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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 17.08.2022

Orders Pronounced on : **26.08.2022**

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Cr.R.C.Nos.705 and 541 of 2019

<u>Crl.R.C.No.705 of 2019:</u>

E.Saravanan ... Petitioner

Versus

State rep. by
The Deputy Superintendent of Police,
CBCID, Metro Wing,
Chennai - 600 016. ... Respondent

<u>Crl.R.C.No.541 of 2019:</u>

A.Pappathiammal ... Petitioner

Versus

Deputy Superintendent of Police,
Crime Investigation Department,
CBCID, Metro Wing,
Chennai - 600 016. ... Respondent

<u>Prayer in Crl.R.C.No.705 of 2019:</u> Criminal Revision Case filed under Section 397 r/w 401 of The Code of Criminal Procedure, 1973, to call for the entire records with related to the order passed by the V Additional Sessions Judge Court, Chennai made in Criminal Appeal No.165 of 2015,

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dated 20.03.2019 whereby confirming the judgment of conviction passed against the petitioner by the Trial Court namely XI Metropolitan Magistrate Court, Saidapet, Chennai made in C.C.No.1918 of 2014 and set aside the same.

Prayer in Crl.R.C.No.541 of 2019: Criminal Revision Case filed under Section 397 and 401 of The Code of Criminal Procedure, 1973, to set aside the order passed by the learned V Additional Sessions Judge, Chennai in C.A.No.166 of 2015 dated 20.03.2019 confirming the judgment of the learned XI Metropolitan Magisterial, Saidapet, Chennai in C.C.No.1918 of 2014 dated 23.07.2015 sentencing to undergo 2 years S.I and fine of Rs.500/- i/d 6 months S.I for the offence u/s 465 r/w 114 of IPC, 3 years R.I and fine of Rs.500/- i/d 6 months S.I for the offence u/s 471 r/w 468 of IPC, 3 years R.I and fine of Rs.500/- i/d 6 months S.I for the offence u/s 420 IPC, 3 years S.I for the offence u/s 419 IPC, 2 years S.I for the offence u/s 465 IPC, 3 years R.I and fine of Rs.500/- i/d 6 months S.I offence u/s 467 IPC, 3 years R.I and fine of Rs.500/- i/d 6 months S.I u/s 468 IPC.

For Petitioner : Mr.S.Sasikumar
(in Crl.R.C.No.705 of 2019)

For Petitioner : Mr.P.Vijendran
(in Crl.R.C.No.541 of 2019)

For Respondent : Mr.S.Vinoth Kumar
(in both the Crl.R.Cs) Government Advocate (Crl. Side)

COMMON ORDER

The charge against the revision petitioners is as follows:-

The first accused was a practicing advocate. In the year 2008-2010, he became a tenant under one *Lalitha @ Lalitha Yogeswari* in Door

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No.20/21, Khan Sahib Street, Choolaimedu, Chennai. While so, the first accused moved very closely with the said *Lalitha @ Lalitha Yogeswari*, who did not have any children and as a matter of fact, she went to the extent of writing a Will in favour of the first accused/tenant, but, however, canceled the same subsequently as she patched up her relationship with her brother, P.W.1. Under the said circumstances, she went missing from 05.09.2010, when she informed her sister and her relatives that she was going to Hyderabad, but, however, never returned thereafter. A case in Crime No.2184 of 2010, woman missing complaint, was also registered at the instance of P.W.1 and was pending investigation. Pending the same, on 30.08.2013, the first accused had set up the second accused to impersonate herself as *Lalitha @ Lalitha Yogeswari* and the third and fourth accused, having agreed to stand as attesting witnesses, have all forged a Power of Attorney in respect of the above said property in favour of the first accused, *Saravanan*. The first accused, *Saravanan*, thereafter, informed all the brokers in the area that he is going to sell the property and one of them informed P.W.1, the brother of the said *Lalitha @ Lalitha Yogeswari*, who was shocked as the said *Lalitha @ Lalitha Yogeswari* went missing from the year 2010 onwards and therefore, lodged a complaint.

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2. Upon the said complaint, a case was registered in Crime No.5 of 2013 and P.W.14 completed the investigation and laid a charge-sheet proposing all the four accused guilty for the offences under Sections 419, 420, 465, 467, 468, 471 read with 114 and 34 of the Indian Penal Code.

3. At this juncture, it is pertinent to note that while the first accused and the accused Nos.2 to 4 were charged as above, further investigation in the woman missing complaint revealed that for the sake of grabbing the property, in the guise of taking for a tour, the first accused along with some other accused had actually taken *Lalitha @ Lalitha Yogeswari* to Himachal Pradesh and near Shimla, they had taken her to a spot where there was a dangerous deep valley and seem to have pushed her down and killed her. On the said allegations, the investigation in the woman missing Crime No.2184 of 2010 was completed and altered into one under Section 302 of the Indian Penal Code and the first accused herein is also facing the trial which is now pending.

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4. Be that as it may, now coming to the present case, upon appearance of the accused and furnishing of the copies, charges were framed against the first accused under Sections 465, 466 read with 34, 467, 468, 468 read with 34, 471 read with 468 and 420 read with 34 of the Indian Penal Code; against the second accused under Sections 465, 465 read with 34, 419, 420, 467, 468, 468 read with 34, 471 read with 468, 465 read with 114 read with 34 of the Indian Penal Code and as against the accused Nos.3 and 4, for the offences under Sections 465 read with 114 read with 34, 465, 468, 471, 420 read with 114 read with 34 of the Indian Penal Code. All the four accused denied the charges and stood trial. The prosecution examined P.Ws.1 to 14 and marked ***Exs.P-1*** to ***P-31*** to bring home the charges. Upon being questioned about the material evidence and incriminating circumstances, the accused denied the same as false. Thereafter, no evidence was let in on behalf of the defence.

5. The Trial Court proceeded to hear the learned Assistant Public Prosecutor on behalf of the prosecution and the learned Counsel for the accused and by a judgment, dated 23.06.2015, categorically found that from the woman missing complaint and the investigation pending in the said case

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coupled with the evidence of P.W.1, the brother of *Lalitha @ Lalitha Yogeswari*, she was missing from the year 2010 and was not at all present at the office of the Sub-Registrar as on 08.11.2013. From the photograph and the left thumb impression and the signature contained in the document, it is accused No.2, *A.Pappathiammal*, who, at the request of the first accused, had become accomplice to the crime and represented before the Sub-Registrar as if she is *Lalitha @ Lalitha Yogeswari* and the accused Nos.3 and 4, being the attesting witnesses, knowingly signed in the said false document. With the help of the false document, the first accused also attempted to sell the property. Therefore, the prosecution had proved the offence beyond any doubt. P.W.13, the forensic expert, has categorically deposed that it was only the second accused who has signed and affixed her left thumb impression as if he was *Lalitha @ Lalitha Yogeswari* and therefore, from the very fact that the first accused have approached the bank for obtaining loan and also approached the brokers for selling the property, held the charges as proved and convicted the first accused for the offence under Section 465 of the Indian Penal Code and imposed a punishment of two years Simple Imprisonment and a fine of Rs.1000/- and in default of payment of fine, to undergo Simple Imprisonment for six months; for the

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offence under Section 471 read with 468 of the Indian Penal Code, three years Rigorous Imprisonment and a fine of Rs.1000/- and in default, six months Simple Imprisonment; for the offence under Section 420 read with 34 of the Indian Penal Code, three years Rigorous Imprisonment and a fine of Rs.1000/- and in default, to undergo six months Simple Imprisonment; for the offence under Section 467 of the Indian Penal Code, three years Rigorous Imprisonment and a fine of Rs.1000/- and in default of payment of fine, to undergo Simple Imprisonment for six months; for the offence under Section 468 of the Indian Penal Code, three years Rigorous Imprisonment and a fine of Rs.1000/- and in default, to undergo Simple Imprisonment for six months. The Trial Court convicted the second accused for the offence under Section 465 read with 114 of the Indian Penal Code and imposed a punishment of two years Simple Imprisonment and a fine of Rs.500/- and in default of payment of fine, to undergo six months Simple Imprisonment; for the offence under Section 471 read with 468 of the Indian Penal Code, three years Rigorous Imprisonment and a fine of Rs.500/- and in default of payment of fine, six months Simple Imprisonment; for the offence under Section 420 of the Indian Penal Code, three years Rigorous Imprisonment and a fine of Rs.500/- and in default of payment of fine, six months Simple

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Imprisonment; for the offence under Section 419 of the Indian Penal Code, three years Simple Imprisonment; for the offence under Section 465 of the Indian Penal Code, two years Simple Imprisonment; for the offence under Section 467 of the Indian Penal Code, three years Rigorous Imprisonment and a fine of Rs.500/-, in default of payment of fine, six months Simple Imprisonment; for the offence under Section 468 of the Indian Penal Code, three years Rigorous Imprisonment and a fine of Rs.500/-, in default of payment of fine, six months Simple Imprisonment. However, giving benefit of doubt to the attesting witnesses as the prosecution did not prove their knowledge of sinister motive of the first accused, the third and the fourth accused were acquitted by the Trial Court.

6. Aggrieved by the conviction and sentence as above, the first accused herein filed Crl.A.No.165 of 2015 and the second accused filed Crl.A.No.166 of 2015 and by separate judgments, dated 20.03.2019, the learned V Additional Sessions Judge, Chennai independently appraised the evidence and considered the findings of the Trial Court and considered the various grounds of appeal raised by the accused and dismissed the appeals and confirmed the conviction and sentence imposed against the

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petitioners/accused Nos.1 and 2. Aggrieved by the same, the present Criminal Revision Cases are laid before this Court.

7. Heard *Mr.S.Sasi Kumar*, learned Counsel for the petitioner in Crl.R.C.No.705 of 2019 and *Mr.P.Vijendran*, learned Counsel for the petitioner in Crl.R.C.No.541 of 2019 and *Mr.S.Vinoth Kumar*, learned Government Advocate (Crl. Side) for the respondent in both the Criminal Revision Cases.

8. *Mr.S.Sasi Kumar*, learned Counsel appearing on behalf of the first accused would submit that in this case, while the Trial Court had acquitted accused Nos.3 and 4 for the very same offence, they ought to have acquitted the first accused also. He would submit that the first accused is not the maker of the false document. Admittedly, even as per the case of the prosecution, one *Raja @ Edwin* only prepared the false Voter ID card which was used to register the alleged false document. Therefore, when the prosecution has not prosecuted the maker of the false document, the first accused cannot, in any event, be prosecuted for the offence of forgery. The learned Counsel would further submit that in this case, the first accused had

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not in any manner executed further documents pursuant to the Power of Attorney and therefore, the Trial Court as well as the lower Appellate Court ought not to have convicted the petitioner for the said offences.

9. *Mr.P.Vijendran*, learned Counsel appearing on behalf of the second accused would submit that the second accused is a poor person and without knowing the seriousness of the act, she was roped in by paying a meager sum of money and she never knew the sinister designs of the other accused and therefore, he would submit that when there was no material to prove the common knowledge, the charges should not be held against her by virtue of Section 34 of the Indian Penal Code and submitted that in any event, for the purpose of eking out a livelihood, she had indulged in impersonating before the Sub-Registrar and this Court should consider imposing a lenient sentence.

10. Per Contra, the learned Government Advocate (Crl. Side) would submit that admittedly, in this case, even though the maker of the false Identity Card was not prosecuted, the first accused is the maker of the false document, as he only engaged the services of the other accused, prepared

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the document, who made all arrangements to be presented before the Sub-Registrar and as a beneficiary, collected the document back, has been rightly prosecuted and punished. The second accused, being the executor of the document, who impersonated and subscribed the signature as if it was signed by the said *Lalitha @ Lalitha Yogeswari* and also subscribed her left thumb impression, is the person who signed and executed the false document and therefore, she has been rightly prosecuted and punished. By examining P.W.13, the forensic expert, it is categorically proved that it is only the second accused who impersonated as *Lalitha @ Lalitha Yogeswari*. The prosecution, through the evidence of the Investigating Officer and the other witnesses, have identified the photograph of the second accused as in the false document. Therefore, this is a case where the prosecution has proved the charges beyond any doubt and therefore, the Trial Court as well as the lower Appellate Court, has rightly convicted and sentenced the petitioners.

11. I have considered the rival submissions made on behalf of either side and perused the material records of this case. In this case, a Power of Attorney has been registered as if the owner of the property, *Lalitha @*

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Lalitha Yogeswari, appeared before the Sub-Registrar and executed the same. The Power of Attorney is in favour of the first accused. It is proved beyond any doubt by marking the connected F.I.R, namely the woman missing Crime No.2184 of 2010 and by examining P.W.1 that *Lalitha @ Lalitha Yogeswari* is missing from the year 2010 and therefore, she could not have been present before the Sub-Registrar. The photograph, the left thumb impression and the signature found in the false document, ***Ex.P-2***, clearly belonged to that of the second accused. The same is categorically proved by the witnesses identifying the photograph and that of the second accused and also through the forensic expert P.W.13. P.W.1 has spoken about the efforts of the first accused to encash and enjoy the property, by using the said false document. Therefore, this is a case where the prosecution has brought home the charges beyond any reasonable doubt and accordingly, there is nothing for this Court to interfere in these Revision Cases.

12. The arguments that accused Nos.3 and 4 were acquitted does not hold any water, since, only on the ground that the prosecution did not prove their knowledge and motive beyond any doubt, the Trial Court acquitted

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them. Similarly, non-prosecution of one *Raja @ Edwin*, who is alleged to have prepared the Voter ID card, which was used as supporting document to create false document, namely the Power of Attorney, by itself will not in any manner render the prosecution's case flawed.

13. Section 464 of the Indian Penal Code clearly defines what amounts to making of a false document and it is useful to extract the relevant portion of the said Section 464 of the Indian Penal Code, which is as hereunder:-

> " ***464*** *Making a false document. — [A person is said to make a false document or false electronic record— First —Who dishonestly or fradulently—*
>
> *(a) makes, signs, seals or executes a document or part of a document;*
>
> *(b) makes or transmits any electronic record or part of any electronic record;*
>
> *(c) affixes any [electronic signature] on any electronic record;*
>
> *(d) makes any mark denoting the execution of a document or the authenticity of the [electronic signature],*
>
> *with the intention of causing it to be believed that such document or part of document, electronic record or [342] [electronic signature] was made, signed, sealed, executed, transmitted or affixed*

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by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or Secondly —Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with [342] [electronic signature] either by himself or by any other person, whether such person be living or dead at the time of such alteration; or Thirdly —Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his [342] [electronic signature] on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration."

Therefore, on a perusal of the clause (a) of the section, it would be clear that the maker and also the person who executes all are deemed to be creating the false document. Therefore, the first accused in this case, by preparing the document, by arranging the other accused and by registering the document, is the maker of the document and the second accused has singed and executed the document and therefore, they are liable to be punished for the offence as stated supra. This court has already considered the meaning of the phrase 'maker of the false document' in Crl.R.C.No.452 of 2019 and has after considering the decided cases, has held that the person

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arranging for the preparation, attestation, presentation of the document for registration can be termed as maker of document and can accordingly be prosecuted.

14. Similarly, the arguments of the learned Counsel appearing on behalf of the second accused that she had no knowledge is absolutely unacceptable on the face of it as she has clearly answered the questions of the Sub-Registrar that her name is *Lalitha @ Lalitha Yogeswari* and she had signed with the said name and also lent her photograph to be used in the Power of Attorney document as well as in the false identity document which is prepared and therefore, the arguments made by the learned Counsel on behalf of the second accused are also without any merits.

15. Now, coming to the sentence, as far as the second petitioner is concerned, it is brought to the notice of this Court that the second accused, namely *Pappathiammal*, has not only impersonated in this case but also indulged in one more similar offence. As far as the first accused is concerned, the allegation as on date is that apart from creating the false document, he is also facing the charges of murder on the said *Lalitha @*

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Lalitha Yogeswari. Even keeping apart this unproven allegations, as on date, for the offenses committed by him, being tenant and thereafter trying to grab the property, itself is a serious offence and as a matter of fact, in my view, the Trial Court has taken an extremely lenient view in the matter of punishment.

16. Therefore, finding no merits these Criminal Revision Cases are dismissed.

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Index : yes/no
Speaking order/Non-speaking order
grs

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D.BHARATHA CHAKRAVARTHY, J.,

grs

To

1. The V Additional Sessions Judge,
   Chennai.

2. The XI Metropolitan Magistrate,
   Saidapet, Chennai.

3. The Public Prosecutor,
   High Court of Madras.

4. The Deputy Superintendent of Police,
   CBCID, Metro Wing,
   Chennai - 600 016.

Pre-Delivery Order in

Crl.R.C.Nos.705 and 541of 2019

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