

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 08.09.2021
Pronounced on : 31.01.2022

CORAM :

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Criminal Revision Case No.701 of 2019
and
Criminal Miscellaneous Petition Nos.9796 and 9797 of 2019

D.Nessaiyan ... Petitioner

vs.

State, rep. by Inspector,
Kangayam Police Station, Kangayam,
Tiruppur District. ... Respondent

Petition filed under Sections 397 and 401 of the Criminal Procedure Code, to call for the records and set aside the order of the learned IIIrd Additional District and Sessions Judge, Tiruppur at Dharapuram, in Criminal Appeal No.72 of 2018 dated 16.04.2019 convicting the Appellant / Accused under Sections 466, 468 and 471 IPC, thereby reversing the judgment dated 24.07.2017 of the learned Judicial Magistrate, Kangayam in C.C.No.224 of 2009 (in Crime No.162 of 2009, Kangayam Police Station) acquitting the Appellant / Accused for offences under Sections 466, 468 and 471 of IPC.

For Petitioner : Mr.R.John Sathyan
For Respondent : Mr.S.Sugendran
Government Advocate (Crl.Side)

ORDER

The respondent / Police registered a case against the revision petitioner / accused in Crime No.162/2009. After investigation, they laid a charge sheet before the learned Judicial Magistrate, Kangayam. The learned Magistrate has taken the charge sheet on file and after completing the formalities, framed charges against the petitioner for the offences under Sections 466, 468 and 471 IPC.

2. After framing the charges, in order to prove the case of the prosecution, on the side of the prosecution, as many as 7 witnesses were examined as PWs.1 to 7 and 6

documents were marked as Exs.P1 to P6. No material object was exhibited.

3. After completing the examination of the prosecution witnesses, incriminating circumstances culled out from the evidence of the prosecution witnesses were put to the petitioner by questioning under Section 313 Cr.P.C, however, he denied the same as false and pleaded not guilty. On the side of the defence, no oral and documentary evidence was produced.

4. On completion of trial, hearing the arguments advanced on either side, considering the materials, the learned Magistrate found not guilty of the petitioner / accused for the offences of abovesaid charges and acquitted him.

5. Challenging the said judgment of acquittal, the prosecution filed an appeal before the learned Principal District and Sessions Judge, Tiruppur, and the same was taken on file in CrI.A.No.72/2018 and made over the same to the learned IIIrd Additional District and Sessions Judge, Tiruppur. The IIIrd Additional District and Sessions Judge, Tiruppur, after receiving the records, hearing the arguments advanced on either side, re-appreciated the entire evidence and reversed the judgment of the trial Court, set aside the judgment of acquittal passed by the learned Magistrate and allowed the appeal and the accused was found guilty for the offences under Sections 466, 468 and 471 IPC. For the offence under Section 466 IPC, the petitioner was convicted and sentenced to undergo 3 years rigorous imprisonment and to pay a fine of Rs.2,000/- in default, to undergo 6 months simple imprisonment; for the offence under Section 468 IPC, he was convicted and sentenced to undergo 3 years rigorous imprisonment and to pay a fine of Rs.2,000/- in default, to undergo 6 months simple imprisonment and for the offence under Section 471 IPC, the petitioner was convicted and sentenced to undergo 3 years rigorous imprisonment and to pay a fine of Rs.2,000/- in default, to undergo 6 months simple imprisonment.

6. Challenging the abovesaid judgment of conviction and sentence passed by the learned IIIrd Additional District and Sessions Judge, Tiruppur, the petitioner / accused has filed the present revision petition before this Court.

7. The learned counsel for the petitioner would submit that the petitioner is a Government servant and the prosecution has failed to prove as to how PW1, the then Tahsildar of Kangayam, got Ex.P2, alleged fake mark sheet of the petitioner and sent it to the District Collector, Erode District, for further processing of the application of the

petitioner for promotion from the post of Office Assistant to the post of Junior Assistant. He would further submit that the prosecution failed to establish that the alleged fake certificate Ex.P2 was produced by the petitioner to PW1, the then Tahsildar, Kangeyam, who in turn, sent it to the District Collector, Erode, who in turn, sent it to PW6, the then Joint Director of Government Examination cum Secretary, Board of Secondary School Education.

8. The learned counsel for the petitioner would further submit that the prosecution has also not explained the delay in filing the complaint and registering the same, which is fatal to the case of the prosecution and therefore, the trial Court rightly appreciating the entire evidence that the prosecution has failed to prove its case beyond all reasonable doubt, acquitted the revision petitioner / accused from all the charges. However, when the prosecution filed the appeal before the appellate court, the appellate court failed to re-appreciate the entire evidence in proper perspective and erroneously found the guilt of the accused for the abovesaid charges. Further, the learned counsel would submit that it is a settled proposition that the appellate court cannot automatically just like that interfere with the judgment of acquittal passed by the trial Court. Unless there is perversity in appreciation of the evidence or compelled circumstances, normally, the appellate court will not interfere with the acquittal judgment of the trial Court. In this case, the appellate court failed to appreciate and re-appreciate the entire evidence in proper perspective and simply has come to the conclusion without even any iota of evidence that the petitioner only produced Ex.P2 to PW1, the then Tahsildar, Kangeyam, for getting promotion and the delay in filing the complaint and registering the FIR has not at all been taken note of and simply reversed the judgment of acquittal, which is against the fundamental principles of law. Therefore, he would submit that the judgment of the appellate court is liable to be set aside.

9. The learned Government Advocate (Criminal Side) appearing for the respondent / Police submits that the revision petitioner was initially appointed as Office Assistant in the Revenue Department in the year 1984 and subsequently, in order to get promotion, he produced the fake certificate Ex.P2, as if he has passed 10th Standard. Ex.P2 is the 10th Standard mark-sheet submitted by the revision petitioner and on enquiry, it was found to be a fake document and hence it was sent to PW6, the then Joint Director of Government Examination cum Secretary, Board of Secondary School Education, to find out the genuineness of the document and after clear verification and inspection, it was found that Ex.P2 is not a genuine document and it is only a fake

document. The petitioner is the only beneficiary by producing Ex.P2 forged document to get promotion and no one is going to get any benefit.

10. The learned Government Advocate (Criminal Side) would further submit that at the time of joining as Office Assistant, the revision petitioner has not produced Ex.P2 and only while in service in a later point of time, he submitted the same and claimed as if he has passed 10th Standard, which is subsequently found to be a fake document, thereby, there was a complaint and the prosecution has registered the complaint and investigated the matter, later on, they filed charge sheet. Though the trial Court failed to appreciate the entire evidence, the appellate court as a final court of fact finding, it has got every power to re-appreciate the entire evidence and give independent finding, as such, the appellate court also re-appreciated the entire evidence and found that the revision petitioner herein is guilty for the abovesaid charges and rightly convicted and sentenced the petitioner as above. Therefore, there is no perversity in re-appreciation of evidence done by the appellate court and there is no merit in the revision and the scope of revision is limited. Thus, he would submit that the revision petition is liable to be dismissed.

11. Heard both sides and perused the records.

12. The case of the prosecution is that the petitioner / accused was working as Office Assistant in the office of the Special Tahsildar, Kangeyam, and he purportedly submitted an application for promotion to the post of Junior Assistant along with 10th Standard mark sheet, which was subsequently found to be fake document thereby resulting in the prosecution.

13. In order to substantiate the charges, on the side of the prosecution, before the trial Court, 7 witnesses were examined and 6 documents were marked. Out of the 7 witnesses, PW1 is the erstwhile Tahsildar in Kangeyam. He would state that while the petitioner was working as Office Assistant, he submitted an application along with Ex.P2 - 10th Standard mark sheet and the same was forwarded to the District Collector. Subsequently, PW1 received an intimation from the District Collector to initiate criminal case against the petitioner since Ex.P2 was found to be a fake document and based on that, he has filed a complaint against the petitioner. The Office Manager of the District Collector Office, Erode, was examined as PW2. He has deposed that he was serving in the District Collector Office, Erode, between 26.12.2006 and 23.06.2008. Since the petitioner submitted an application for his promotion from Office Assistant to Junior Assistant, he called

for the reports and also the qualification certificate from the Tahsildar Office, Kangeyam and the Tahsildar also received the application from the petitioner along with 10th Standard mark sheet and sent it to PW2. As per the direction of the District Collector, when PW2 sent it to PW6, it was found to be a fake document. The erstwhile Tahsildar working between 06.03.2009 and 18.09.2009 in Kangeyam, was examined as PW3 and he would depose that on 08.06.2009, Kangeyam Police came to his office and enquired about the fake certificate submitted by the petitioner and he stated that in between 23.04.2006 to 27.02.2009, the petitioner was on long medical leave. PW4 also corroborated the evidence of the abovesaid witnesses.

14. Perusal of the records clearly shows that the petitioner was working as Junior Assistant in the Revenue Department at Kangeyam from the year 1984 and subsequently he submitted the application in the year 2006 along with Ex.P2-10th Standard mark sheet for his promotion from Office Assistant to Junior Assistant and later, on scrutiny, Ex.P2 was found to be a fake document and it was confirmed through all the officials concerned. It is not in dispute that the petitioner was working as Office Assistant and subsequently he was in the zone of promotion to the post of Junior Assistant. Though the learned counsel for the petitioner would submit that the prosecution has not proved that the petitioner has produced Ex.P2 to PW1, since during the relevant point of time, he was on long medical leave and therefore, he could not have submitted Ex.P2, the alleged fake mark sheet, however, the fact remains that the evidence of PWs.1 to 4, clearly proved that the petitioner was working as Office Assistant from 1984 in the Revenue Department and he submitted application along with 10th Standard mark sheet, for promotion from Office Assistant to Junior Assistant and on scrutiny, it was found to be a fake document and therefore, the case was registered. From the evidence of the prosecution witnesses, the prosecution has proved its case beyond all reasonable doubt. Though the learned Magistrate had not appreciated the evidence properly and acquitted the petitioner, however, the appellate court as a final court of fact finding, re-appreciated the entire evidence in proper perspective and found that there is a compelled circumstances to reverse the judgment and therefore, the acquittal judgment was set aside and the appeal was allowed and the petitioner was convicted and sentenced as stated above.

15. It is a settled proposition that the scope of revision is very limited. The revisional court cannot sit in the armchair of the appellate court and revisit and re-appreciate the entire evidence, while exercising the revisional jurisdiction. This Court has to see as to whether there is any perversity in appreciation of the evidence and

unless there is any perversity in appreciation of evidence, normally, the revisional court will not interfere with the judgment of the Court below. So, in this case also, a careful perusal of the record shows that though the trial Court has not properly appreciated the evidence, the appellate court understood the scope of appeal and re-appreciated the entire evidence in proper perspective and found the petitioner guilty of all the charges and convicted and sentenced him as above.

16. In this case, though the petitioner's counsel vehemently contended that the delay in filing the complaint and registering the case is fatal to the prosecution case, and that has not been taken note of by the appellate court, mere delay in filing the complaint and registering the case would not enure any benefit to the petitioner / accused when the prosecution through its witnesses, has amply proved the guilt of the petitioner / accused, as discussed above. This Court finds that the appellate court rightly re-appreciated the evidence and recorded the conviction and sentence. Thus, as a revisional court, this Court does not find any perversity in the re-appreciation of the evidence by the appellate court. There is no reason to interfere with the judgment of the appellate court.

17. Accordingly, this Criminal Revision Case is dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

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To

- 1)The IIIrd Additional District and Sessions Judge,
Tiruppur at Dharapuram.
- 2)The Judicial Magistrate,
Kangeyam.
- 3)The Chief Judicial Magistrate,
Tiruppur District.

CRL.RC.No.701 of 2019

PL (CO)
PR (10/03/2022)