Bail Slip in Crl.R.C.No. 238/2016:

The Petitioner/Accused namely Loganathan S/o. Govindan was directed to be released on bail in and by the order of this Court made in Crl.M.P. No. 2413/2017 in Crl.R.C.No.238/2017 dated 23.02.2017.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.05.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Orders Reserved On 13.04.2022	Orders Pronounced On 27.05.2022

Crl.R.C.No.238 of 2017

Loganathan ...Petitioner/Accused

Vs.

The State of Tamil Nadu,
represented by Inspector of Police,
Vellore District Crime Branch, Vellore.
Crime No.30 of 2013 ...Respondent/Complainant

PRAYER: Criminal Revision Petition filed under Sections 397 and 401 of Criminal Procedure Code, to call for the records in C.A.No.25 of 2016 on the file of the Court of Principal District and Sessions Judge, Vellore dated 03.10.2016 confirming the order of conviction of the learned Judicial Magistrate No.2, Vellore in C.C.No.393 of 2015 dated 26.04.2016 and set aside the same.

For Petitioner : Mr.N.R.Elango
Senior Counsel
for Mr.R.Ganesan

For Respondent : Mr.R.Kishore Kumar
Government Advocate

ORDER

The petitioner/accused in C.C.No.393 of 2015 was convicted by the learned Judicial Magistrate No.II, Vellore by judgment dated 26.04.2016 for the offence under section 466 IPC and sentenced to undergo one year rigorous imprisonment and to pay a fine of Rs.1000/-, in default to undergo three months simple imprisonment, for the offence under Section 468 IPC and sentenced to one year rigorous imprisonment and to pay a fine of Rs.1,000/-, in default to undergo three months simple imprisonment, for the offence under Section 471 IPC and sentenced to undergo one year rigorous imprisonment and to pay a fine of Rs.1,000/-, in default to undergo three months simple imprisonment, for the offence under Section 420 IPC and sentenced to undergo one year rigorous imprisonment and to pay a fine of Rs.1,000/-, in default to undergo three months simple imprisonment and the sentence to run concurrently. Against which, the petitioner preferred an appeal in C.A.No.25 of 016 before the Sessions Court. The learned Principal District and Sessions Judge, Vellore by judgment dated 03.10.2016 dismissed the appeal confirming the conviction and sentence of the Trial Court, against which, the present revision petition is filed.

2.Before the Trial Court, P.W.1 to P.W.8 examined and Ex.P1 to Ex.P9 marked. On the side of the defence, no witnesses examined and no documents marked. On conclusion of the trial, the Trial Court convicted the petitioner which was confirmed by the Lower Appellate Court as stated above.

3.The brief facts of the case is that the petitioner joined as Junior Assistant in Commercial Taxes Department, Vellore. During the year 2000, the petitioner submitted a certificate/Ex.P.4 dated 04.08.2000 claiming that he passed the Junior Accountancy Test. Based on the application submitted by the petitioner, entries were made in his Service Register. Thereafter, the petitioner got promoted on 02.01.2007 and transferred to Salem. The Department sent the certificate of the petitioner along with ten others for verification with the Director of Technical Education, who verified the same and found that nine certificates were genuine and two certificates were forged, one such was that of the petitioner. After making internal verifications, on the instructions of the Commissioner of Commercial Taxes, the Assistant Commissioner of Commercial Tax lodged a complaint annexing the report and documents to the respondent police on 06.05.2013. The respondent registered a case in Crime No.30 of 2013 for the offence under Section 466, 468, 471 and 420 IPC. After investigation, final report was filed before the learned Judicial Magistrate No.II, Vellore.

4.The contention the petitioner is that the petitioner appeared for the Junior Accountancy Test which is a Departmental examination, which Government servant is required to clear. The petitioner applied for the same, appeared for the examination and thereafter, the certificate/Ex.P4 was sent to him by post from the Director of Technical Education. On receipt of the same, the petitioner submitted a request letter to P.W.4 along with the certificate and the postal cover. P.W.4 recorded the same in his Service Register which is marked as Ex.P5. Thereafter, the petitioner is not aware of what had happened. Later the petitioner came to know that P.W.3 received a letter from the Commissioner, Commercial Tax that there is some doubt with regard to technical education certificates of 11 persons, hence certificates including that of the petitioner in Certificate Serial No.JEG051112 [Registration No.315484] were sent to the head office, from there it was forwarded to the Director of Technical Education, who by Ex.P3 later informed that the petitioner's certificate found to be forged and the petitioner had not cleared the Accounts Test. This happened 13 years before and thereafter, the complaint was lodged. It is further submitted that in this case eight witnesses examined. P.W.1/Assistant Commissioner, Commercial Tax Office, Tiruvannamalai is the complainant who forwarded the complaint along with the documents, P.W.2/Assistant Commissioner, Commercial Tax Office, Erode who states about the petitioner employed at Sathyamangalam within the Erode Division, P.W.5/Deputy Commissioner, Commercial Tax Office, Vellore states about the Commissioner in proceedings Na.Ka.No.B2/49307/2006/1 dated 12.10.2006 promoted the petitioner from Assistant to Assistant Commercial Tax officer and the same was recorded in the Service Register of the petitioner. P.W.6 is the Regional Officer of Technical Education who states that he received Ex.P2/letter to verify the genuineness of the certificate of nine persons. Thereafter, Ex.P4 was verified and found to be forged.

5.In the cross examination, P.W.6 admits that he has not given details as to how and in what manner Ex.P4 was verified and found to be forged, he simply states that he verified the certificate with the registers maintained in the office and given the report. He further clarifies by stating that the documents are confidential documents and hence not produced the same, if the Court or the Police request for the same, the same shall be produced, thereafter, no steps taken by the prosecution for production of registers. In view of the same, the discrepancy in the certificate and the register not proved. It is further submitted that the certificate issued by the Director of Technical Education is not disputed, the dispute is with regard to recording of pass in the Accounts Test, which is not verified, compared with any of the records, no register, answer sheet, etc. produced before the Court. Hence, in this case the basic foundation and the primary aspect of the case not proved. P.W.7 and P.W.8 are the Investigating Officers, who admit that they have not taken any steps to verify the genuineness of the documents since already the Commercial Tax Officer took steps to verify the same and thought fit not to reconfirm the same.

6.In this case, the primary document is ExP.4, P.W.4 speaks about the same and confirms that Ex.P4 was submitted along with the requisition letter but the said requisition letter not produced. P.W.6, official from the Technical Education Department states that Ex.P2 and Ex.P3 would confirm that Ex.P4/certificate of the petitioner, shows passed in second class in Accountancy, is not correct and it is forged one. The result and the marks obtained was verified with the registers but no register produced in this case. He further submitted though he states that it is a confidential document, there is nothing confidential with regard to the marks in the register. Hence, the prosecution miserably failed to prove that Ex.P4 is a forged document. The Lower Court had gone on a wrong premise that Ex.P4 was submitted by the petitioner, hence an adverse inference to be taken that a forged document was produced by the petitioner. P.W.4 admits that along with the postal cover, covering letter, certificate was produced and P.W.6 admits that the certificate format and the certificate Sl.No.JEG051112 are all genuine except for the result. Obviously, the certificate format issued by the Director of Technical Education is not denied. Thus, the Trial Court and the Lower Appellate Court failed to consider this important aspect and wrongly convicted the petitioner.

7.The learned Government Advocate appearing for the respondent submitted that on the complaint of P.W.1, FIR was registered and thereafter investigation was conducted by P.W.7, who examined the witnesses. P.W.1 along with the complaint/Ex.P1 submitted the relevant documents Ex.P2 and Ex.P3/letters received from the Director of Technical Education confirming that the petitioner with registration No.315484 had not cleared the Accounts Test. Further, in Ex.P3 the names of the nine persons who have passed the examination and their particulars are given, in which the petitioner's name found missing which confirms that Ex.P4/certificate is forged. P.W.2, who was the Deputy Commissioner, Commercial Taxes, Erode at the time when the petitioner was working as the Assistant Commercial Tax Officer at Sathyamangalam, was directed to lodge a complaint, after getting opinion from the Public Prosecutor informed that the complaint to be lodged only by the Assistant Commissioner, Vellore. P.W.3 had clearly stated about the verification of certificates of 11 persons and the petitioner's certificate was found to be forged. P.W.4 is the Assistant Commissioner [Incharge], Vellore at the time when the petitioner submitted the certificate/Ex.P4 along with the covering letter and the same recorded in the Service Register. Thus, the petitioner submitted the certificate/Ex.P4 is confirmed. P.W.5 is the Assistant Commissioner, Vellore who confirms that on the recording of the petitioner clearing the Accounts Test, he became eligible to be promoted as Assistant Commercial Tax Officer and the Commissioner of Commercial Taxes, by proceedings dated 12.10.2006 issued the promotion order to the petitioner. P.W.6 is the Regional Officer of the Technical Education Department who confirms that Ex.P2 and Ex.P3 were issued by his office after verifying Ex.P4 with the register. P.W.6 further states that earlier request was received from the Commercial Tax office for verifying 11 certificates, all were verified and the petitioner's certificate was found to be forged. There is no reason to doubt the evidence of P.W.6, a public servant. P.W.7 and P.W.8 are the Investigating Officers, who conducted investigation, on conclusion of investigation filed a final report and produced the witnesses before the Trial Court. The Trial Court on the evidence of the witnesses and the materials produced rightly convicted the petitioner. He further submitted that the petitioner being employed in a Government Department, produced a document claiming that he had passed the Accounts Test and now taking a technical defence that the covering letter produced along with the certificate not produced. The petitioner not taken any steps to file any petition for summoning the covering letter and also the registers available with the Director of Technical Education and now attempts to take advantage of the same. The Trial Court finding that the burden of proving the fact under Section 106 of the Indian Evidence Act, 1872 is with the petitioner and further under Section 114, adverse inference was drawn against him and hence, convicted the petitioner. He further submitted that the reasoning given by the Courts below are proper and needs no interference. Hence, he prayed for dismissal of this petition.

8.Considering the submissions made and on perusal of the materials placed before this Court, it is seen that the petitioner was employed as Assistant in the Commercial Tax Office, Ranipet. He produced a certificate/Ex.P4 on 04.08.2000 claiming that he passed the Departmental examination in Accounts, based on the certificate produced by the petitioner entries were made in his Service Register and later, the petitioner was promoted as Assistant Commercial Tax Officer on 27.10.2006. At that time, certificates of 11 persons including the petitioner was sent for verification to the Director of Technical Education on 24.01.2007. On 13.02.2007, a communication Ex.P3 disclosed that certificates of 9 persons found to be genuine and certificates of two persons found to be forged, one of the certificate is that of the petitioner. Thereafter, complaint was lodged on 19.03.2013 along with the letters received from the Technical Education Department. P.W.2 and P.W.3 state about the service and postings of the petitioner and nothing more. P.W.4 is the important witness to whom the petitioner submitted the certificate/Ex.P4 which now turned to be forged. Ex.P4 is the certificate issued by the Technical Education Department. Normally, these certificates are sent through post to the concerned candidates. The specific case of the petitioner is that the petitioner submitted the certificate/Ex.P4 along with the covering letter and postal cover, P.W.4 admits that the certificate/Ex.P4 was submitted by the petitioner along with covering letter but the same not available in the Service Register. The Service Register is an important document which is to be maintained with proper care. It is the responsibility of the concerned officer to maintain and keep the Service Register properly with safety. It is an important primary document for all Government servants wherein from the date of joining his duty till his retirement, all his service particulars, conduct and receipt of any communication are recorded and maintained in the file. The other witness, P.W.6 who is the Regional Officer, Directorate of Technical Education confirms that Ex.P2 and Ex.P3 were issued by his Department. From Ex.P2 it is seen that the petitioner secured less marks and had not passed the Accounts Test and in Ex.P3, the list of nine persons whose certificates found to be genuine are provided. Ex.P4 is the certificate of the petitioner wherein it is shown that the petitioner had passed the Accounts Test. In comparing Ex.P4 with Ex.P2, it is seen that in Ex.P2 there is no mention about the serial number of the Certificate JEG051112. P.W.6 does not state that Ex.P4 was not issued by the Department of Technical Education, he only states that the result found in Ex.P4 is not genuine and in all other aspects, Ex.P4 is not disputed.

9.Added to it, P.W.6 submits that Ex.P2 was issued on verifying Ex.P4 with the registers available in the Technical Education Department. Strangely the register or its copy not produced. P.W.6 admits that if the Prosecution or the Court summons, the same can be produced and for what reason, no steps taken to produce the same is not known. In view of not disputing Ex.P4 except for the result, then how come Ex.P4 had reached the petitioner is also not known. P.W.7 and P.W.8, Investigating Officers admit that they have not taken any steps to verify the genuineness of Ex.P4 since already Commercial Tax Office had taken steps and collected Ex.P2 and Ex.P3, on completion of investigation, charge sheet filed. This reasoning and the answer is not proper. It is the duty of the Investigating Officer to verify the documents with records personally or summon the same during investigation, thereafter get opinion if needed and to find out how Ex.P4 reached the hands of the petitioner and the person who made correction at the Office of the Director of Technical Education. All these aspects not considered and it has been glossed over. The Trial Court given a finding that the burden of proof is on the accused especially when it is within the knowledge, as per Section 106 of Indian Evidence Act is not proper. Likewise, drawing adverse inference as per Section 114 of the Act is not proper on the facts and circumstances of this case. The certificate was produced along with the covering letter and postal cover, is admitted by P.W.4 and the said letter is not available now. Withholding of vital facts is due to the laxity in the investigation by the Investigating Officer, who failed to take steps during investigation with the personnels of Director of Technical Education to find out as to who generated Ex.P4 and how it was despatched to the petitioner. These vital facts and laxity not considered by the Courts below and on the other hand, convicted the petitioner shifting the burden on the petitioner. It is the duty of the prosecution to prove the case beyond all reasonable doubt. In this case, they miserably failed to do so. In view of the same, this Court is inclined to set aside the conviction passed by the Trial Court which was confirmed by the Lower Appellate Court.

10.Accordingly, the order of conviction passed by the learned Judicial Magistrate No.2, Vellore in C.C.No.393 of 2015 dated 26.04.2016 which was confirmed by learned Principal District and Sessions Judge, Vellore in C.A.No.25 of 2016 dated 03.10.2016 are hereby set aside. The petitioner is acquitted of all the charges levelled against him.

11.In the result, this Criminal revision petition is allowed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To
1.The Judicial Magistrate No.2,
Vellore.

2. The Chief Judicial Magistrate,
Vellore

3.The Principal District and Sessions Judge,
Vellore.

4.The Inspector of Police,
Vellore District Crime Branch,
Vellore.

5.The Public Prosecutor,
High Court, Madras.

6. The Superintendent
Central Prison, Vellore.

Crl.R.C.No.238 of 2017

RK(CO)
SP(03/06/2022)