the judgment of conviction and sentence, the accused and other persons preferred an appeal before the learned V Additional District and Sessions Judge, Madurai, in C.A.No.71 of 2012. The lower appellate Court, by judgment dated 15.04.2016, partly allowed the appeal. Aggrieved over the same, the petitioner/A-3 has preferred the instant criminal revision case.

4. The case of the prosecution is that the 1st accused is the owner of harvestor vehicle bearing Regn. No.TN-58-L-8269. A-2 & A-4 approached the defacto complainant and requested to finance by mortgaging the above said vehicle belonged to the 1st accused. Accordingly, on 19.05.2010, P.W.1, P.W.2 and P.W.3 went to Piraviyampatti and met A-2, A-3 and A-4. A-3 was introduced as a relative of the 1st accused by the 2nd and 4th accused. P.W.2 contacted A-1 through telephone and ascertained his consent. Thereafter, P.W.1 received the original RC book, transfer of ownership form, cash receipt and other documents from A3 and handed over a sum of Rs.4,20,000/-to him.

5. The further case of the prosecution is that A-2 to A-4 introduced A-5 to drive the vehicle to Karur and P.W.3 sent along with A-5 to drive the vehicle to Karur. When the vehicle was in half way A-5 cheated P.W.3 and brought back the vehicle. On receiving the information, P.W.1 and P.W.2 started to search the vehicle throughout the night and on next day found the same in front of the A1's house. It is alleged that they have requested A-1 and A-3 to return back the vehicle but they refused and told that the documents given to them are fake, scolded them, in abusive language and threatened to kill P.W.1 to P.W.3. Hence, P.W.1 requested the local influential persons P.W.6 to P.W.8 to mediate the matter which failed. So after 11 days i.e.,31.05.2010 P.W.1 registered complaint before the Sub-Inspector of Police, Valandhur Police station, Madurai. The police received the complaint and had given receipt in

CSR. 45 /10 and enquired the matter. No accused attended the enquiry and P.W.1 to P.W.3 went back to Karur. On 05.06.2010, P.W.1 got information that the vehicle is in a yard and he came to the yard and took the vehicle and handed over the same to the Valandhur Police Station and registered a new complaint. For the 2nd complaint the police registered the FIR in Cr. NO.90 of 2010 for the offences under Sections 420, 506(i) and 294(b) of IPC. Moreover, they came to know that A-2 Ragu had falsely stated his name as Manikandan. The respondent police laid charge sheet against the accused for the offences under Sections 468, 471, 420 r/w 34, 506(1) and 294(b) of IPC.

6. Heard Mr.N. Karthik Kanna, learned counsel appearing for the revision petitioner and Mrs.M. Anantha Devi, Government Advocate (crl. Side) appearing for the respondent/State and perused the material documents available on record.

7. Mr.N. Karthik Kanna, learned Counsel for the revision petitioner submitted that the Court below failed to appreciate none of the ingredients for offence under Section 420 of IPC is satisfied and there is no iota of evidence for the payment of Rs.4,20,000/- alleged to have been cheated by A-3. He further submitted that there is an inordinate delay in registering the FIR and 11 days delay in lodging the complaint and 6 days in registering the FIR and the delay is left unexplained. He further submitted that no handwriting expert's opinion was obtained to ascertain the genuineness of the signature and the said documents are empty forums without filing any details and it has no evidentiary value at all. He further submitted that there is no evidence adduced by the defacto complainant for possession of money before getting cheated and he himself admitted the money is a Black money. He further submitted that there is no document to show that the alleged involvement of Rs.4,20,000/- and A-3 is entitled to exonerate from the charge under Section 420 of IPC. Therefore, he prays for interference.

8. Per contra, the learned Government Advocate (Crl. Side) submitted that the case of the prosecution is supported by the evidences of PWs.1 to 12. She further submitted that the prosecution has proved the case against the petitioner based on the evidence of the prosecution witnesses and documents. Therefore, she prays for dismissal.

9. The petitioner/A-3 has filed this Criminal Revision case to set aside the conviction and sentence passed by the learned Judicial Magistrate No.II, Usilampatti, in C.C.No.70 of 2011, dated 28.09.2012, as confirmed by the learned V Additional District and Sessions Judge, Madurai, in C.A.No.71 of 2012, dated 15.04.2016.

10. The respondent police has laid charge sheet against all the accused persons and the petitioner/A-3 herein was charged for the offences under Sections 468, 471, 420 r/w 34, 506(i) and 294(b) of IPC.

11. The petitioner herein/A-3 was convicted and sentenced to undergo Three years rigorous imprisonment and fine of Rs.2,000/-in default to undergo simple imprisonment of 15-days for the offence under Section 420 of IPC and to undergo Two years rigorous imprisonment and fine of Rs.1,000/-in default to undergo simple imprisonment of 15 days for the offence under Section 471 of IPC and fine of Rs.500/-in default to undergo simple imprisonment of 15-days for the offence under Section 294(B) of IPC and rigorous imprisonment of Three months and fine of Rs.500/-in default to undergo simple imprisonment of 15 days for the offence under Section 506(i) of IPC and rigorous imprisonment of Two years and fine of Rs.1000/-in default to undergo simple imprisonment of 15 days for the offence under Section 468 r/w 34 of IPC.

12. In C.A. No.71 of 2012, A-3 alone was convicted under Section 420 of IPC., only and modified the sentence to six months. Whether the charge under Section 420 of IPC., as against A-3 is proved by prosecution?.

13.The ingredients of Section 420 of IPC is extracted hereunder;

420 : Cheating and dishonestly inducing delivery of property :

> ***"Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine".***

14. Charge was framed under Section 420 r/w 34 of IPC., against all the five accused persons. All the accused persons were acquitted except A-3. All the offences under Sections 471, 468, 506 (1) and 294(b) of IPC against A-3 were not proved by the prosecution. Therefore, only charge is 420 of IPC. Whether, A-3 had received a sum of Rs.4,20,000/-from P.W.1 and cheated him. P.W.1 is stated to be a financier. Without any document he handed over the huge amount to A-3 is unbelievable one. Ex.P.7 is only a blank cash receipt. No date and no particulars about to whom it was given. Signature in Ex.P.6 & Ex.P.7 were not analysed by the handwriting expert. The Court can compare the signature. But, prosecution has failed to produce admitted signature of A-1, who signed in Ex.P.6 & Ex.P.7. Further, except oral evidence, no documents filed to prove that the amount was given to A-3 cash receipt was signed only by A-1. But A-1 was acquitted from all charges. Atleast, identification parade might have been conducted to identify A-3.

15. In the case of ***Mohd Iqbal M.Shaikh and Others Vs. State of Maharastra reported in AIR 1998(4) SCC 494,*** where it mandates the conduct of IT parade, if the witness did not know the accused persons by name but can only identify from their appearance.

Admittedly, no identification parade was conducted. But the Courts below failed to appreciate the ratio laid down by the Hon'ble Apex Court.

16. Therefore, both the Courts below erred in giving finding regarding A-3. Hence, this Court is inclined to interfere with the findings of the Courts below.

17. In view of the foregoing discussions and reasonings this Criminal Revision Case is allowed and set aside the order, dated 15.04.2016 in C.A. No.71 of 2012 passed by the V Additional District and Sessions Judge, Madurai, by modifying the Judgment, dated 28.09.2012in C.C. No.70 of 2011, passed by the learned Judicial Magistrate No.II, Usilampatti. Regarding the vehicle, the learned Judicial Magistrate No.II, Usilampatti is directed to pass an order, if return of property petitioner is filed.

Sd/-

Assistant Registrar (crl side)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

ksa

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

1.The Judicial Magistrate No.II, Usilampatti,
Madurai District.

2. The V Additional District and Sessions Judge,
Madurai.

3. The Inspector of Police,
Valandhur Police Station,
Madurai District.

4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

5. The Section Officer, Criminal Section,(2 copies)
Madurai Bench of Madras High Court,
Madurai.

Order made in
Crl.RC(MD)No.417 of 2016
22.02.2021

VB (04.03.2021) 5P 7C