IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.04.2022
PRONOUNCED ON : 27.05.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.1042 of 2017 and
Crl.M.P.Nos.9832, 9833 & 9834 of 2017

B.Purushothaman @ Shanmugasundaram ... Petitioner/Accused

Vs.

State by,
Inspector of Police,
CBCID,
O.U.C., Chennai.
(Crime No.820/2007) ... Respondent/Complainant

PRAYER: Criminal Revision is filed under Section 397 r/w 401 of the Code of Criminal Procedure, to call for the records pertaining to the judgment dated 25.07.2017 passed by the learned XVIII Additional Sessions Judge, Chennai in Crl.A.No.80/2016 confirming the judgment dated 05.03.2016 passed by the learned XI Metropolitan Magistrate, Saidapet, Chennai in C.C.No.2213/2012 and to set aside same and acquit the petitioner from the charge level against him.

For Petitioner : Mr.C.Sivakumar
For Respondent : Mr.R.Kishore Kumar, Government Advocate (Crl. Side)

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ORDER

The conviction and sentence of the learned XI Metropolitan Magistrate, Saidapet, Chennai (trial Court) passed against the petitioner/accused in C.C.No.2213 of 2012, dated 05.03.2016 are as follows:-

- For offence under Section 465 IPC, the petitioner was sentenced to undergo Rigorous Imprisonment for two years and to pay a fine of Rs.2,000/-, in default, to undergo Simple Imprisonment for two months.

- For offence under Section 468 IPC, the petitioner was sentenced to Rigorous Imprisonment for two years and to pay a fine of Rs.5,000/-, in default, to undergo four months Simple Imprisonment.

- For offence under Section 471 r/w 465 IPC, the petitioner was sentenced to Rigorous Imprisonment for two years and to pay a fine of Rs.2,000/-, in default, to undergo two months Simple Imprisonment.

- For offence under Section 420 IPC, the petitioner was sentenced to undergo Rigorous Imprisonment for two years and to pay a fine of Rs.5,000/-, in default, to undergo Simple Imprisonment for four months.

2.As against the judgment of trial Court, dated 05.03.2016, the petitioner preferred an appeal before the learned XVIII Additional Sessions Judge, Chennai (lower appellate Court) in C.A.No.80 of 2016. The lower appellate Court, by judgment, dated 25.07.2017 confirmed the judgment of the trial Court and dismissed the appeal, against which, the present Criminal Revision case.

3.Gist of the case is that the defacto complainant/PW1 is the Manager of M/s.Manoj Babuji Exports India Private Limited, Park Town, Chennai. The petitioner contacted PW1 over phone and introduced himself as Managing Director and authorized signatory of M/s.Sree Maruthamalai Murugan Textile Industries Private Limited, Vadavelli, Coimbatore and requested for supply of yarn on credit basis with an assurance of payment will be given within a week or ten days after the receipt of goods. Initially, the petitioner requested PW1 over phone and later, he approached him directly. Believing the same, PW1 supplied 2140 kg of yarn to the petitioner at Coimbatore, vide Invoice No.T0001, dated 01.12.2006 to the tune of Rs.5,56,400/-, for which, the petitioner issued a cheque bearing No.521292, dated 02.12.2006 (Ex.P3) drawn on Centurion Bank of Punjab, Avanashi Road, Coimbatore. The yarn was delivered by one Pandi from Battalagundu Cotton Mill and delivery challan (Ex.P4) was issued. When the cheque (Ex.P3) was presented for encashment, the same was dishonoured and returned to PW1 with an endorsement of 'Funds Insufficient'. Thereafter, the petitioner was unable to be contacted by PW1. When PW1 visited the address given by the petitioner at Vadavelli, Coimbatore, he came to know that there is no company existed in the name of M/s.Sree Maruthamalai Murugan Textile Industries Private Limited. On discrete enquiry, PW1 came to know that the petitioner is a regular offender, involved in several cases and cheated many persons by using his alias name like Purushothaman @ Shanmugasundaram @ Gopalakrishna Raja.

4.PW1 lodged a complaint to the Inspector of Police, Elephant Gate Police Station, Chennai and the same was registered in Crime No.820 of 2007 (Ex.P8), for offence under Section 420 of IPC. Since no proper investigation was done, PW1 filed a direction petition before this Court in Crl.O.P.No.26292 of 2007, wherein this Court, by order, dated 04.09.2007 directed the CBCID to investigate the case. Thereafter, PW16, the Inspector of Police took up investigation, enquired the witnesses viz., PW1/defacto complainant, PW4/Manager of M/s.Manoj Babuji Exports India Private Limited, bank officials, Commercial Tax officers, Regional Transport Officers and collected documents. After transfer of PW16, PW17 took up further investigation, arrested the petitioner, recorded his confession (Ex.P20) and filed charge sheet before the trial Court.

5.During trial, on the side of the prosecution, 17 witnesses were examined as PW1 to PW17 and 20 documents were marked as Exs.P1 to P20. On the side of the defence, no witness was examined and no document was marked. After completion of trial, the trial Court convicted the petitioner as stated above and the same was confirmed by the lower appellate Court, vide judgment, dated 25.07.2017 in Crl.A.No.80 of 2016.

6.The learned counsel for the petitioner submitted that the petitioner is called as Purushothaman and never he had any alias name like Shanmugasundaram and Gopalakrishna Raja, which fact not considered by the trial Court as well as lower appellate Court. He further submitted that the entire case proceeded on the ground that it was Shanmugasundaram, who approached PW1 and PW4, got orders for supply of yarn. He further submitted that the trial Court placed heavy reliance on the evidence of PW1/the defacto complainant, PW4/Manager of M/s.Manoj Babuji Exports India Private Limited and PW15/neighbour and convicted the petitioner. In this case, Ex.P13 is the personal account opening form of Centurion Bank of Punjab, wherein, the petitioner's photo does not find place. In this case, PW5, PW6, PW7, PW8 and PW10 have confirmed that the verification of the petitioner's address while opening account in Centurion Bank of Punjab was done by Krishnan & Company and nobody has seen the petitioner to have claimed himself as Shanmugasundaram. PW15, the neighbour of the petitioner stated that she had seen the petitioner, his name is Purushothaman. On what basis PW15 said so, there is no proof in this case. He further submitted that during trial, the trial Court sent the document to the handwriting expert and the same was returned for insufficient documents, thereafter, no steps was taken to send the documents again. On the other hand, the trial Court confirmed that the petitioner is Purushothaman @ Shanmugasundaram and he cheated PW1 by producing false documents.

7.Further, the trial Court and the lower appellate Court failed to see the contradictions in the prosecution witnesses and convicted the petitioner on the basis of the evidence of PW1, PW4 and PW15. Thus, the prosecution failed to prove the case beyond reasonable doubt and he prayed for acquittal of the petitioner from all charges levelled against him.

8.The learned Government Advocate (Crl. Side) appearing on behalf of the respondent Police submitted that the petitioner is a regular offender, he is involved in several cases. In the complaint (Ex.P6), PW1 clearly gave particulars how and on what manner, he and others were cheated by the petitioner, they have also provided the particulars with regard to the petitioner being detained under the Goondas Act in Crime No.567 of 2007, on the file of the Inspector of Police, B-7 Ramanathapuram Police Station, Coimbatore in a rice smuggling case and the petitioner involved in 33 criminal cases. He further submitted that the petitioner claiming various alias name like Purushothaman @ Shanmugasundaram @ Gopalakrishna Raja, cheated several persons. This fact is confirmed from the confession of the petitioner (Ex.P20), wherein the petitioner detailed about various cases pending against him. He further submitted that PW1, the Manager of M/s.Manoj Babuji Exports India Private Limited, Park Town, Chennai detailed in his evidence with regard to the manner in which the petitioner had approached and deceived him and thereby, yarn was supplied on credit basis. PW4, the Managing Director of M/s.Manoj Babuji Exports India Private Limited, Park Town, Chennai confirmed the evidence of PW1. From the evidence of PW2/Assistant from the Registrar of Companies and from his letter (Ex.P7), it is confirmed that there is no company in the name of M/s.Sree Maruthamalai Murugan Textile Industries Private Limited.

9.The learned Additional Public Prosecutor further submitted that PW1 in his evidence confirmed about the purchase order, dated 13.11.2006 (Ex.P2), the petitioner handing over the cheque (Ex.P3), delivery challan (Ex.P4), Invoice (Ex.P5) and lodging of complaint (Ex.P6). All these documents confirmed the role of the petitioner in this case. PW4 stated about the letter of M/s.Sree Maruthamalai Murugan Textile Industries Private Limited, dated 29.11.2006 (Ex.P9) handed over by the petitioner along with the cheque (Ex.P3). The covering letter (Ex.P9) not only confirmed the issuance of cheque (Ex.P3), but also confirmed the supply of yarn to the petitioner by PW1. PW3, the Inspector of Police, Elephant Gate Police Station, Chennai stated that he received the complaint from PW1 and registered FIR in Crime No.820 of 2007 (Ex.P8). PW5 and PW8, the employee of Krishnan & Company, Coimbatore, the verification agents for Centurion Bank of Punjab confirmed the account opening form was addressed to them for verification of the customer Shanmugasundaram's address. PW10 is the Manager of Centurion Bank of Punjab when the petitioner opened the bank account. PW6 is the subsequent Manager of Centurion Bank of Punjab, who confirmed the petitioner opened the bank account and had transactions in the name of Shanmugasundaram. PW7 is the Manager of HDFC Bank, Parris Branch, Chennai, he stated about PW1's bank account particulars. PW9 is the Postman, under whose jurisdiction the address No.6/28, BPC Nagar, Bharathiyar University, Coimbatore is situated. He confirmed that in the said address one Natarajan and Sivaraman were there and there is no company in the name of M/s.Sree Maruthamalai Murugan Textile Industries Private Limited. The evidence of PW9 confirmed the forgery committed by the petitioner. PW13/Deputy Commercial Tax Officer confirmed that TNGST number and CST number provided by the petitioner are bogus and issued the report (Ex.P19) to that effect. PW11 confirmed the driving license submitted along with the application form is false. PW12, the delivery van owner confirmed about the delivery of yarn to the petitioner. PW14 is the witness to the confession statement of the petitioner (Ex.P20). PW16 and PW17 are the Investigating Officers. PW16 conducted major portion of the investigation, examined the witnesses, collected documents, on his transfer, PW17 arrested the petitioner, recorded the confession of the petitioner (Ex.P20) and collected further documents and filed charge sheet. The trial Court on the evidence and documents produced, had rightly convicted the petitioner and the same was confirmed by the lower appellate Court.

10.He further submitted that the petitioner is a regular offender, involved in several cases and cheated many persons. The petitioner by using alias name, is attempting to wriggle out from his misdeeds. Hence, he prayed for dismissal of this criminal revision.

11.This Court considered the rival submissions and perused the materials available on record.

12.The primary contention of the petitioner is that Shanmugasundaram and Purushothaman are two different persons and not one and the same. The Police on their own gave alias name to the petitioner and falsely implicated in this case. The cheque (Ex.P3) was signed in the name of Shanmugasundaram. The petitioner's name is Purushothaman, he has got nothing to do with Shanmugasundaram.

13.On perusal of the evidence and documents, it is seen that the purchase order (Ex.P2) was signed by the Manager Purchase and the delivery challan (Ex.P4) was signed by one Pandi, the driver of the delivery van. The bank document viz., the Letter of Centurion Bank of Punjab Limited (Ex.P11), statement of account (Ex.p12), account opening form (Ex.P13), residential report (Ex.P15), prepaid savings account (Ex.P16) and KYC control sheet-individual accounts (Ex.P17) confirmed that the account was maintained by one Shanmugasundaram and not by Purushothaman. The petitioner by using alias name is attempting to wriggle out from his misdeeds. The evidence of PW1 and PW4 confirmed that the petitioner approached PW1, placed orders for supply of yarn and handed over the cheque (Ex.P3) along with the covering letter (Ex.P9). Further, the address of M/s.Sree Maruthamalai Murugan Textile Industries Private Limited found in the purchase order (Ex.P2), delivery challan (Ex.P4), invoice (Ex.P5), covering letter (Ex.P9), letter of Centurion Bank of Punjab Limited (Ex.P11), Centurion Bank of Punjab Personal Account Opening form (Ex.P13) and in the connected documents confirmed that the address is in the name of Shanmugasundaram. The person, who handed over Exs.P2, P3 & P9 is the petitioner and the same is confirmed from the evidence of PW1 and PW4, who identified the petitioner.

14.It is also seen that PW15 identified the petitioner as Purushothaman. The bank officials identified the petitioner is the person, who opened the bank account in the name of Shanmugasundaram. The petitioner to suit his convenience used his name like Purushothaman @ Shanmugasundaram @ Gopalakrishna Raja and cheated several persons, which is confirmed in Ex.P6. Further, the petitioner involved in several cases. The trial Court, in a detailed manner, analyzed the evidence and materials and rendered well reasoned judgment convicting the petitioner. The lower appellate Court confirmed the same.

15.On the evidence and materials, this Court does not find any illegality or perversity or infirmity in the judgments of the trial Court and the lower appellate Court and the same are, hereby, confirmed.

16.In the light of the above discussion, the criminal revision is not sustainable and, is liable to be dismissed and accordingly, dismissed. Consequently, the connected Criminal Miscellaneous Petition is closed.

17.The trial Court is directed to secure the petitioner for sufferance of the remaining period of sentence.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1.The XVIII Additional Sessions Court,
Chennai.

2.The XI Metropolitan Magistrate Court,
Saidapet, Chennai.

3. Do through the Chief Metropolitan Magistrate,Chennai.

4.The Inspector of Police,
CBCID,O.U.C., Chennai.

5.The Public Prosecutor,
High Court, Madras.

+1 cc to Mr.C.Sivakumar, Advocate Sr.NO. 31942

Crl.R.C.No.1042 of 2017

SSI(CO)
A.SK(06/06/2022)