



Bail Slip

The Petitioner/Accused Viz., K.Saravana Kumar @Samsudeen, Male aged 54 years S/O Sri Karuppasamy was directed to be released on bail vide order dated 25/09/2014 in CrI.MP.No.1/2014 in CrI.R.C.No.922/2014.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.01.2022

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

CrI.R.C.No.922 of 2014

1.K.Saravana Kumar @ Samsudeen (died)
S/o.Sri Karuppasamy

2.S.Banumathy
W/o. Saravanakumar

3.Baby,
W/o.K.Saravana Kumar @ Samsudeen

4.N.Saranya
D/o.S.Naveen Kumar,

... Petitioners

(Impleaded as per order in
CrI.R.C.No.922 of 2014 dated 10/11/2021)

Vs.

State Rep by
The Inspector of Police,
City Crime Branch,
Coimbatore
(Cr.No.3 of 2002)

... Respondent

Prayer: Revision petition filed under Sections 397 r/w 401 of Cr.P.C. to set aside the conviction and sentence passed in C.C.No.157 of 2002 on 10.10.2013 by the learned Judicial Magistrate No.VI, Coimbatore, and having been confirmed by the learned IV Additional District & Sessions Judge, Coimbatore on 05.08.2014 in C.A.No.173 of 2013 and acquit the petitioner herein so that justice may be done.

For Petitioners : Mr.C.S.Danasekaran

For Respondent : Mr.L.A.J.Selvam
Government Advocate (CrI. Side)



ORDER

(The case has been heard through video conferencing)

WEB COPY This Criminal Revision Case Crl.R.C.No.922 of 2014 was originally filed by the 1st accused viz. K.Saravana Kumar @ Samsudeen, aggrieved by the judgment of the learned Judicial Magistrate No.VI, Coimbatore dated 10.10.2013 in C.C.No.157 of 2002 whereby the petitioner was convicted for an offence u/s.120 (B) and imposed punishment of six (6) months Rigorous Imprisonment and fine of Rs.1,000/- and in default to pay the fine one (1) month Rigorous Imprisonment and for the offence u/s.420 (26 counts), three (3) years Rigorous Imprisonment in respect of each count and Rs.1,000/- as fine in respect of each count and in default of payment of fine, nine (9) months Rigorous Imprisonment, for the offence of 465, one (1) year Rigorous Imprisonment and fine of Rs.1,000/- in default to undergo three (3) months Rigorous Imprisonment and for the offence of 468 r/w 471 (26 counts) and imposing punishment of three (3) years Rigorous Imprisonment in respect of each count and fine of Rs.1,000/- in each count and in default to pay the fine amount nine (9) months Rigorous Imprisonment in respect to each count and the judgment of the IV Additional District and Sessions Judge, Coimbatore, on 05.08.2014 in C.A.No.173 of 2013, thereby dismissing the appeal and confirming the conviction and sentence imposed by the trial Court.

2.On 30.01.2002 P.W.1 lodged a complaint before the Inspector of Police, City Crime Branch, Coimbatore, stating that the 1st accused was the President of the District Builder's Association and during October 2001, promising to get a job for P.W.1's daughter viz. Sumathi, stating that they know the authorities in the Coimbatore Municipality and promising to get her a job of technical assistant, totally on two occasions obtained a sum of Rs.1,20,000/- and thereafter on 28.01.2002 they received a job offer by registered post and upon verification with the Coimbatore Municipality, they found that the said order was bogus, therefore the complaint. P.W.31, the Inspector of Police took up the case for investigation and he actually found that, apart from P.W.1, the accused have conned another 25 persons by promising them to get employment in different organizations during the period 1999 upto 2002 and have cheated a total sum of Rs.18,08,300/- and therefore after examining the witnesses and completing the investigation laid a charge sheet proposing both the accused guilty of the offences punishable u/s.120(B), 465, 420 (26 counts), 468 r/w 471 (26 counts).

3.The case was taken on file as C.C.No.157 of 2002 by the learned Judicial Magistrate No.VI, Coimbatore and upon summoning



the accused and furnishing copies u/s.207 Cr.P.C., the accused denied the charges and stood trial.

4. Thereafter, the prosecution examined P.W.1 to P.W.31 and marked Ex.P1 to Ex.P47 and rested its case. Upon questioning of adverse evidence and circumstances on record u/s.313 Cr.P.C. the accused denied the same as false. The learned Magistrate, thereafter, proceeded to hear the learned Additional Public Prosecutor (Grade II) on behalf of the prosecution and the learned counsel for the accused and by judgment dated 10.10.2013 found that P.W.1 to P.W.29 all these persons being victims, who are conned by the accused by making false promises that they will get employment in various Government organizations and by providing them with fake / bogus / forged orders of appointment, which are all also marked as Ex.P2 to Ex.P28, found that the prosecution has proved the offences beyond any reasonable doubt and convicted the accused for the offences u/s.120(B), 465, 420 (26 counts), 468 r/w 471 (26 counts) and sentenced as aforesaid.

5. It appears that thereafter the 2nd accused in the case viz. Bargath Ali Khan passed away and the 1st accused viz. K.Saravana Kumar alone filed the criminal appeal in C.A.No.173 of 2013 before the IV Additional District and Sessions Judge, Coimbatore and by judgment dated 05.08.2014, after considering the evidence on record, the Lower Appellate Court found even though the accused had cheated P.W.1 to P.W.29 on different occasions at different points of time, mere non obtaining of complaint from them will not in any manner vitiate the trial. In this case, it held that it is crystal clear that the accused had furnished bogus appointment order and confirmed the conviction and sentence imposed by the trial Court. Aggrieved by the said judgment, the 1st accused viz. K.Saravana Kumar originally laid the present criminal revision before this Court.

6. Pending the Revision, the petitioner / accused viz. K.Saravana Kumar also died and this Court for the limited purpose of examining the correctness of the order has impleaded his legal representatives as the petitioners 2 to 4 and also appointed Mr.C.S.Dhanasekaran the learned counsel originally appearing for the petitioner as Amicus Curie in this case to assist the Court.

7. Heard Mr.C.S.Dhanasekaran, the learned Amicus Curie appearing on behalf of the petitioner and Mr.L.A.J.Selvam, the learned Government Advocate (Crl. Side) appearing on behalf of the prosecution.

8. The contentions of the Amicus Curie appearing on behalf of the petitioner firstly is that when the trial Court as well

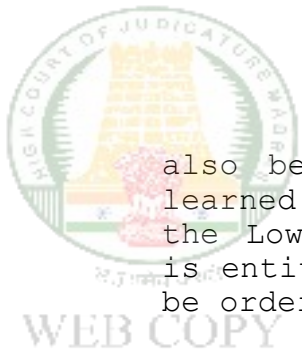


as the Lower Appellate Court have convicted the original petitioner for 26 counts of charges for cheating different persons at different point of time by providing different appointment orders by way of independent transactions they cannot be treated as "in course of same transaction" and form definite and distinct charges of independent transactions. Therefore, in the absence of 26 specific charges being framed and that too by clubbing only three charges in one case is permissible and not conducting trial on different charges to convict the petitioner on 26 counts is illegal and violative of the provisions of 218 to 220 Cr.P.C. and therefore, the trial Court as well as the I Appellate Court committed an error in law that this Court need to interfere.

9. His second submission is that, in this case, only the photocopies of the alleged fake appointment orders alone have been produced. No valid explanation for the absence of the original documents is given before the trial Court. Therefore, in the absence of valid explanation for letting in the secondary evidence in the place of primary evidence just because of the xerox copies are marked, the trial Court as well as the I Appellate Court ought not to have taken this evidence and therefore ought to have rejected the photocopies of the documents and ought to have acquitted the accused for want of documentary evidence.

10. It is his further submission that as far as the offence of 464 as well as 465 r/w 468, the Hon'ble Supreme Court of India after interpreting Sections 463 to 464 has clearly held that only the author and signatory of the documents can be prosecuted and punished for the offence of forgery. In this case, even though the prosecution has let in evidence that the alleged orders of appointment are bogus, thereafter no positive evidence was let in by the prosecution by comparing the signatures and hand writings in the alleged forged documents that of the accused and no positive charge is laid against the accused that they are the authors of all the forged documents. No expert evidence and comparison of the admitted signature of the accused with the writings / signatures found in the alleged forged orders was let in. Therefore, the prosecution did not carry out the said exercise at all and did not even compare the signatures / authorship of the alleged forged document as to who prepared them or signed them or made the forged documents. Charges u/s. 464, 465 and 468 cannot be laid as against the petitioner / accused.

11. It is his further submission that once the charges for forgery is untenable, cheating is alleged to have been committed only with the aid of the forged documents and when the basis of the charge of forgery goes, the offence u/s. 420 should



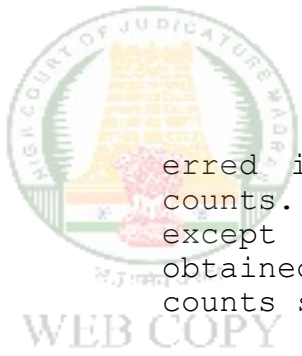
also be held to be not proved. Therefore, according to the learned Amicus Curie, the judgment of the trial Court as well as the Lower Appellate Court are unsustainable and the petitioner is entitled for acquittal and the fine amount paid by him should be ordered to be refunded.

12. Per contra, the learned Government Advocate (Crl. Side) appearing on behalf of the prosecution would submit that the trial Court as well as the I Appellate Court have convicted the petitioner by taking into account the daring act of cheating and forgery committed by him. In this case, when it is categorically proved that the appointment order is not issued by the concerned authority / the Coimbatore Municipality, as the case may be, it is not further necessary to prove the commission of forgery by the accused. Therefore, he would submit that there is no error in the judgment of the trial Court as well as the I Appellate Court.

13. I have considered the rival submissions made on behalf of either side and also perused the evidence on record. I am in agreement that the learned Amicus Curie that as far as the conviction on the ground of 26 counts is concerned, in this case, admittedly P.W.1 to P.W.29 were cheated in distinct transactions at different point of time spread over a period of three years. This being so, the learned Amicus Curie relied upon the decision of the Hon'ble Supreme Court of India reported in (2003 CRL.L.J.60) State of Punjab and another V. Rajesh Syal in paragraph 7 as follows:

"7. In the present case, different people have alleged to have been defrauded by the respondent and the Company and therefore each offence is a distinct one and can not be regarded as constituting a single series of facts or transactions."

14. Learned Amicus Curie also pressed into service the judgment of the Rajasthan High Court reported in (1995 CRL.L.J.769) Jodhpur Woollen Mills Ltd., and others V. State of Rajasthan and another, in paragraphs 5 to 7 the provisions contained in Section 218, 219, 220, 221, 223 Cr.P.C. Were dealt with by the Rajasthan High Court and held that for every distinct charge is concerned, the charge has to be framed as a distinct charge and the accused is entitled for trial on the said charge. Only three similar charges in the same calendar year can be tried in a single trial more than three charges even though they are similar in nature can only be conducted by way of joint trial and it may not be by way of single trial. In this case, only one charge was framed and not even the complaints were obtained from the other victims. Therefore, I hold that the trial Court as well as the 1st Appellate Court



erred in law by convicting the petitioner / accused for 26 counts. Therefore, the conviction of the petitioner / accused except regarding the 1st count, where the complaint has been obtained from P.W.1 and specific charge has been framed, other counts should go.

15. Now, coming to the charges in respect of the first count i.e. the complaint lodged by P.W.1 for which, the charge has been framed., as rightly pointed out by the learned Amicus Curie, the prosecution has not proved the manner of forging or the authorship of those bogus employment orders. The Hon'ble Supreme Court of India, has dealt with the matter in detail in the judgment reported in (2018) 3 MLJ (Cr1) 39 (SC) LNIND 2018 SC 265 Sheila Sebastian V.R.Jawaharaj and Another Etc., where under after extracting the Section 463 and 464 in paragraphs 17 and 18, the Hon'ble Supreme Court of India has held as follows in paragraphs 19 and 20:

"19. A close scrutiny of the aforesaid provisions makes it clear that, Section 463 defines the offence of forgery, while Section 464 substantiates the same by providing an answer as to when a false document could be said to have been made for the purpose of committing an offence of forgery under Section 463, IPC. Therefore, we can safely deduce that Section 464 defines one of the ingredients of forgery i.e., making of a false document. Further, Section 465 provides punishment for the commission of the offence of forgery. In order to sustain a conviction under Section 465, first it has to be proved that forgery was committed under Section 463, implying that ingredients under Section 464 should also be satisfied. Therefore unless and until ingredients under Section 463 are satisfied a person cannot be convicted under Section 465 by solely relying on the ingredients of Section 464, as the offence of forgery would remain incomplete.

20. The key to unfold the present dispute lies in understanding Explanation 2 as given in Section 464 of IPC. As Collin J., puts it precisely in *Dickins v. Gill* (1896) 2 QB 310, a case dealing with the possession and making of fictitious stamp wherein he stated that "to make", in itself involves conscious act on the part of the maker. Therefore, an offence of forgery cannot lie against a person who has not created it or signed it."

16. Further, the Hon'ble Supreme Court of India had also considered the earlier judgments and finally held in paragraph 26 as follows:

"26. The definition of "false document" is a



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part of the definition of "forgery". Both must be read together. "Forgery" and "Fraud" are essentially matters of evidence which could be proved as a fact by direct evidence which could be proved as a fact by direct evidence or by inferences drawn from proved facts. In the case in hand, there is no finding recorded by the trial Court that the respondents have made any false document or part of the document/record to execute mortgage deed under the guise of that 'false document'. Hence, neither respondent no.1 nor respondent no.2 can be held as makers of the forged documents. It is the imposter who can be said to have made the false document by committing forgery. In such an event the trial court as well as appellate court misguided themselves by convicting the accused. Therefore, the High Court has rightly acquitted the accused based on the settled legal position and we find no reason to interfere with the same."

17. Therefore, it is clear that unless it is alleged by the prosecution that, the petitioner / accused is the maker of the document and has let in positive evidence regarding the same, the conviction of the petitioner for the offence u/s.465 & 468 r/w 471 has to go. Accordingly, the trial Court as well as the I Appellate Court erred fell in error in convicting the petitioner of these offences.

18. Now, what remains is the offence u/s.420. As far as the offence u/s.420 is concerned, the learned Amicus Curie would rely upon the judgment of the Hon'ble Supreme Court of India reported in (AIR 1997 Supreme Court 1448) *Guru Bipin Singh V. Chongtham Manihar Singh and another*, 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 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."

(emphasis supplied)

19. Relying upon the said judgment, the learned Amicus Curie would submit that in this case also the basis of cheating



is that by producing bogus appointment order P.W.1 was cheated. Therefore, once the basis goes, the offence u/s.420 cannot also stand alone and therefore he would plead that the petitioner should be acquitted in respect of the offence u/s.420 also. But, I find the facts of the Supreme Court judgment relied upon by the learned Amicus Curie is little different from the present case. In that case, the accused had prepared the 1st edition of the book, as if it was a manuscript written by Maharaja and cheated the victims to buy books. Therefore, the Hon'ble Supreme Court said once the pleadings regarding forgery fails, cheating on the books of the cannot independently stand. But in this case, from the evidence of P.W.1, it is clear that the accused represented to P.W.1 that they will get employment as a technical assistant in the Coimbatore Municipality and upon such promise the complainant delivered a sum of Rs.1,20,000/-. Even in the absence of the accused furnishing the bogus appointment order, still the factum of making false promise and making P.W.1 to part with money is made out, even in the absence of the offence of the forgery committed by the accused. Therefore, I am not in agreement, the learned Amicus Curie that in this case, the offence u/s.420 would also automatically fall. Therefore, in respect of one count of 420 alone cheating P.W.1 for which the complaint has been obtained, charge sheet has been framed, I find that the conviction imposed by the trial Court is in order. Therefore except to convict the petitioner/accused for one count of 420 and confirming the punishment of three years Rigorous Imprisonment and a fine of Rs.1000/-, I acquit the petitioner in respect of other charges and the corresponding conviction and punishment imposed by the trial court shall stand set aside and except the fine amount of Rs.1000/- the rest of the fine paid by the petitioner/accused shall stand refunded. Because the accused has not been tried by framing specific charges the direction to pay the compensation cannot also be sustained and accordingly set aside. The Criminal Revision Case stands partly allowed as above. Consequently, the connected miscellaneous petition if any is closed.

Sd/-

Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The Judicial Magistrate No.VI
Coimbatore.



2.The IV Additional District and Sessions Judge
Coimbatore.

3.The Chief Judicial Magistrate
Coimbatore. (for Information)

4.The Superintendent
Central Prison, Coimbatore.

5.The Inspector of Police
City crime Branch
Coimbatore.

6.The Public Prosecutor
High Court of Madras.

7.The Deputy Registrar
Criminal Side
High Court, Madras.

Cr1.R.C.No.922 of 2014

PMK(CO)
SB(09/02/2022)