



Crl.RC.No.1230 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2022

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.RC.No.1230 of 2018

Pandiyan

... Petitioner

Versus

State rep the
The Sub Inspector of Police,
Perambalur District Crime Branch,
Perambalur
crime No.11 of 2007

... Respondent

PRAYER:

Criminal Revision has been filed under Section 397 r/w 401 of the Code of Criminal Procedure to set aside the judgment and sentence passed in CA.No.14 of 2017 dated 05.10.2018 on the file of the Principal District & Sessions Court, Ariyalur confirming the judgment and sentence passed in CC.No.268 of 2008 dated 30.06.2017 on the file of the learned Judicial Magistrate No.I, Ariyalur convicting the petitioner under Section 420 of



Crl.RC.No.1230 of 2018

IPC and sentenced to undergo six months simple imprisonment and imposed a fine of Rs.5,000/-, in default to undergo 15 days simple imprisonment.

For Petitioner : Mr.V.Illanchezian

For Respondent : Mr.A.Gopinath,
Government Advocate(crl.side)

ORDER

This criminal revision is filed as against the judgment passed in Crl.A.No.14 of 2017 dated 05.10.2018 on the file of the Principal District & Sessions Court, Ariyalur, thereby confirmed the conviction and sentence imposed in CC.No.268 of 2008 on the file of the learned Judicial Magistrate-I, Ariyalur dated 30.06.2017, thereby convicted the petitioner for the offence punishable under Section 420 of IPC and sentenced him to undergo six months simple imprisonment and fine of Rs.5,000/-, in default to undergo 15 days simple imprisonment.

2. The case of the prosecution is that 15.05.2006, the accused induced the defacto complainant to send her son to abroad and received a sum of Rs.25,000/- as first instalment and also received second instalment



Crl.RC.No.1230 of 2018

Rs.1,00,000/- on 21.06.2006. Thereafter, the accused obtained bogus visa and sent him to Dubai. He stayed at Dubai Airport for two days and he was sent back to India, thereby the accused cheated the defacto complainant. Hence, the complaint. On receipt of the said complaint, the respondent registered FIR in crime No.11 of 2007 for the offence punishable under Section 406, 420 and 506(i) of IPC. After completion of investigation, final report was filed and the same has been taken cognizance by the trial court in CC.No.268 of 2008.

3. On the side of the prosecution, examined PW1 to PW15 and marked Ex.P1 to Ex.P11. On the side of the accused, no one was examined and no documents were marked. On perusal of oral and documentary evidence, the trial court found him guilty for the offence punishable under section 420 of IPC and sentenced to undergo six months simple imprisonment and fine of Rs.5,000/-, in default to undergo 15 days simple imprisonment. Aggrieved by the same, the petitioner preferred appeal and the same was also dismissed and confirmed the judgment passed by the trial court. Aggrieved by the same, the present revision has been filed.



Crl.RC.No.1230 of 2018

WEB COPY

4. The learned counsel for the petitioner would submit that the victim i.e. the son of PW1 was not examined by prosecution to prove its case beyond any doubt. The prosecution also failed to mark the alleged passport and the alleged bogus visa obtained by the accused before the trial court. The entire conviction is based only on Ex.P2. It was allegedly executed by the accused in the house of PW1, whereas PW1 deposed that the alleged Ex.P2 was executed by the accused in the police station in front of PW2 and PW4. Ex.P2 was executed by the petitioner only in the police station, that too under coercion and compulsion. Therefore, Ex.P2 cannot be used for any purpose and the courts below convicted the petitioner only on the basis of Ex.P2. Therefore, he prayed for acquittal.

5. Per contra, the learned Government Advocate(crl.side) appearing for the respondent / police submitted that though the prosecution did not examine the victim, evidence of PW1 to PW4 are very clear and their evidences are cogent and trustworthy. On the basis of their evidence, both the courts below rightly convicted the petitioner for the offence



Crl.RC.No.1230 of 2018

punishable under Section 420 of IPC. PW2 and PW4 categorically deposed that Ex.P2 was executed by the accused in the house of PW1. Therefore, he prayed for dismissal of the present criminal revision.

6. Heard, Mr.V.Illanchezian, the learned counsel for the petitioner and Mr.A.Gopinath, the learned Government Advocate (Crl.side) appearing for the respondent / police.

7. Admittedly, the son of PW1 was sent to Dubai. However, he stayed at Dubai Airport and he was sent back to India. PW1 deposed that the accused induced her to send her son to abroad and received money to the tune of Rs.1,25,000/- on two instalments. Thereafter, he prepared passport and also obtained visa to go to Dubai. Accordingly, her son was sent to Dubai and he stayed there for two days. Thereafter, he was sent back to India since it was bogus visa. It is also seen that PW1 lodged police complaint and the same was not registered by police. Therefore, she was constrained to file private complaint for the direction under Section 156(3) of Cr.P.C., which was marked as Ex.P1. The learned Magistrate issued a



Crl.RC.No.1230 of 2018

direction in Crl.MP.No.7462 of 2007 to register FIR and on the said direction, the respondent registered FIR, which was marked as Ex.P11. Though Ex.P11 was filed on 28.09.2007, it revealed that the petitioner admitted to return the amount to the tune of Rs.1,05,000/- in the panchayat held before panchayatars under the guidance of one, Deiva Ilayaraja, who was examined as PW8.

8. It is further clear that as agreed by the petitioner, he did not return the money to the tune of Rs.1,05,000/- and she lodged complaint. However, it was not considered and as such she was constrained to file a private complaint. PW8 also corroborated the evidence of PW1 and other panchayatars i.e. witnesses to Ex.P2, who were examined as PW2 and PW4. They categorically deposed that Ex.P2 was executed in the house of PW1. Therefore, the offence under Section 420 of IPC is clearly proved by the prosecution against the petitioner. Though the prosecution failed to examine the victim and failed to produce the passport and visa, it is clear from the evidence of PW1 to PW8 and the prosecution proved its case beyond any doubt. As such, the courts below rightly convicted the petitioner



Crl.RC.No.1230 of 2018

for the offence punishable under Section 420 of IPC. However, the learned counsel for the petitioner would submit that considering the age of the petitioner, the sentence may be reduced. He further submitted that so far, the petitioner has incarcerated imprisonment of 16 days.

9. Considering the above submission, this Court is inclined to reduce the sentence. As such, the judgment in CA.No.14 of 2017 dated 05.10.2018 on the file of the Principal District & Sessions Court, Ariyalur confirming the judgment passed in CC.No.268 of 2008 dated 30.06.2017 on the file of the learned Judicial Magistrate No.I, Ariyalur is modified as follows:

- (i) The acquittal for the offence under Sections 406 and 506(i) of IPC and the conviction imposed for the offence under Section 420 of IPC are confirmed.
- (ii) The sentence rendered for the offence under Section 420 of IPC is reduced to the period of remand already undergone by the petitioner on condition that the petitioner shall pay a sum of Rs.1,00,000/- (Rupees One Lakh only) as compensation to PW1 directly by way of demand



Crl.RC.No.1230 of 2018

draft on or before 02.12.2022 and produce the acknowledgment receipt before the respondent, failing which the sentence imposed by the courts below shall stand automatically restored and the respondent is directed to secure the petitioner for serving his remaining period of sentence.

- (iii) The fine imposed by the courts below is hereby confirmed.
- (iv) On payment of Rs.1,00,000/-, the petitioner is directed to be set at liberty forthwith, unless his custody is required in connection with any other case and the bail bond, if any executed by the petitioner, shall stand cancelled.

10. In the result, this criminal revision stands partly allowed.

09.11.2022

Internet:Yes

Index:Yes/No

Speaking/Non speaking order

lok

Note: Issue order copy on 16.11.2022



WEB COPY



Crl.RC.No.1230 of 2018



WEB COPY



Crl.RC.No.1230 of 2018

G.K.ILANTHIRAIYAN. J,

lok

To

- 1.The Principal District & Sessions Court,
Ariyalur
- 2.The learned Judicial Magistrate No.I,
Ariyalur
- 3.The Sub Inspector of Police,
Perambalur District Crime Branch,
Perambalur
- 4.The Public Prosecutor,
High Court of Madras

Crl.RC.No.1230 of 2018

09.11.2022

10/10