IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.11.2022

CORAM

THE HON'BLE Dr.JUSTICE G.JAYACHANDRAN

Crl.R.C.No.984 of 2017

S.Kumar

... Petitioner

-Vs.-

State represented by
The Inspector of Police,
Central Crime Branch,
Chennai
(Crime No.814 of 2008)

.. Respondent

Criminal Revision Petition filed under Section 397 read with Section 401 of Code of Criminal Procedure to call for the records in Crl.A.No.173 of 2016 and set aside the conviction and sentence confirmed by the learned XVI Additional Sessions Judge, Chennai in C.C.No.4699 of 2010 on the file of the learned III Metropolitan Magistrate, George Town, Chennai 600 001 and acquit the petitioner/appellant/accused of all the charges framed against him.

For Petitioner :Mr.N.R.Elango,
Senior Counsel,
for Mr.A.S.Aswin Prasanna

For Respondents :Mr.N.S.Suganthan,
Government Advocate (Criminal side)
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O R D E R

This Criminal Revision Case has been filed to set aside the conviction and sentence ordered, in Crl.A.No.173 of 2016, by the learned XVI Additional Sessions Judge, Chennai confirming the order passed by the learned III Metropolitan Magistrate, George Town, Chennai in C.C.No.4699 of 2010.

2. Heard the learned Senior counsel for the petitioner and the learned Government Advocate (Criminal side) for the respondent.

3. This Criminal Revision Case has been filed against the concurrent findings of the Court below, holding the petitioner herein

guilty of offence under Clauses 10(b) and 12(a) of the Tamil Nadu Schedule Commodities (Regulation of distribution by card system) Order, 1982 [hereinafter "said Order"] punishable under Section 7(1)(a)(ii) of the Essential Commodities Act and for the offences under Section 420 IPC.

4. The sum and substances of the charge against the accused person is that he is the son of the brother of one Kamala Bai, who died intestate on 07.04.2007. Her husband/Seetharaman was predeceased in the year 1980. The valuable residential property was left behind by Kamala Bai. The petitioner herein posing himself as son of Kamala Bai alleged to have obtained legal heir certificate and transfered the property in his name and also mortgaged the property with Cooperative Bank and availed loan of Rs.50,000/-. Thereafter the informations were collected by some of the second class heirs of Kamala Bai through RTI. The FIR came to be registered by the respondent police in Crime No.814 of 2008 and final report was filed against this petitioner in C.C.No.4699 of 2010 for charges under Section 7(1)(a)(ii) of the Essential Commodities Act

and Sections 420 and 465 read with 471 of IPC.

5. Before the trial Court, the prosecution has examined 18 witnesses and marked 77 exhibits. The trial Court held that the prosecution has failed to prove the charges under Sections 465 read with 471 IPC. However, for having two ration cards, one as a son of Kamala Bai and another as a head of the family along with wife and son, the trial Court found the petitioner herein guilty for the offences under Clauses 10(b) and 12(a) of the said Order, punishable under Section 7(1)(a)(ii) of the Essential Commodities Act and for the offences under Section 420 IPC for avaling loan based on the title of the document, which he has obtained by misrepresenting himself as the sole legal heir of the deceased Kamala Bai.

6. The appeal preferred by the petitioner herein before XVI Additional City Civil Court, Chennai in Crl.A.No.177 of 2016, came to be dismissed on 14.07.2017 by confirming the trial Court judgment of conviction and sentence. Against the said judgment, the present revision petition has been filed.

7. At this juncture, it is pertinent to note that the State has not preferred any appeal against the acquittal of the accused for the offences under Section 465 read with 471 IPC and the same has some bearing in deciding this revision petition. The provisions of law under which the petitioner herein found guilty and convicted is Clauses 10(b) and 12(a) of the said Order, which reads as follows:

> *<u>Clause 10(b) of the said Order:</u>*
>
> ***"10.Return of family card by person in authorised possession**.-*
>
> *(a) ....*
>
> *(b) Where person is in possession of a family card and such possession is not authorised by this order, he shall forthwith deliver the same to the person to whom it is issued or to the Inspecting Officer."*
>
> *<u>Clause 12(a) of the said Order</u>:*
>
> ***"12. Prohibition against applying the supply card, etc**.-*
>
> *No person shall*
>
> *(a) dishonestly apply for or receive a family card, if he knows or has reason to believe that his name is already*

included in any family card issued to any household; or"

8. Section 7(1)(a)(ii) of the Essential Commodities Act prescribes penalty for the said offences and to attract Clauses 10(b) and 12(a) of the said Order, essentially the prosecution ought to have proved that the petitioner had reasonable belief that his name is already included in family card issued to any household, which is prohibited under Clause 12(a) of the said Order.

9. Though the Courts below had held that the petitioner has violated Clause 12(a) of the said Order by knowing well that his name has been included in the family card issued for Kamala Bai, he has obtained new family card in his name showing himself as head of the family and his wife and his son as other members of the family. In this regard, the prosecution has relied upon PW9/Mohamed Akbar, Assistant Commissioner, Department of Food Safety and Consumer Protection. The PW9 had categorically deposed that both the ration cards, which stood in the name of Kamala Bai as well as in the name of

Kumar/petitioner herein, were issued on renewal in the year 2005. He candidly admitted that while renewing the ration card, they do not verify the members of the family unless there is any representation. Further he also admits that on the death of Kamala Bai, the ration card issued in the name of Kamala Bai was cancelled since other member of the family/ Kumar/petitioner herein had his own ration card along with his family members. It is also stated in the cross examination that Kumar/petitioner herein had intimated the authorities on 21.04.2008 for cancelling the ration card issued in the name of Kamala Bai, since Kamala Bai died.

10. To attract offences under Clause 10(b) of the said Order, if the person is in possession of the family card and such possession is not authorised by the order, he shall forthwith deliver the same to the person, by whom it was issued or to the Inspecting Officer. In this case, it is admitted by the prosecution witness that the petitioner has infomred the death of Kamala Bai and pursuant to that the ration card issued in the name of Kamala Bai has been cancelled. Therefore, the provisions of law, under which the trial Court has convicted the petitioner herein for the

offences punishable under the Essential Commodities Act for helding two ration cards is unfound. The perversity of the Courts below in not properly appreciating the charge and the ingredients required for convicting him warrants interference exercising the revisional jurisdiction.

11. As far as the offences under Section 420 IPC, the allegations against the petitioner is that the petitioner, by posing himself as son of the deceased Kamala Bai, has manipulated the documents and got legal heir certificate and also availed loan from Cooperative Bank pledging the documents of the house, which he has fraudulently transfered in his name using the legal heir certificate. For this, the trial Court has framed composite charge of offences under Sections 420 and 465 read with 471 IPC, which is not in consonance with Section 218 of Code of Criminal Procedure. That apart, the trial Court on appreciating the evidence has found the offences under Section 465 read with 471 IPC has not been made out. However, convicted the petitioner for the offences under Section 420 IPC, which reads as follows:

"Section 420 of IPC:-

***420**. Cheating and dishonestly inducing delivery of property —Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."*

12. The fact, which has been established through the prosecution witnesses, is that this petitioner has availed loan from the Cooperative Bank using the documents, which indicates him as son of Kamala Bai and in fact the same had not been proved. However, as pointed out by the learned Senior counsel appearing for the petitioner, the loan availed by the petitioner from the Cooperative Bank was discharged long before the complaint, which shows that the petitioner had no dishonest intention of inducing the Bank to sanction loan.

13. It is the case of the petitioner that the petitioner, who was taking care of Kamala Bai, after demise of her husband in the year 1980, is treated as her son and appointed as nominee to her bank accounts and also in several other documents, he has been shown as her son even during her lifetime. At the death of Kamala bai, he performed the last rituals and the same has been admitted by the PW5, who is one of the second class legal heirs of Kamala Bai and relying upon the documents, it is stated that the petitioner was brought up by Kamala Bai and her husband while he was young and pursuing his studies and further it indicates that he was living with them till their demise and taking care of them. Therefore, without any dishonest intention, the petitioner had believed him to be the fostered son of Kamala Bai and he was allowed to be acted upon by the other second class legal heris till misunderstanding cropped up between him and PW5.

14. This Court, *dehors* of the above submission of the learned Senior counsel while analysing the charge framed against the petitioner and evidence placed by the prosecution, finds that the charge framed against the petitioner is not substantiated through the evidence relied by the prosecution. The Courts below was carried way by other facts, for which charges were not framed and had convicted the petitioner, which is manifest error of law and the same requires interference.

15. In view of the above, this Criminal Revision Case is allowed. Accordingly, the conviction and sentence ordered in Crl.A.No.173 of 2016, by the learned XVI Additional Sessions Judge, Chennai confirming the order passed by the learned III Metropolitan Magistrate, George Town, Chennai in C.C.No.4699 of 2010, is set aside.

14.11.2022

Speaking/Non-speaking order
Index: Yes/No
Internet : Yes/No
nsa

To

1.The Additional Sessions Judge No.XVI,
Chennai

2.The Metropolitan Magistrate No.III,
George Town,
Chennai 600 001

3.The Inspector of Police,
Central Crime Branch,
Chennai
(Crime No.814 of 2008)

4.The Public Prosecutor,
High Court, Madras.

Dr.G.JAYACHANDRAN.J.,

nsa

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