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Crl.R.C.No.826 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2022

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.R.C.No.826 of 2018

Tamilselvan @ Sowkath Ali

....

Petitioner

Vs

The State represented by
The Inspector of Police,
District Crime Branch (DCB),
Coimbatore District.
(Crime No.06 of 2015)

....

Respondent

PRAYER: Criminal Revision Case filed under Section 397 read with Section 401 of the Code of Criminal Procedure, to allow the above Criminal Revision Petition and thereby set aside the conviction imposed in the Judgment dated 11.04.2018 made in C.A.No.339 of 2017 on the file of the I Additional and District Sessions Judge, Coimbatore, confirming the conviction imposed in Judgment dated 28.09.2017 made in C.C.No.163 of 2015 on the file of the Judicial Magistrate No.I, Coimbatore by allowing this Criminal Revision Petition.

For Petitioner

: Mr.R.Sankarasubbu
for Mr.D.Mario Johnson

For Respondent

: Mr.A.Gopinath
Government Advocate (Crl.Side)



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ORDER

WEB COPY This Criminal Revision case has been filed to set aside the Judgment dated 11.04.2018 made in C.A.No.339 of 2017 on the file of the I Additional District and Sessions Judge, Coimbatore thereby confirming the Judgment dated 28.09.2017 passed in C.C.No.163 of 2015 on the file of the Judicial Magistrate No.I, Coimbatore, thereby convicted the petitioner for the offence punishable under Section 420 read with 511 of IPC.

2. The case of the prosecution is that the first accused approached the defacto complainant to obtain 'Honorary Doctorate from American University' for social work done by the defacto complainant on 17.02.2015. Immediately, the defacto complainant refused the said offer and again he had shown some photographs that the second accused giving Doctorate Degree to the social workers and demanded a sum of Rs.55,000/- as instructed by the second accused. Therefore, the defacto complainant lodged a complaint on 20.02.2015 and the respondent had set up trap on 21.02.2015. Accordingly, when the defacto complainant paid a sum of Rs.5,000/- to the first accused, he was got red handed. Thereafter, an FIR was registered in Crime No.6 of 2015 for the offence punishable under Section 420 read with 511 of IPC. After completion of



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investigation, the respondent filed final report and the same has been taken cognizance by the Trial Court in C.C.No.163 of 2015.

3. On the side of the prosecution, they examined P.Ws.1 to 6 and marked Exs.P1 to P3. On the side of the accused, no one was examined and no document was marked.

4. On perusal of the oral and documentary evidence, the Trial Court found both the accused guilty for the offence punishable under Section 420 read with 511 of IPC and sentenced them to undergo six months rigorous imprisonment and to pay a fine of Rs.1,000/- in default to undergo two months simple imprisonment. Aggrieved by the same, the accused preferred an appeal and the same was dismissed and the order of the Trial Court was confirmed. Hence, this revision.

5. The learned counsel for the petitioner would submit that even according to the prosecution, the petitioner is arrayed as A2. As per the submission of the first accused, he has been implicated as accused. According to the prosecution, as instructed by the petitioner, the total amount was reduced to 1,50,000/- from 3,00,000/-. Finally the first accused agreed for a sum of Rs.55,000/- and issued American Doctorate Degree in the social workmanship. Even on the date of trap conducted



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by the respondent, A1 was got red handed. There is absolutely no document produced to connect the petitioner along with A1. That apart, a trap was laid on 21.02.2015, whereas the FIR was registered only on 17.03.2015. There was enormous delay and there was no explanation by the prosecution. Even according to the prosecution, the petitioner has nothing to do as alleged by the prosecution. Therefore, he prayed for acquittal.

6. Per contra, the learned Government Advocate (Criminal Side) appearing for the respondent submitted that P.W.1 categorically deposed that only on the instruction given by the first accused, the sum was reduced to 1,50,000/- lakh and initially demanded a sum of Rs.55,000/-. On demand, the defacto complainant lodged a complaint on 20.02.2015 and the same was marked as Ex.P1. As per the said complaint, the respondent set up a trap on 21.02.2015 and the first accused was got red handed with Rs.5,000/- by the defacto complainant. On the said complaint, an FIR was registered and the same was marked as Ex.P3. Therefore, the prosecution proved its case beyond any doubt and the Courts below rightly convicted the petitioner.



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7. Heard, Mr.R.Sankarasubbu, learned counsel appearing for the petitioner and Mr.A.Gopinath, learned Government Advocate (Criminal Side) appearing for the respondent and perused the materials available on record.

8. The case of the prosecution is that the first accused offered to P.W.1 to provide Doctorate Degree from American University for social work done by him. However, he refused the said offer and informed to the respondent. On 20.02.2015, on the date itself he lodged a complaint and the same was marked as Ex.P1. Accordingly, the respondent had set up a trap on 21.02.2015, where P.W.1 had given a sum of Rs.5,000/- to the first accused and he was got red handed. Even then the respondent did not register any FIR. P.W.6 deposed that on the complaint, she registered an FIR only on 17.03.2015, which was marked as Ex.P3, in Crime No.6 of 2015 for the offence under Section 420 read with 511 of IPC. Therefore, there was a delay of 27 days in registration of the FIR. There was absolutely no explanation offered by the prosecution.

9. That apart, even according to the prosecution, the first accused only offered a sum of Rs.3,00,000/- to provide Doctorate Degree from American University in favour of P.W.1. While reducing the amount, he



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used the name of the petitioner and also he induced the defacto complainant by showing photographs of the petitioner, as if he was issuing Doctorate Degree to so many persons. That photo was also not marked by the prosecution. Therefore, the prosecution failed to mark any piece of document to connect the petitioner with the first accused. Only on the statement from the first accused, the petitioner has been implicated as an accused. Except the complaint lodged by the defacto complainant, no other documents has been marked by the prosecution to prove its case beyond any doubt, especially to connect the petitioner, there was no evidence. Further, P.W.1 deposed that the defacto complainant is a friend of him for the past 15 years. Therefore, only due to wrong evidence as against the first accused, a false case has been foisted and a trap was set up. Even assuming that P.W.1 was offered to provide Doctorate Degree from American University, it is only by the first accused. There is absolutely no material to connect the petitioner with the alleged occurrence. Further, when the respondent had set up a trap on 21.02.2015, the first accused was the only person who received a sum of Rs.5,000/- from the defacto complainant. The petitioner was not present on that date. No where the petitioner's name was mentioned on



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the statement recorded from the first accused. Therefore, the prosecution failed to prove its case beyond any doubt. The conviction imposed by the Courts below cannot be sustained as against the petitioner and it is liable to be set aside.

10. In view of the above, the Judgment dated 11.04.2018 made in C.A.No.339 of 2017 on the file of the I Additional District and Sessions Judge, Coimbatore and the Judgment dated 28.09.2017 passed in C.C.No.163 of 2015 on the file of the Judicial Magistrate No.I, Coimbatore, are hereby set aside, insofar as the revision petitioner alone. Accordingly, this Criminal Revision Case stands allowed, to the extent indicated above.

08.11.2022

Index : Yes/No

Internet : Yes

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To

- 1.The I Additional District and Sessions Judge, Coimbatore.
2. The Judicial Magistrate No.I, Coimbatore.
3. The Inspector of Police, District Crime Branch (DCB), Coimbatore District.
4. The Public Prosecutor, High Court, Madras.



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G.K.ILANTHIRAIYAN, J.

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