



BAIL SLIP

The Appellant/Accused namely K.Ravi, S/o.Karuppan was directed to be released on bail in and by the order of this Court dated 29.04.2014 and made in MP.No.1 of 2014 in Crl.R.C.No.468 of 2014 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order Reserved on : 31.01.2022

Order Pronounced on : 08.02.2022

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Crl.R.C.Nos.468 and 446 of 2014

K.Ravi .. Petitioner
(in Crl.R.C.No.468 of 2014)

N.Shanthi .. Petitioner
(in Crl.R.C.No.446 of 2014)

Versus

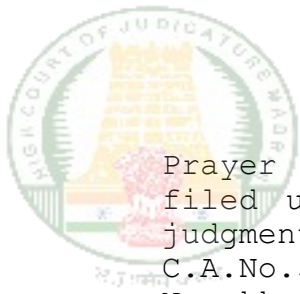
The Inspector of Police,
Namakkal Police Station,
Namakkal District.
(Crime No.1355 of 2004)

.. Respondent
(in Crl.R.C.No.468 of 2014)

State rep. By its
Inspector of Police,
Namakkal Police Station,
Cr.No.1355 of 2004

.. Respondent
(in Crl.R.C.No.446 of 2014)

Prayer in Crl.R.C.No.468 of 2014: Criminal Revision Case is filed under Section 397 and 401 of Cr.P.C., to call for the records and set aside the judgment, dated 28.02.2014 passed by the learned Principal Sessions Judge, Namakkal, Namakkal District in C.A.No.07 of 2013 by confirming the judgment, dated 31.12.2012 passed by the learned Judicial Magistrate No.I, Namakkal in C.C.No.36 of 2005.



Prayer in Crl.R.C.No.446 of 2014: Criminal Revision Case is filed under Section 397 r/w 401 of Cr.P.C., to set aside the judgment passed against the revision petitioner on 28.02.2014 in C.A.No.5 of 2013 on the file of the learned Sessions Judge at Namakkal in C.C.No.36 of 2005, by the learned Judicial Magistrate No.I, Namakkal and acquit her from all the charges.

For Petitioner : Mr.B.Vasudevan
(in Crl.R.C.No.468 of 2014)

For Petitioner : Mr.P.V.Elango
(in Crl.R.C.No.446 of 2014)

For Respondent : Mr.L.Baskaran
(in both Crl.R.Cs) Government Advocate
(Criminal Side)

COMMON ORDER

These two Revisions in Crl.R.C.Nos.468 and 446 of 2014 are filed by the accused Nos.1 and 2 respectively in Cr.No.1355 of 2004, aggrieved by judgment of the learned Judicial Magistrate No.I, dated 31.12.2012 in C.C.No.36 of 2005, thereby, convicting petitioners for the offence under Sections 406 and 420 of Indian Penal Code and imposing a sentence of one year Simple Imprisonment for the offence under Section 406 of Indian Penal Code and sentence of one year Simple Imprisonment for the offence under Section 420 of Indian Penal Code and fine of Rs.1,000/- each and in default of payment of fine, to undergo one month Simple Imprisonment and the judgment of the learned Principal Sessions Judge, in Crl. A.Nos.5 of 2013 and 7 of 2013, dated 28.02.2014, thereby confirming the conviction and sentence passed by the Trial Court.

2. On 17.08.2004, P.W.1, one Thilaka went to the Namakkal Police Station and lodged a complaint stating that by promising to get an employment as Sub- Inspector of Police in the Police Department, Government of Tamil Nadu, both the accused persons jointly conned her and made her to part with the sum of Rs.1,00,000/- on 15.01.2003 and another sum of Rs.1,40,000/- on 20.02.2003, but the said results were negative, therefore, when she asked for the money, a sum of Rs.20,000/- was paid and for another sum of Rs.15,000/-, a cheque was issued, but, however, the same bounced. On the said complaint, P.W.12, the Sub-Inspector of Police registered a case in Crime No.1355 of 2004, for the offences under Sections 406 and 420 of I.P.C, thereafter, P.W.14 took up the case for investigation and filed



a final report on 31.12.2004, proposing both the accused guilty of the offences under Sections 120-B, 420, 468 and 471 of Indian Penal Code.

3. The learned Judicial Magistrate No.I, Namakkal took the case on file in C.C.No.36 of 2005 and after hearing the learned Public Prosecutor and the learned Counsel appearing on behalf of the accused and upon considering the materials on record, on 20.06.2005 framed four charges under Sections 120-B, 420, 468 and 471 of Indian Penal Code. Upon questioning, the accused denied the charges and stood trial. Thereafter, the prosecution examined P.W.1 to P.W.14 and marked Exs.P-1 to P-8 .Upon being questioned about the adverse evidence and incriminating circumstances on record, as per Section 313 Cr.P.C., the accused denied the same as false.

4. Thereafter, on behalf of the accused, one Renuka Devi was examined as D.W.1 and one Mumtaz Begum was examined as D.W.2. On behalf of the accused, Exs.D-1 to D-4 were marked. Thereafter, the learned Magistrate proceeded to hear the learned Assistant Public Prosecutor on behalf of the prosecution and the learned Counsel appearing for the accused and by a judgment, dated 31.12.2012 found that the charges under Section 120-B, 468 and 471 of Indian Penal Code have not been proved as against the accused and acquitted them respectively. However, based on the evidence of P.W.1, coupled with the evidence of P.W.2 and Exs.P-2 and P-3, petitioners are guilty for the offences under Sections 406 and 420 of I.P.C and sentenced them as aforesaid.

5. Aggrieved by the same, the accused preferred two appeals in CrI.A.Nos.4 of 2013 and 7 of 2013 respectively and the same was taken up for disposal by way of a common judgment, dated 28.02.2014, the learned Principal Sessions Judge, Namakkal, after comprising the evidence and considering the evidence of P.Ws.1 and 2 and rejected the evidence of the defence, confirmed the conviction and sentence imposed by the Trial Court. Aggrieved by the same, the present Criminal Revision Cases are laid before this court.

6. Heard, Mr.P.V.Elango, the learned counsel appearing for the petitioner in CrI.R.C.No.446 of 2014 and Mr.B.Vasudevan, the learned Counsel appearing for the petitioner in CrI.R.C.No.468 of 2014 and Mr.L.Baskaran, the learned Government Advocate (Criminal Side) for the respondent.

7. At the outset, both sides learned counsel brought to the notice of this Court that no charge was framed under Section 406 of I.P.C by the Trial Court and therefore, conviction for the offence under Section 406 of Indian Penal Code was not sustainable. The law, on this aspect, has been made very clear



by the Hon'ble Supreme Court of India that normally, the accused persons cannot be convicted without specific charges being framed in respect of the criminal offences they are being punished and the only exceptions, being made, is that if any lesser offence of the same nature is made out or if already all the ingredients of the offence has been directly put into issue and there is no prejudice being caused to the accused. The said legal position can be ascertained from the Judgment of the Hon'ble Supreme Court of India in the case of Anil Vs. Admn. Of Daman & Diu, Daman¹, wherein it has been held as follows:-

"54. The propositions of law which can be culled out from the aforementioned judgments are:

(i) The appellant should not suffer any prejudice by reason of misjoinder of charges.

(ii) A conviction for lesser offence is permissible.

(iii) It should not result in failure of justice.

(iv) If there is a substantial compliance, misjoinder of charges may not be fatal and such misjoinder must be arising out of mere misjoinder to frame charges."

8. In this case, the offence under Section 406 of I.P.C is distinct from the offences under Sections 420, 468 and 471 of I.P.C, for which the charges were framed as in respect of the offences under Section 406 of I.P.C, the ingredients are different and unique and the prosecution has to prove the entrustment of any property or any dominion of any property and dishonest misappropriation or conversion to own use of that property by the accused in violation of any direction of law prescribing the mode in which such trust is to be discharged or of any legal contract express or implied which he has been made touching the discharge of trust and thus, thereby proving the criminal breach of trust. It cannot be considered that offence of same genus as Sections 420, 468 and 471 of I.P.C or a the lesser offence. It is a distinct and separate offence having different ingredients. Therefore, unless a specific charge is framed under Section 406 of I.P.C, the Trial Court and the first Appellate Court erred in convicting the accused. Therefore, I have no hesitation in setting aside the conviction and sentence imposed in respect of the offence under Section 406 of I.P.C.

1 (2006) 13 SCC 36



9. Now, coming to the other offence, for which the petitioners are convicted, namely Section 420 of the Indian Penal Code, the prosecution is based on the oral testimony of P.Ws.1 and 2 and the documents in Exs.P-2 and P-3. Of the same P.W.2, in his testimony, contradicted the evidence of P.W.1 and the prosecution case, by admitting that he had issued notice that the Ex.P-2 cheque was issued to him in discharge of the loan amount and not pertaining to the money which is alleged to have been cheated. The learned Counsel appearing on behalf of the petitioners would submit that the accused brought in positive evidence by marking the duty rosters Exs.D-1 to D-4 and by examining D.W.2, the Constable, who accompanied the first petitioner, while she was on summons duty on the date of which she is alleged to have got money from P.W.1 and from the fact that the prosecution, in this case, did not produce any evidence to initially discharge this burden to state that P.W.1' has sufficient educational qualification to apply for the post of Sub-Inspector of Police or the application made by her or the written examination Hall ticket, and the result, namely the negative result was not marked or brought forth in the investigation or before the Trial Court.

10. This apart, the only basis of reliance was that of the Ex.P-3, the letter of confirmation, which has been from the beginning disputed by first accused. Before this Court, additional evidence in the form of an expert opinion, from a Private forensic lab stating that said signature is forged was being produced. But, however, when the same was not marked during the trial, the same principles as contained in Order 41 Rule 27 of C.P.C, for receiving any additional document in the Criminal Appeal and Revision as held by the Allahabad High Court in the case of Ramdas Tureha Vs. State of U.P and Another² as extracted hereinafter:-

"12. It is therefore seen that the powers under section 391 of the Code to take additional evidence by the appellate court are of a discretionary nature and are to be exercised sparingly and only in suitable cases. The powers under the section have been held akin to those under Order XLI Rule 27 of the Code of Civil Procedure, 1908 and in view thereof additional evidence cannot be tendered at the appellate stage as a matter of right and the power to be exercised by the appellate court is to be based on discretion, sound judicial principles and in the interest of justice. The discretion is to be exercised in



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suitable cases and not to fill up gaps and lacunae in the evidence. The recording of reasons by the appellate court for taking the additional evidence has been made mandatory with the salutary objective of operating as a check against a too easy reception of evidence at a later stage of the litigation. The test to be applied is as to whether the evidence sought to advanced is essential for a just decision of the case."

11. Therefore, at this stage, without subjecting the expert to cross examination, the said document cannot be taken on file and hence rejected. However, when P.W.2 has, in the cross-examination, contradicted the evidence of P.W.1 by admitting that he issued notice for bouncing of cheques stating that the cheque was issued in the discharge of the loan, the contention of the learned Counsel appearing for the petitioners about the absence of evidence to initially establish that P.W.1 was qualified for the post and that she actually applied for post except especially when unimpeachable defence evidence is on record to show that as on the date when P.W.1 alleged that the first accused to have received the money, she was on duty elsewhere serving summons and it was impossible to receive the money at the date, time and place alleged, coupled with the fact that in this case, the accused is also a Police personnel, the person wanting to get a job in police department, and the discrepancies regarding the territorial jurisdiction, clearly raise serious issues about veracity of the prosecution case.

12. This apart, the specific charge, in this case, that the accused had forged by obtaining signatures in plain paper as if they had issued for Rs.1,90,000/- for a different purpose and when the forgery under Sections 468 and 471 of I.P.C is disproved, then it is difficult to prove the consequential charge of cheating as also not. The Judgment of the Hon'ble Supreme Court of India reported in (AIR 1997 Supreme Court 1448) *Guru Bipin Singh Vs. Chongtham Manihar Singh and Another*³, in which paragraph 9 of the said judgment, it has held as follows;

"9. In view of the above, we agree with Shri Jethmalani that the allegations made in the complaint, even if true, do not make out the case of forgery. Now, if forgery be not there, allegation under Section 420 would fail because the allegation in para 5 of the complaint is that by "forgoing the said book" deception was caused and member of the

³ AIR 1997 Supreme Court 1448



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public were induced to purchase the same. So forgery is the principal allegation, cheating being a consequential offence, If forgery goes, cheating cannot stand. So, the complaint does not make out a case under any of the three Sections, namely, 420, 465 and 468. It may be pointed out that 468 is intimately connected with 420 and 465."

13. In view of all the reasons, I hold that the Trial Court and the first Appellate Court grievously erred in finding the petitioners guilty of the offence under Section 420 of I.P.C for non-consideration of the said legal principles and the material evidence on record, leading to serious miscarriage of justice to the petitioners/accused and therefore, it is a fit case for interference in exercise of revisional jurisdiction and accordingly, I hold that the conviction imposed by the Trial Court and the First Appellate Court in respect of Section 420 of I.P.C is unsustainable and accordingly, the accused are acquitted by giving the benefit of doubt.

14. In the result, the Criminal Revision Cases are allowed. The judgment of the learned Judicial Magistrate No.I, Namakkal in C.C.No.36 of 2005, dated 31.12.2012 and the judgment of the learned Principal Sessions Judge, in C.A.Nos.5 of 2013 and 7 of 2013, dated 28.02.2014 are set aside. The accused are acquitted of the charges and fine amount, if any, paid by them is ordered to be refunded to them.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

grs

To

1. The Principal Sessions Judge,
Namakkal, Namakkal District.
2. The Judicial Magistrate No.I,
Namakkal.
3. The Chief Judicial magistrate,
Namakkal.



4. The Inspector of Police,
Namakkal Police Station,
Namakkal District.

5. The Public Prosecutor,
High Court of Madras.

+1cc to M/s.P.V.Elango, Advocate, S.R.No.8476

Cr1.R.C.Nos.468 and 446 of 2014

KSM(CO)
SU(16/02/2022)