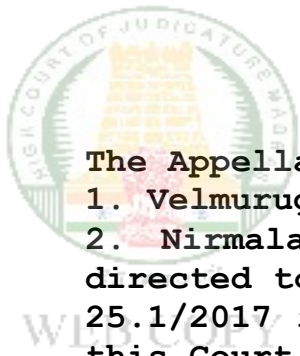




Bail Slip

The Appellants/Accused 1&2 Namely

**1. Velmuruganantham @ Anandhan, Male, aged 67, S/o.Thangavel Pillai
2. Nirmala Female aged 62, W/o.Velmuruganantham @ Anandhan were
directed to be released on bail as per the order of this court dated
25.1/2017 in CrI.MP(MD)737/2017 in CrI.RC(MD)87/2017 on the file of
this Court.**

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 24.02.2021

Pronounced on : 20.04.2021

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

CRL.RC(MD).No. 87 of 2017

1.Velmuruganantham @ Anandhan

2. Nirmala :Petitioners / Appellants/Accused No.1&2

Vs.

State rep. by

The Inspector of Police,

District Crime Branch,

Sivagangai District.

(Crime No. 4 of 2006)

: Respondent/Respondent/Complainant

PRAYER:- Criminal Revision Case filed under Section 397 r/w. 401 Cr.P.C., against the conviction and sentence of imprisonment passed by the learned Sessions Judge of Mahila Fast Track Court, Sivagangai, in C.A.No.32 of 2015 dated 10.01.2017 confirming the Judgment of the learned Judicial Magistrate No.II, Sivagangai in C.C.No. 97 of 2012, dated 26.05.2015.

For petitioner : Mr.G. Thiruvarut Selvan

For Respondent : Mrs. S.E. Veronica Vincent

Government Advocate (Crl. Side)

ORDER

This Criminal Revision is directed against the concurrent Judgments of conviction passed in C.A.No.32 of 2015 dated 10.01.2017 on the file of the Mahila Fast Track Court, Sivagangai and the Judgment made in C.C.No.97 of 2012, dated 26.05.2015 on the file of the Court of Judicial Magistrate No.II, Sivagangai.

2. The revision petitioners are the accused 1 and 2 in C.C.No.97 of 2012 on the file of the Court of Judicial Magistrate No.II, Sivagangai. The respondent police, on the basis of the complaint lodged by one Jeyamuniyandi, registered a case in Crime No. 4 of 2006 for the offences under Sections 420 and 506(i) IPC. After completion of the investigation, the respondent police has



laid a final report against the three accused under Sections 420 and 506(ii) IPC and the same was taken on file in C.C.No. 97 of 2012 on the file of the Court of the Judicial Magistrate No.II, Sivagangai.

3. During trial, the prosecution in order to prove its case examined four witnesses as PW.1 to PW.4 and exhibited 8 documents as Exs.P1 to P8. The accused have adduced neither oral nor documentary evidence.

4. The learned Judicial Magistrate, upon considering the evidence adduced and on hearing the arguments of both sides, has passed the Judgment on 26.05.2015 acquitting the first accused for the offence under Section 506(ii) IPC and the third accused for the offence under Section 420 IPC and convicting the accused 1 and 2 for the offence under Section 420 IPC and sentenced them to undergo 2 years Simple Imprisonment and to pay a fine of Rs.3,000/- each in default to undergo one month Simple Imprisonment. Aggrieved by the said Judgment of conviction, the accused 1 and 2 have preferred an appeal in C.A.No.32 of 2015 and the learned Sessions Judge of Mahila Fast Track Court, Sivagangai, upon considering the materials on record and arguments of both sides, has passed the impugned Judgment on 10.01.2017 dismissing the appeal and thereby, confirming the Judgment of conviction and sentence imposed by the trial Court. Aggrieved by the dismissal of the Criminal appeal, the accused 1 and 2 have come forward with the present revision.

5. Whether the impugned Judgment passed by the learned Sessions Judge of Mahila Fast Track Court, Sivagangai in C.A.No.32 of 2015 dated 10.01.2017 confirming the Judgment of the learned Judicial Magistrate No.II, Sivagangai in C.C.No. 97 of 2012, dated 26.05.2015 is liable to be set aside? is the point for consideration.

6. Before entering into the further discussion, it is time to remind myself about the restricted or limited jurisdiction of this Court under Sections 397 and 401 Cr.P.C., The revision jurisdiction is one of the supervisory jurisdiction for correcting miscarriage of justice and the said revisional power cannot be equated with the power of an Appellate Court nor can it be treated as a second Appellate jurisdiction. Generally, it would not be appropriate for the High Court to re-appreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as Sessions Judge in appeal unless any glaring feature is brought to the notice of this Court, which would otherwise tantamount to gross miscarriage of justice. It is settled law that when Appellate Court has given its findings after reassessing the entire evidence, this Court cannot sit in the arm chair of the Appellate Court and reassess the evidence and substitute its views on finding of facts. While exercising the revisional jurisdiction there is absolutely no scope for re-appreciation of entire evidence once again. But certainly if



the appreciation of evidence is tainted with perversity that can be interfered with. It is also settled law that even if an alternative view is possible, this Court while exercising the revisional jurisdiction, cannot substitute its own view, in lieu of the concurrent views of the courts below. Bearing the above legal position in mind, let us consider the case on hand.

7. It is the case of the job racketing. The relationship not in dispute is that the first accused is the husband of the second accused and that the third accused is the son of the accused 1 and 2. The case of the prosecution is that the first accused had been running Muthu and Swamy Air Travels at No.9, Arunachalam Chettiyar Street, Sekkalai, Karaikudi, that the accused had published advertisements in Tamil Dailies to the effect that Visa, ticket and everything was ready to join in a job in Malaysia and directed the interested persons to contact them directly or through telephone, that the witnesses PW.1 to PW.3 had approached the accused and the accused had directed them to pay a sum of Rs.90,000/- per person, that the defacto complainant Jayamuniyandi and PW.1 Murugan had jointly paid Rs.1,55,000/- to the accused, that PW.2 had also paid Rs.55,000/- to the first accused on the same day, that PW.3 Sekar and witness Selvaraj had also paid Rs.90,000/- each to the first accused in the presence of the accused 2 and 3, that after receiving the above payments, the accused had neither taken any steps to send the witnesses abroad nor returned the amount and that on 03.05.2005 when the witnesses had demanded returning of the amount, the first accused had threatened the witnesses to return the documents or else he would kill them and thereby, caused criminal intimidation.

8. In the case on hand, it is the specific case of the prosecution that the accused have given false promises and assured the witnesses to provide jobs and believing their words, the witnesses said to have made payments and after receiving the amounts, the accused have neither fulfilled their promise in sending the witnesses abroad nor returned their money.

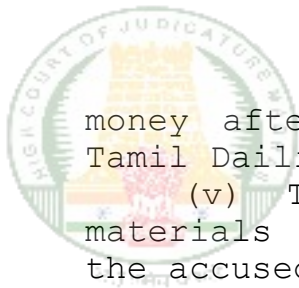
9. Now, let us consider the grounds of attack raised by the revision petitioner :

(i) Though the occurrence was allegedly held on 23.10.2003, the complainant was lodged only on 24.04.2006. The prosecution has not offered any acceptable explanation for the long delay of three years

(ii) The non-examination of the defacto complainant Jeyamuniyandi is fatal to the prosecution case.

(iii) Though the prosecution has alleged that the accused using the bogus passport has cheated the defacto complainant, they have not produced the bogus passport.

(iv) Though the prosecution has alleged that the defacto complainant and other witnesses approached the accused and gave



money after seeing the advertisement in Tamil Dailies, the said Tamil Dailies were not produced by the prosecution.

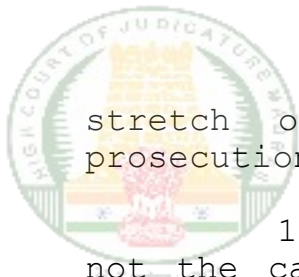
(v) The prosecution has not produced any documents or materials to strengthen the offence under Section 420 IPC against the accused.

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10. Regarding the delay, no doubt, the defacto complainant lodged the complaint on 24.04.2006 for the incident allegedly occurred on 23.10.2003. It is the specific case of the prosecution that the defacto complainant and the witnesses after seeing the news paper advertisements had approached the accused and had paid the amount as demanded by the accused on 23.10.2003. It is not the case of the prosecution that the offence was completed on that day itself. According to the defacto complainant and other witnesses, it is only on that day i.e., 23.10.2003, the accused had promised and assured them to send abroad. In Ex.P1 complaint itself, they have referred about the complaints given to the District Police Department and thereafter to the Deputy Inspector General of Police, Ramanathapuram. PW.1 would say that the accused gave him Visa after one year, that when he was attempting to use that Visa, he was informed that it was a bogus one and that thereafter only he had started demanding the accused to return the money. PW.3 would say that the accused have failed to take Visa for him and that after waiting for sufficient time, himself and other persons who gave money, have chosen to lodge the complaint.

11. As rightly observed by the trial Court as well the Appellate Court that in such type of job racketing cases, it is very common for the persons, who had paid such huge amounts for getting a job abroad, after coming to know that they were cheated, to wait for a long time to get back the amount and lodging of the police complaint will only be of the last resort. Moreover, it is settled law that the delay in lodging the complaint with the police is not by itself fatal to the case of the prosecution and the defence has to show the prejudice caused to them by the said delay. In the case on hand, the accused have not shown as to how they were prejudiced by the delay. The trial Court as well as the appellate Court have dealt with the above issue and rightly decided that the delay does not affect the case of the prosecution.

12. Regarding the non-examination of the defacto complainant, it is evident from the records that since the defacto complainant was working in Singapore at relevant point of time, the examination of the defacto complainant was dispensed with. No doubt, though the law was set in motion by the defacto complainant, after investigation, the respondent police has laid the final report that the accused, by receiving the amounts from the defacto complainant Jayamuniyandi, P.W.1 - Murugan, PW.2 - Kannan, PW.3 Sekar and one Selvaraj, had cheated them by not sending them to abroad as agreed nor returned the amounts received. As rightly held by the courts below, the non examination of the complainant, by no



stretch of imagination, can be considered as fatal to the prosecution.

13. Regarding the non-production of bogus passport, it is not the case of the prosecution that the accused has given bogus passport to the witnesses and it is only the case of the bogus Visa. As already pointed out, PW.1 would say that though he was given Visa but the same was rejected by the Immigration officials informing that it is a bogus one. It is not the case of the defence that they have not at all given any visa to PW.1 and other witnesses or that they have given only genuine Visa. Moreover, PW.3 would say that he was not at all given any Visa. As rightly observed by the Courts below, the non-production of alleged visa does not affect the case of the prosecution any way.

14. As rightly contended by the learned Government Advocate (Crl. Side), since PW.1 to P.W.3 have given categorical evidence that the accused 1 and 2 had received the amounts and promised to send them abroad and that they have not taken any steps to fulfill their promise nor returned the amount, the factum of non filing of Tamil Newspapers containing the advertisements of the accused does not affect the case of the prosecution. As already pointed out, after seeing the advertisement in the Tamil Newspapers, according to the prosecution, the defacto complainant and other witnesses had approached the accused and as such, no importance can be given for non filing of the said newspapers.

15. Regarding the non-production of any documents, the prosecution has produced and exhibited Exs. P1 to P6 documents alleged to have been given by the accused 1 and 2. Though the accused had taken a stand that the police had compelled them to give such documents, they have not chosen to adduce any evidence to substantiate the said complaint. It is not the case of the defence that they have preferred any complaint to the higher officials nor initiated any legal proceedings against those police, who had forced the accused to execute those documents and hand over the same to the witnesses. As rightly observed by the Courts below, the accused have not disputed the signatures found in the said documents nor the contents therein.

16. As rightly contended by the learned Government Advocate (Crl. Side), the accused have specifically admitted the receipt of the amount and also agreed to take steps to send the witnesses abroad as agreed. It is further case of the prosecution that the the second accused had issued a cheque for Rs.1,55,000/- in favour of the defacto complainant and PW.1- Murugan and when presented for collection, the same was returned dishonored for want of sufficient funds in the bank account of the accused. As rightly argued by the learned Government Advocate (Crl. Side), the complaint of cheating got confirmed by the dishonor of the cheque.

<https://hcservices.ecourts.gov.in/hcservices/> 17. Considering the above, it is very much clear that the



Appellate Court has reassessed the entire evidence and gave its findings concurring with the trial Court. The revision petitioners have not shown any other reason or ground to interfere with the concurrent Judgments of conviction made by the Courts below. Hence, this Court decides that the findings of the trial Court as well as the Appellate Court that the accused are guilty of the offence under Section 420 IPC cannot be found fault with and this Court is in entire agreement with the findings of the Courts below.

18. Now turning to the punishment, as already pointed out, the learned Judicial Magistrate has sentenced the accused 1 and 2 to undergo two years Simple Imprisonment and to pay a fine of Rs.3,000/- each in default to undergo one month Simple Imprisonment and that the appellate Court has also confirmed the sentence imposed by the trial Court. The trial Court has observed that the second accused being a women and the accused 1 and 2 are aged persons, they have to be imposed with lesser punishment. As already pointed out, it is a job racketing case. Considering the nature and seriousness of the offence, the sentence imposed by the trial Court and confirmed by the appellate Court cannot be said to be excessive. Hence, this Court concludes that the Criminal Revision is devoid of merits and the same is liable to be dismissed.

19. In the result, the Criminal Revision is dismissed and the Judgment of conviction passed in C.A.No.32 of 2015 dated 10.01.2017 on the file of the Mahila Fast Track Court, Sivagangai confirming the Judgment made in C.C.No.97 of 2012, dated 26.05.2015 on the file of the Court of Judicial Magistrate No.II, Sivagangai is confirmed. The trial Court is directed to take necessary steps to secure the accused to undergo the remaining period of sentence, if any.

Sd/-

Assistant Registrar (W)

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/ /2021

Sub Assistant Registrar(CS)

trp

To

1. The Judge Mahila Fast Track Court, Sivagangai.
2. The Judicial Magistrate No.II, Sivagangai
3. The Chief Judicial Magistrate, Sivagangai District.



4. The Sub Inspector of Police,
District Crime Branch, Sivagangai Dist.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madura.

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order made in
CRL.RC(MD) .No. 87 of 2017
20.04.2021

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