BEFORE THE MADURAI BENGH OF MADRAS HIGH COURT
DATED : 23.03.2022
CORAM
THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN
Crl.R.C(MD)Nos.932 of 2021 & 16 of 2022
and
Crl.M.P(MD)No.11161 of 2021

1.Crl.R.C(MD)No.932 of 2021:-

James ... Petitioner/Appellant/ Sole Accused

Vs.

1.State through,
The Inspector of Police,
CBCID Police Station,
Virudhunagar in
District Crime Branch,
Madurai Police Station.
(Crime No.130 of 2000) ... 1st Respondent/1st Respondent/ Complainant

2.G.Rengasamy ... 2nd Respondent

(R - 2 impleaded vide order dated 22.12.2021 made in Crl.M.P(MD)No.11787 of 2021)

PRAYER: Criminal Revision Case filed under Section 397 read with Section 401 of the Code of Criminal Procedure, to call for the records and set aside the order of conviction and sentence rendered by the trial Court in C.C.No.23 of 2011 on the file of the learned Judicial Magistrate No.IV, Madurai, dated 22.05.2015 confirmed by the learned I Additional Sessions Judge, Madurai in Crl.A.No.20 of 2015, dated 20.09.2021 and allow this Criminal Revision Petition.

For Petitioner : Mr.V.Kathirvelu Senior Counsel for Mr.P.Subbiah

For R - 4 : Mr.S.Ravi Additional Public Prosecutor

For R - 1 : Mr.C.Muthu Saravanan

2.Crl.R.C(MD)No.16 of 2022:-

G.Rengasamy ... Petitioner/P.W.8/ Defacto complainant

Vs.

1.T.James
2.A.Santhi
3.Helan Rosalin Pornima ... Respondents 1 to 3/Respondents/ Accused

4.The State represented by,
The Inspector of Police,
Crime Branch CID,
Virudhunagar. ... 4th Respondent/Respondent/ Complainant

PRAYER: Criminal Revision Case filed under Section 397 read with Section 401 of the Code of Criminal Procedure, to call for the records and set aside the Judgment dated 20.09.2021 made in Crl.A.No.40 of 2015 on the file of the learned I Additional District and Sessions Judge, Madurai, confirming the Judgment dated 22.05.2015 made in C.C.No.23 of 2011 on the file of the learned Judicial Magistrate No.IV, Madurai.

For Petitioner : Mr.C.Muthu Saravanan
For R - 1 : Mr.S.Ravi
Additional Public Prosecutor
For R - 4 : Mr.V.Kathirvelu
Senior Counsel
for Mr.P.Subbiah

COMMON ORDER

Crl.R.C(MD)No.932 of 2021 has been filed to set aside the order of conviction and sentence rendered by the trial Court in C.C.No.23 of 2011 on the file of the learned Judicial Magistrate No.IV, Madurai, dated 22.05.2015, confirmed by the learned I Additional Sessions Judge, Madurai in Crl.A.No.20 of 2015, dated 20.09.2021.

2.Crl.R.C(MD)No.16 of 2022 has been filed to set aside the the Judgment dated 20.09.2021 made in Crl.A.No.40 of 2015 on the file of the learned I Additional District and Sessions Judge, Madurai, confirming the Judgment dated 22.05.2015 made in C.C.No.23 of 2011 on the file of the learned Judicial Magistrate No.IV, Madurai.

3.Totally there are four accused, in which the petitioner in Crl.R.C(MD)No.932 of 2021 is arraigned as the first accused (hereinafter referred to as 'the first accused'). The second accused already died and the trial Court acquitted A.3 and A.4.

4.The case of the prosecution is that the accused persons conspired together and collected amounts from the dealers and cheated them. In the year 1998, the accused started the Gas company in the name and style of 'Samson LPG Bottlers Company' for supplying

LPG gas cylinder at Nagercoil. They also opened office in the name of 'Shanthi Traders' at Tirunelveli and Madurai and they caused advertisements in the daily calling for dealership for the firm for particular areas. In view of the said advertisement, the victims had deposited money for their dealership for their respective areas and on receipt of the deposits, they were issued receipts. The accused had collected a sum of Rs.1,97,78,155/- from the victims. The entire amount was converted into their own use and also purchased valuable properties and thereby misappropriated the funds collected from the various persons and cheated them.

5.The petitioner in Crl.R.C(MD)No.16 of 2022, namely, P.W.8-defacto complainant (hereinafter referred to as 'the defacto complainant') was selected as President of the Association which was formed as 'Samson Gas Dealers Welfare Association' to take appropriate action as against the accused. He was examined as P.W.8. On his complaint, the first respondent police registered the F.I.R against the accused in Crime No.130 of 2020 for the offences under Sections 406, 420 r/w 120(b) of the I.P.C. After completion of investigation filed the final report and the same has been taken cognizance in C.C.No.23 of 2011 on the file of the learned Judicial Magistrate No.IV, Madurai.

6.On the side of the prosecution, examined P.W.1 to P.W.77 and marked Exs.P.1 to P.592 and M.O.1 was marked on the side of the prosecution and on the side of the accused, they have marked Ex.D.1 and Ex.D.2.

7.On perusal of oral and material evidence, the trial Court acquitted all the accused persons under Section 120(b) of I.P.C and acquitted A.3 and A.4 for the offence punishable under Sections 120 (b) and 420 of I.P.C. Insofar as the second accused is concerned, during trial the second accused died and convicted the first accused for the offence under Section 420 of IP.C and sentenced him to undergo three years simple imprisonment and imposed a fine of Rs.5,000/- in default to undergo three months simple imprisonment. Aggrieved by the same, the first accused preferred Crl.A.No.20 of 2015 and the defacto complainant preferred an appeal in Crl.A.No.40 of 2015 as against the acquittal of A.3 and A.4 and for enhancement of punishment against A.1. The State also filed an appeal in Crl.A.No.14 of 2018 for enhancement of punishment as against the first accused and as against the acquittal of A.3 and A.4.

8.The first Appellate Court confirmed the Judgment of the trial Court and dismissed all the appeals. Aggrieved by the same, the first accused preferred Crl.R.C(MD)No.932 of 2021 and the defacto complainant preferred Crl.R.C(MD)No.16 of 2022.

9.Both the revisions are arising from common judgment and as such, this Court decided these revisions by common order.

10.The learned Senior Counsel appearing for the petitioner in Crl.R.C(MD)No.932 of 2021 would submit that the entire transactions are business transactions and there is absolutely no material to attract the offence under Section 420 of I.P.C. Even according to the case of the prosecution, from the year 1998 to 2000, they collected deposits from the dealers and they supplied gas cylinders till the beginning of the year 2000 and subsequent period, they failed to supply the gas cylinders. Therefore, from the inception there was no *mens rea* for the first accused to cheat the dealers. They never induced the dealers to deposit money for their respective dealership with the intention to cheat them. In fact, most of the dealers were already settled and now he is ready and willing to return the deposits which were collected from the dealers. In fact, the trial Court observed that there was no intention on the part of the accused to deceive any one at the time of beginning the transaction, subsequent change of circumstances, causing inability to perform the contract after running the industry for more than 1-1/2 years, when it being so, the trial Court ought not to have convicted the first accused for the offence under Section 420 of I.P.C. It is evident from all the customers as well as the retail dealers that the transaction was going on for several months after commencement of the business and also the chain of activities by receiving the empty cylinders and supplying refill were continuing for more than 1-1/2 years after the commencement of the supply of domestic gas, the question of criminal intention to deceive anyone is totally absent. The intention is required to prove at the time of inception of the transaction in order to bring home guilt on the accused. Asfar as the first accused is concerned, he had no intention to deceive anyone. But he was involved in a genuine business transaction for supplying domestic gas cylinder and it was carried for some time and as such, the question of intention is absent.

11.Heard the learned counsel appearing for the first accused, the learned Additional Public Prosecutor appearing for the State and the learned counsel appearing for the defacto complainant and perused the entire materials available on record.

12.On a perusal of the records revealed that admittedly from the year 1998, the accused had started the Gas company in the name and style of LPG Bottlers Company for supplying LPG gas cylinders to the general public. Whereas, the license was issued with necessary endorsement by the explosive department only on 27.03.2001 and the same was delivered to the accused on 28.03.2002. All the accused persons, namely A.1 to A.4, started a partnership firm in the name of Shanthi Traders in Tirunelveli and Madurai from 20.10.1998 and 03.12.1998 respectively. The said firm was registered only on 24.01.2000. They caused advertisements in the newspapers calling upon the dealership for their respective areas. In pursuant to the said advertisements, the victims deposited amounts for their respective dealership areas as refundable deposits in the office of the Shanthi Traders and other amounts under different heads. All the dealers were issued receipts signed by A.1 and A.2. In their absence, their employees issued receipts as per the instruction given by the first and second accused. The entire deposits were credited in the account opened in the name of Shanthi Traders in the State Bank of Travancore in Tirunelveli Branch. From January 1998 to July 2000 a sum of Rs.71,86,473.50/- was credited in the said account. Subsequently, a sum of Rs.71,81,080.25/- was withdrawn from the said account. Thereafter, another one Bank account was opened in the name of Shanthi Traders in State Bank of Travancore in Madurai Branch. In the same period, the first accused purchased a house from Saraswathi on 30.12.2019 for the sale consideration of Rs.4,50,000/-. On 03.11.1999, the first accused purchased the property from Narayana Nadar and Balakrishnan and on the same day, the first accused purchased another property from Sikamani, Kovilpatti, Balu, Stevan and Balakrishnan. On 15.07.1999, he also purchased another property from Ramasamy, Sivasubramaniyan, Kailasam, Sriramar, Jeyarani, Ramalakshmi, Panjavarnam and Pramasakthivelsamy.

13.On perusal of evidence revealed that when the victim contacted the second accused, he promised him that he would get back the total amount of the deposit, if he was appointed as dealer. Believing his words, all the dealers deposited their respective deposits for their respective area. The defacto complainant himself deposited a sum of Rs.2,49,200/- and obtained receipts and dealership certificates which were marked as Ex.P.370 to Ex.P.390. However, from the beginning of the year 2000, the accused stopped the supply of gas cylinders and did not return the amount. All the accused have misappropriated the sum paid by the dealers and thereby cheated them. Though the accused supplied cylinders for some period, admittedly, they have no license from the authority concerned to run LPG cylinder company. P.W.73, who was the then Deputy Chief Controller of Executor in Sivakasi, deposed that the license was delivered to the accused to run LPG cylinder only on 28.03.2002. Therefore, the accused did not disclose it to the dealers and published advertisements and collected huge amount from the various persons. Further, the partnership firm called Shanthi Traders was registered only on 24.01.2000. Therefore, the accused had an intention to cheat the dealers, collected deposits in the name of Shanthi Traders, which was not at all registered firm. When the accused failed to supply the cylinders to the dealers, they ought to have refund the deposits which were deposited by the dealers for their partnership. Admittedly, the accused did not refund the deposit to any of the dealer. Insofar as A.3 and A.4 are concerned, they did not have any active role in the partnership firm. A.3 is the wife of A.2 and A.4 is the wife of A.1. They were used only to register the partnership firm and there are no specific allegations against them even as per the case of the prosecution. Therefore, the trial Court convicted the first accused and acquitted A.3 and A.4 and the same was confirmed by the first Appellate Court. In view of the above, this Court finds no infirmity or illegality in the order passed by the Court below. Accordingly, these Criminal Revision Cases are dismissed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The I Additional Sessions Judge,
Madurai.

2.The Judicial Magistrate No.IV,
Madurai.

3.The Inspector of Police,
Crime Branch CID,
Virudhunagar.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Copy to
The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.P.SUBBIAH, Advocate (SR-14659[F] dated 25/03/2022)

Crl.R.C(MD)Nos.932 of 2021 & 16 of 2022
23.03.2022

RK(04/04/2022) 6P 8C