



Crl.A.No.156 of 2019

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.09.2022

PRONOUNCED ON : 26.10.2022

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.A.No.156 of 2019

S.Ravikumar
S/o.N.S.Selvaraj
Director,
M/s.Basil Air Conditioning Pvt. Ltd.,
PS Paradise, 1st Floor,
73, 7th Avenue, Ashok Nagar,
Chennai – 600 083.

...Appellant

Vs.

1. State represented by
The Sub Inspector of Police,
Central Crime Branch, Team-II,
Egmore, Chennai – 600 008.

2. G.Vairamuthu
...Respondents



CrI.A.No.156 of 2019

WEB COPY

Prayer: The Criminal Appeal filed under Section 372 of Code of Criminal Procedure seeking to call for the records in C.A.No.182 of 2016 on the file of the learned VI Additional Judge, City Civil Court, Chennai, and set aside the judgment dated 07.12.2018, reversing the judgment dated 01.06.2016 in C.C.No.12250 of 2008 by the learned XI Metropolitan Magistrate, Saidapet, Chennai.

For Appellant : Mr.M.Palanivel

For Respondent : Mr.S.Sugendran
Additional Public Prosecutor for R1

Mr.M.Radhakrishnan for R2

JUDGMENT

The criminal appeal has been filed against the reversal judgment of acquittal passed by the learned VI Additional Judge, City Civil Court, Chennai, in C.A.No.182 of 2016 dated 07.12.2018, reversing the judgment dated 01.06.2016 in C.C.No.12250 of 2008 by the learned XI Metropolitan Magistrate, Saidapet, Chennai.



Crl.A.No.156 of 2019

WEB COPY 2

Originally the first respondent police registered a case against the second respondent and two others for the offence under Section 409, 420, 467, 468, 471 r/w 468 and 109 IPC. After investigation, laid charge sheet, which was taken on file in C.C.No.12250 of 2018 by the learned XI Metropolitan Magistrate, Saidapet, Chennai. In order to prove the charges, prosecution has examined as many as 17 witnesses as P.Ws.1 to 17 and marked 37 documents as Exs.P1 to P37. After completing examination of prosecution witnesses, incriminating circumstances culled out from the evidence of the prosecution witnesses were put before the accused they denied the same as false. On the side of the defence, no one was examined and no document was marked.

3 The learned Magistrate, after trial and hearing both the parties, by judgment dated 01.06.2016, convicted the second respondent alone and acquitted the other two accused from all the charges, and sentenced the second respondent to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.5000/-, in default, to undergo simple



Crl.A.No.156 of 2019

imprisonment for a further period of eight weeks for each of the offence under Sections 409 and 420 IPC, to undergo rigorous imprisonment for a period of one year and to pay fine of the Rs.3000/-, in default, to undergo simple imprisonment for a further period of six weeks for each of the offence under Sections 468 and 471 r/w 468 IPC, and ordered the sentence to run concurrently. Aggrieved over the judgment of conviction and sentence, the second respondent/A1 filed an appeal in C.A.No.182 of 2016 and the learned VI Additional Judge, City Civil Court, Chennai, after hearing both the parties, by judgment dated 07.12.2018 allowed the appeal by reversing the judgment of conviction and acquitted the appellant from all the charges.

4 Aggrieved over the reversal judgment of acquittal, the defacto complainant has filed the present appeal before this Court.

5 Learned counsel appearing for the appellant/defacto complainant would submit that the appellant and the second accused were the Directors of M/s.Basil Air Conditioning Pvt. Ltd., and one Sundaram was an employee as Manager and the appellant entrusted the management



CrI.A.No.156 of 2019

of the Company to the second respondent/A1 and he was attending the field activities. Between September and December 2006 the Company carried out the work of installing the Air conditioners at the instance of M/s.Rishap Infor Park Pvt. Ltd., Guindy. The appellant/defacto complainant completed the works in the name of M/s.Basil Air Conditioning Pvt. Ltd., but the second respondent/A1 raised the invoices in the name of Basic Air Conditioning Systems and obtained the cheques and also encashed the same through the Bank account with M/s.Vijya Bank, Ashok Nagar Branch and HDFC Bank, for a sum of Rs.27,14,330/- under several work orders placed by M/s.Rishap Info Park Pvt. Ltd., to M/s.Basil Air Conditioning Pvt. Ltd., The second accused namely Samuthiram, who is the elder brother of A1, in connivance with the second respondent/A1, opened an account in the name of M/s. Basic Air Conditioning Systems to facilitate the encashment of the cheque drawn on the invoices by A3 Sundaram and A1 and thereby the second respondent/A1 cheated the defacto complainant and made loss to him by dishonestly misappropriating the payments due to M/s.Basil Air Conditioning Pvt. Ltd.



Crl.A.No.156 of 2019

WEB COPY 6

The learned counsel would further submit that the lower appellate Court has failed to analyze the evidence of P.W.1 and P.W.14 and the documents marked by the prosecution viz. Exs.P2, 3, 4, 6, 10, 11, 15, 16, 17, 21, 32 and 36. It is the grievance of the appellant that the first accused colluding with the second and third accused, since A1, who was one of the Directors of the Company, could not operate the joint account maintained in the Oriental Bank of Commerce at Mahalingapuram, had created bogus documents as if he is the Director of Basic Air Conditioning Systems and by fabricating the documents dishonestly misappropriated the amounts due to Basil Air Conditioning Private Ltd., The lower appellate Court has erroneously acquitted the second respondent/A1, when the trial Court has convicted him after analyzing all the evidence adduced by the prosecution. Therefore, the appeal has to be allowed and the second respondent/A1 has to undergo the sentence imposed by the trial Court.



Crl.A.No.156 of 2019

7 Mr.S.Sugendran, learned Additional Public Prosecutor

appearing for the first respondent/state would submit that the trial Court even though acquitted the second and third accused, convicted the second respondent/A1, but the lower appellate Court reversed the judgment of the trial Court and acquitted the second respondent/A1.

8 The learned counsel appearing for the second respondent/A1 would further submit that it is the specific case of the prosecution that the second respondent/A1 dishonestly misappropriated the sum of Rs.33,21,770/- entrusted to him in his capacity as one of the Directors of M/s.Basil Air Conditioning Pvt. Ltd., and hence he has committed offence under Section 409 IPC and during the course of same transaction A1 created bogus documents, false invoices, memorandum of association and articles of association showing A3 as Director of the said company and opened account in the Vijaya Bank and caused resolution as if the second respondent/A1 was authorised to sign the cheques of M/s.Basil Air Conditioning Pvt. Ltd., having its Account at Oriental Bank of Commerce, in which resolution it is alleged that the second respondent/A1 forged the signature of the



Crl.A.No.156 of 2019

appellant/defacto complainant and thereby committed offence under Sections 420, 468 and 471 r/w 468 IPC.

9 The learned counsel would further submit that the trial Court acquitted A2 and A3 for the offences under Sections 409 r/w 109, 420, 467, 468 and 471 IPC r/w 468 IPC and based on the very same materials found the second respondent/A1 guilty and convicted for the offence under Sections 409, 420, 468 and 471 IPC, which is against the law. Further neither the appellant/defacto complainant nor the first respondent/state has filed any appeal against the acquittal of the other accused i.e. A2 and A3, when the charges are almost identical in nature except that the second respondent/A1 forged the signature of the appellant/defacto complainant, which itself clearly shows that the contents of the complaint is not a genuine one. There is no materials to show that the second respondent/A1 alone committed the offence as concluded by the trial Court.

10 The learned counsel would further submit that Section 409 IPC



Crl.A.No.156 of 2019

does not speak about the Company or its Directors, it speaks only about a public servant or a banker, merchant, factor, broker, attorney or agent.

Therefore, the finding of the trial Court is erroneous and the conviction against the second respondent/A1 is not sustainable. Therefore the lower appellate Court has acquitted him by giving elaborate reasons for the same, which does not call for any interference of this Court.

11 Heard the learned counsel appearing for the appellant and the second respondent and the learned Additional Public Prosecutor for the first respondent and carefully perused the materials available on record and the judgments of both the Courts below.

12 A careful perusal of the records show that the charge itself is that the second respondent/A1 dishonestly misappropriated the sum of Rs.33,21,770/- entrusted to him in his capacity as one of the Directors of M/s.Basil Air Conditioning Pvt. Ltd., and hence he has committed offence under Section 409 IPC and during the course of same transaction, A1 created bogus documents, false invoices, memorandum of association and



Crl.A.No.156 of 2019

articles of association showing A3 as Director of the said company and opened of account in the Vijaya Bank and caused resolution as if the second respondent/A1 was authorised to sign the cheques of M/s.Basil Air Conditioning Pvt. Ltd., having its Account at Oriental Bank of Commerce, in which resolution it is alleged that the second respondent/A1 forged the signature of the appellant/defacto complainant and thereby committed offence under Sections 420, 468 and 471 r/w 468 IPC.

13 The trial Court came to the conclusion that prosecution has not proved its case beyond all reasonable doubt against the second and third accused and hence acquitted them extending benefits of doubt, whereas based on the very same materials, convicted the second respondent/A1 alone, when the charges are almost identical as stated above. The lower appellate Court, as a final Court of fact finding, has re-appreciated the entire materials and acquitted the second respondent/A1 giving elaborate reason.



Crl.A.No.156 of 2019

WEB COPY 14

Normally, in an appeal against acquittal, unless compelled circumstances warrants, the Court will not interfere with the judgment. Now this Court has to see, whether prosecution has proved its case against the second respondent/A1 independently and there is any compelled circumstances warranting interference with the judgment of acquittal.

15 As rightly contended by the learned counsel appearing for the second respondent/A1, A1 is not coming within the purview of Section 409 IPC as it deals with only public servant or a banker, merchant or agent, attorney or factor or broker. Further even as per the charge, it was A3 who prepared invoices, but he was acquitted by the trial Court. Therefore, there is no materials to sustain the conviction against A1 for the offence under Section 409 IPC and hence prosecution has failed to prove the charge independently. Coming to the other charges, the lower appellate Court has given elaborate reasons for acquitting the second respondent/A1, in which this Court does not find any perversity.

16 From the careful reading of the evidence of prosecution



Crl.A.No.156 of 2019

witnesses and the other materials and also the judgment of the lower appellate Court, this Court does not find any compelled circumstances to interfere with the judgment of acquittal passed by the lower appellate Court and there is no merit in the appeal.

17 For the foregoing reasons, this criminal appeal stands dismissed as devoid of merit and substances.

26.06.2022

Index : Yes/No
Speaking order/non speaking order
cgi

To

1. The VI Additional Judge, City Civil Court, Chennai.
2. The XI Metropolitan Magistrate, Saidapet, Chennai.
3. The Sub Inspector of Police, Central Crime Branch, Team-II, Egmore, Chennai – 600 008.
4. The Public Prosecutor, High Court of Madras.



WEB COPY



Crl.A.No.156 of 2019

P.VELMURUGAN, J.,

cgi

Pre-Delivery Judgment in
Crl.A.No.156 of 2019

26.10.2022