



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 05.07.2021
PRONOUNCED ON : 29.07.2021
CORAM

THE HONOURABLE MR.JUSTICE **SATHI KUMAR SUKUMARA KURUP**

CRL.R.C.(MD) No.468 of 2017

Kovai Balu @ Balakrishnan : Petitioner/Appellant/
Accused No.1

Vs.

The Inspector of Police,
District Crime Branch,
Sivagangai District.
(Crime No.2 of 2003)

: Respondent/Respondent/
Complainant

PRAYER: Criminal Revision Petition filed under Section 397 Cr.P.C. r/w. Section 401 of Criminal Procedure Code, to set aside the judgment before the learned District Sessions Court, Sivagangai in Crl.A.No.31 of 2013, dated 08.01.2016 and the judgment, dated 01.07.2013 passed by the learned Judicial Magistrate No.II, Sivagangai, in C.C.No.23 of 2012 by convicting the petitioner.

For Petitioner : Mr.R.Rajesh

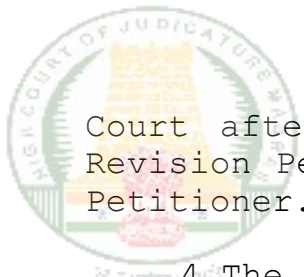
For Respondent : Mr.T.Senthilkumar
Government Advocate

ORDER

This Criminal Revision Petition is filed to set aside the judgment of the learned District Sessions Judge, Sivagangai in Crl.A.No.31 of 2013, dated 08.01.2016 and the judgment, dated 01.07.2013 confirming the conviction ordered by the learned Judicial Magistrate No.II, Sivagangai, in C.C.No.23 of 2012.

2.Heard Mr.R.Rajesh, learned Counsel for the Revision Petitioner and Mr.T.Senthil Kumar, learned Government Advocate (Crl.side) appearing for the respondent.

3.When the case up for hearing, Mr.R.Rajesh, learned Counsel for the Revision Petitioner submitted that the Revision Petitioner is the first accused before the Trial Court. Already, A2 and A3 were acquitted by the Trial Court based on the same set of evidence. Therefore, the Revision Petitioner is entitled to acquittal. Further, Mr.R.Rajesh, learned Counsel for the Revision Petitioner submitted that if this Court feels to confirm the judgment of Trial



Court after hearing the arguments, the sentence imposed upon the Revision Petitioner may be reduced, considering the age of Revision Petitioner.

4. The learned Counsel for the Revision Petitioner relied on the following Rulings of the Honourable Supreme Court:

- (1) (2009) 17 SCC 438 (**Ramesh Vithalrao Thakre and another vs Sate of Maharashtra**)
(2) (2013) 10 SCC 391, **Prabhat alias Bhai Narayan Wagh and others vs State of Maharashtra**
(3) (2016) 12 SCC 389, **Ram Laxman vs State of Rajasthan**
(4) (2019) 11 SCC 758, **Raju vs State of Madhya Pradesh**

5. Mr. T. Senthil Kumar, learned Government Advocate (Crl. side) appearing for the respondent submitted that this is a case, where the accused along with other two persons, who were already acquitted by the learned Trial Judge, had collected huge amount from persons, the de-facto complainant, by offering them job in Government service by claiming to be closed to the AIADMK Ministers and therefore, he can get them jobs. The first accused is alleged to have indulged in cheating the job seekers, numbering 56, (1. Rajagopal-Rs. 60,000/-, 2. Balakannan-Rs. 50,000/-, 3. Alagusundaram-Rs. 75,000/-, 4. Thangarasu-Rs. 60,000/-, 5. Samikannu-Rs. 50,000/-, 6. Venugopal-Rs. 50,000/-, 7. Kannan-Rs. 60,000/-, 8. Raja Mohamed-Rs. 50,000/-, 9. Valanarasan-Rs. 50,000/-, 10. Ganesan-Rs. 40,000/-, 11. Prabhu-Rs. 60,000/-, 12. Ganesamoorthy-Rs. 60,000/-, 13. Kavitha-Rs. 50,000/-, 14. Nageshwari-Rs. 50,000/-, 15. Ganesan-Rs. 60,000/-, 16. Jawahar-Rs. 50,000/-, 17. Raja Amuthan-Rs. 50,000/-, 18. Alagarsamy-Rs. 50,000/-, 19. Prabhakaran-Rs. 60,000/-, Dharmar-Rs. 50,000/-, 21. Kavitha-Rs. 50,000/-, 22. Ravikumar-Rs. 50,000/-, 23. Mahendran-Rs. 50,000/-, 24. John Rasa-Rs. 60,000/-, 25. Saravanan-Rs. 50,000/-, 26. Dhanabalan-Rs. 50,000/-, 27. Maheshwari-Rs. 50,000/-, 28. Murugan-Rs. 60,000/-, 29. Kalaitangam-Rs. 50,000/-, 30. Vellaidurai Pandi-Rs. 50,000/-, 31. Muthukumar-Rs. 50,000/-, 32. Elil Arasan-Rs. 50,000/-, 33. Ramya-Rs. 50,000/-, 34. Bharatharathna-Rs. 50,000/-, 35. Amstrang-Rs. 85,000/-, 36. Manikandan-Rs. 60,000/-, 37. Sekar-Rs. 1,50,000/-, 38. Senthilkumar-Rs. 45,000/-, 39. Kumar-Rs. 1,50,000/-, 40. Adaikalam-Rs. 1,50,000/-, 41. Arutselvan-Rs. 65,000/-, 42. Umamaheshwari-Rs. 50,000/-, 43. Dinesh-Rs. 1,00,000/-, 44. Rajendran-Rs. 50,000/-, 45. Dinesh-Rs. 50,000/-, 46. Palanikumar-Rs. 60,000/-, 47. Muthukrishnan-Rs. 50,000/-, 48. Ganapathy-Rs. 50,000/-, 49. Kalaiarasan-Rs. 75,000/-, 50. Nagarasan-Rs. 50,000/-, 51. Meenatchisundaram-Rs. 50,000/-, 52. Thangalakshmi-Rs. 40,000/-, 53. Shankar-Rs. 50,000/-, 54. Saravanan-Rs. 50,000/-, 55. Srirangan Selvan-Rs. 50,000/- and 56. Subramanian-Rs. 55,000/-) to the tune of Rs. 33,50,000/-. The defacto complainants were examined before the Court of the learned Judicial Magistrate-II, Sivagangai.



6. During arguments, Mr.T.Senthil Kumar, learned Government Advocate had also submitted that the petitioner is an habitual offender indulged in very same offence throughout Tamil Nadu and various cases have been registered against him in Coimbatore and other districts. He is a native of Coimbatore and has cheated the job seekers in and around Madurai and Sivagnagai to the tune of Rs.33,50,000/-, which had resulted in registration of a case by the District Crime Branch resulting in laying of charge and trial. He further submitted that at the time pronouncing the judgment before the District Sessions Judge, the petitioner absconded and therefore, the learned District Sessions issued non bailable warrant against him on 19.01.2016.

7. After reply by Mr.T.Senthil Kumar, learned Government Advocate (Crl.side), Mr.R.Rajesh, learned Counsel for the petitioner submitted that if the Court arrives at a conclusion that the concurrent finding of the Trial Court and the Appellate Court is justified and the revision has no merits, the learned Counsel for the Revision Petitioner prayed the Court to consider the advanced age of the accused and the date of occurrence and therefore, sought a lesser sentence. Also, he offered that the Revision Petitioner is ready to settle the dues to the parties.

8. The Revision Petition was filed in the year 2017 with the petition to condone the delay in filing the revision, whereupon, he had stated that the judgment of conviction by the learned District Sessions Judge came to his knowledge only in the month of February 2017, which is not true and he had been absconded from 2011 and in view of the long abscondance, the learned Judicial Magistrate-II, Sivagangai, had issued non bailable warrant against the petitioner on 03.10.2012. With very difficulty, the trial had been concluded. The conduct of the Revision Petitioner in prolonging the proceeding before the Trial Court alone had caused disappointment to the witnesses, who had lost huge amount to the fraud played by the Revision Petitioner. Therefore, the Revision Petition is to be dismissed.

9. On perusal of the judgment of the learned Judicial Magistrate-II, Sivagangai, in C.C.No.23 of 2012, nothing is found perverse. Based on proper appreciation of evidence, the learned District Sessions Judge, Sivagangai, in C.A.No.31 of 2013, had arrived at finding that the finding of guilt recorded by the Trial Court does not warrant any interference and therefore, dismissed the appeal and confirmed the conviction imposed on the accused for offence under Section 420 IPC to undergo three years rigorous imprisonment and fine of Rs.5,000/- and in default, to undergo one month simple imprisonment.

10. The submissions of Mr.R.Rajesh, learned Counsel for the Revision Petitioner regarding the grounds of revision cannot at all

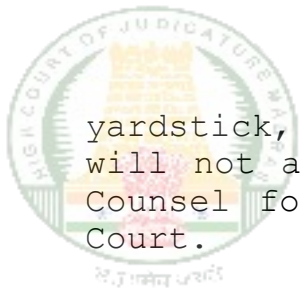


be accepted. The Revision Court cannot go into the evidence and finding, as the Appellate Court. The power of the Revision Court is restricted, unlike the powers of Appellate Court. The Revision Court can exercise discretion warranting interference in the findings arrived at by the Trial Court or the Appellate Court, only if the finding of either the Trial Court or the Appellate Court is perverse. Noting is found perverse on perusal of the judgment of the learned Trial Judge as well as the Appellate Judge. Therefore, the revision lacks merits and is to be dismissed.

11.The reliance placed upon the reported rulings of the Honourable Supreme Court by the learned Counsel for the Revision Petitioner, referred to supra, will not hold good regarding the facts of the case involved in this case. The facts of the reported rulings are based on the facts in a murder of trial, where, there were contradictions in the testimony of the witnesses. Therefore, for the same set of evidence, if there are acquittal for the co-accused, the other accused is also granted the benefit. There are contradictions between the witnesses. Here, in the case on hand, the prosecution case had been proved against the accused, who is alleged to have cheated the job seekers to the tune of Rs.33,50,000/- on the pretext that he is closed to Ministers of AIADMK party and he will arrange Government jobs for them and collected amount of Rs.33,50,000/-. In the judgment of the learned Judicial Magistrate-II, Sivagangai, he had discussed the evidence of witnesses, who had deposed evidence.

12.Not only that, the other co-accused are said to have been the people, who introduced the job seekers to the accused. The learned Trial Judge had acquitted the accused along with co-accused regarding the charges under Sections 120(B), 467 and 471 IPC. But, this accused alone was convicted for the offence under Section 420 IPC. The documents relied on by the learned Trial Judge to arrive at a conclusion against the accused, were marked as Ex-P2 to Ex-P9, wherein, the accused the petitioner herein, himself had written in his own hand writing and signed. He is alleged to have used the letter pad of the Labour Union belonging to the AIADMK party for recommending jobs under Ex-P6 and also he had written down in his own hand writing in a 52 page note book detailing the amount received from each of the complainants, which was marked as Ex-P5.

13.Therefore, the reliance placed upon by the learned Counsel for the Revision Petitioner referred to supra regarding the criminal trials, stands on a different footing from criminal trial for the offences under Sections 406 and 420 IPC, which are borne out of records/documents. Generally, murder cases and attempt to murder cases are based only on oral testimony, whereas, cases under cheating, fraud, breach of trust, misappropriation, corruption, embezzlement, and vigilance case, based upon documents, which are considered as white color crimes, and for those cases, the



yardstick, that is applied through criminal trial for murder cases, will not apply. Therefore, the Rulings relied upon by the learned Counsel for the petitioner referred to supra are rejected by this Court.

14.This revision is filed by the accused before the learned Judicial Magistrate-II, Sivagangai. The grounds of revision cannot at all be accepted. The Revision Court, even though High Court, does not have the power to reassess the evidence.

15.After completion of trial, the learned Judicial Magistrate-II, Sivagangai, had found the accused guilty and convicted him and sentenced him to undergo six years rigorous imprisonment and a fine of Rs.5,000/-. Aggrieved by the order of the learned Judicial Magistrate-II, Sivagangai, the accused had preferred an appeal in Crl.A.No.31 of 2013. After hearing the both sides, the learned District Sessions Judge, Sivagangai, had dismissed the appeal, against which, the revision petitioner had filed this revision before this Court.

16.The discretion exercised by the Revision Court is perverse when compared to the powers exercised under Cr.P.C., concerning the appeals. Here, the order of the learned Judicial Magistrate had been confirmed by the Appellate Judge. Aggrieved by the appeal being dismissing and the judgment of conviction pronounced by the learned Judicial Magistrate being confirmed, this Revision had been filed.

17.Honourable Supreme Court in the case of **State represented by the Drugs Inspector vs Manimaran**, reported in (2019) 13 SCC 670, held that the Revision Court cannot go into the concurrent findings:

"D.Criminal Procedure Code, 1973 - S.401 - Revisional jurisdiction - Scope - Revisional Jurisdiction of High Court different from appellate jurisdiction - High Court, in revisional jurisdiction cannot interfere with concurrent findings of facts unless perverse or arrived at ignoring material evidence."

18.This Court cannot exercise the discretion in matters dealt with by the Appellate Court. Only if the findings of either the Trial Court or the Appellate Court is perverse, this Court can interfere. In the light of the above, the point for consideration is answered in against the Revision Petitioner and in favour of the respondent.

19.In the result, this Criminal Revision case is dismissed. The learned Judicial Magistrate-II, Sivagangai, is directed to issue warrant to the accused and undergo the imprisonment. The period already undergone is set off.



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20.Registry is directed to send the copy of the order to the learned Chief Judicial Magistrate, Sivagangai, for follow up.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

cmr

To

- 1.The Chief Judicial Magistrate, Sivagangai,
- 2.The District Sessions Judge, Sivagangai.
- 3.The Judicial Magistrate No.II, Sivagangai.
- 4.The Inspector of Police,
District Crime Branch,
Sivagangai District.

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