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CrI.R.C.No.487 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.01.2023

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN

CrI.R.C.No.487 of 2018

K.Srinivasan

... Petitioner

Vs.

State Represented by,
The Inspector of Police,
C.B.I., ACB, Chennai.

... Respondent

Prayer:

Criminal Revision Petition filed under Section 397 and 401 Cr.P.C., to set aside the judgement dated 21.02.2018 passed by the learned IV Additional District and Sessions Judge, Coimbatore in CrI.A.No.51 of 2016, confirming the sentence and fine imposed on the petitioner by judgment dated 05.04.2016 passed by the learned Chief Judicial Magistrate, Coimbatore in C.C.No.119 of 2008.

For Petitioner: M/s.S.Rajalakshmi
for Mr.R.Vijayaraghaven

For Respondent : Mrs.G.Vrinda Ramesh
for Mr.K.Srinivasan
Special Public Prosecutor for CBI Cases.



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ORDER

The Criminal Revision Case has been filed against the judgement dated 21.02.2018 passed in Crl.A.No.51 of 2016 on the file of the learned IV Additional District and Sessions Judge, Coimbatore, confirming the sentence and fine imposed on the petitioner by the judgment dated 05.04.2016 passed in C.C.No.119 of 2008 on the file of the learned Chief Judicial Magistrate, Coimbatore.

2. The respondent police filed a complaint in Crime No.RCMA.1 of 2007(A)0021 before the learned Chief Judicial Magistrate, Coimbatore against the petitioner. The learned Magistrate has taken the complaint on file in C.C.No.119 of 2008 and framed the charge against the petitioner for the offence under Sections 409 and 471 IPC. In order to substantiate the case, on the side of the prosecution, 23 witnesses were examined as P.W.1 to P.W.23 and 27 documents were marked as Ex.P.1 to Ex.P.27. On the side of the defence, no oral and documentary evidence was produced. After trial, the trial court found the petitioner guilty for the offence under Sections 409 and 471



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IPC, convicted the petitioner herein and sentenced him to undergo two years rigorous imprisonment and to pay fine of Rs.5,000/- in default to undergo further period of three months simple imprisonment for the offence under Section 409 IPC. Further, he was convicted and sentenced to undergo two years rigorous imprisonment and to pay fine of Rs.5,000/- in default to undergo further period of three months simple imprisonment for the offence under Section 471 IPC. Aggrieved over the same, the accused has filed an appeal before the learned Principal District and Sessions Judge, Coimbatore and the same was taken on file in Crl.A.No.51 of 2016 and made over the same to the IV Additional District and Sessions Judge, Coimbatore for disposal in accordance with law. The learned IV Additional District and Sessions Judge after hearing the arguments and considered the materials, dismissed the appeal by confirming the judgment of conviction and sentence passed by the Chief Judicial Magistrate, Coimbatore. Aggrieved over the same, the accused has filed the present Criminal Revision Case before this Court.



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3. The case of the prosecution is that the revision petitioner was an authorized agent of New India Assurance Company Limited, Mettupalayam during the relevant period from 2001 to 2006. He is not an authorized agent to procure business for any other branches of New India Assurance Company Limited including Conoor and Ooty. During the period of January to March 2006, as in a capacity of authorized agent of New India Assurance Company, Limited, Mettupalayam, he was entrusted with insurance premium amount for a sum of Rs.8,253/- collected from various policy holders for issuing insurance policies. He dishonestly misappropriated the said amount for his personal use and fraudulently prepared seven fake vehicle insurance policy certificates by using the stationary of the New India Assurance Company Limited, Conoor and Ooty and United National Insurance Company Limited, Avinashy Road, Coimbatore. He handed over those fabricated policy certificates to the brokers to be given to the policy holders and thereby used by them as genuine. Hence, case was registered against the petitioner in Crime No.RCMA.1 of 2007(A)0002 before the learned Chief Judicial Magistrate, Coimbatore. The learned Magistrate has tried the case and convicted the petitioner for the offence as stated above.



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4. Learned counsel for the revision petitioner submitted that there are contradictions between the evidence of P.Ws1, 2 and 3 with regard to the place of examination by P.W.4-the investigating officer appointed by the New India Assurance Company. It is the case of the prosecution that the revision petitioner has fabricated seven fake insurance policies, however, the Chief Regional Manager, New India Assurance Company has not made any complaint to the police with regard to the alleged commission of offence. Further, the trial court failed to consider the vital documents Ex.P.6,7 and 10 which were the letters dated 10.04.2006, 19.04.2006, 19.04.2006 submitted by P.Ws.1,2 and 3 do not contain seal and signature of the officer concerned. The Investigating Officer failed to produce receipt memo with regard to the obtainment of Exs.P1 to P3, Exs.P6 to P10 from P.W.18, the Vigilance Officer of the New India Assurance Company, Coimbatore. The prosecution miserably failed to prove that the petitioner was working as authorized agent of New India Assurance Company and his dominion over the alleged misappropriation. They have not produced book of accounts or any statement of accounts for the alleged non receipt of the amount by the New India Assurance Company. The Investigating Officer has suppressed the earlier report filed in support of the



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revision petitioner. P.W.23 has filed a false complaint before the trial court.

Ex.27-Seizure Mahazar has not been duly proved by examining the attested witnesses. Delay in filing the F.I.R was not properly explained by the prosecution. Therefore, the unexplained delay of one year in registering the F.I.R is fatal to the case of the prosecution. The alleged forgery of documents have not been made as projected by the prosecution. Hence, the judgment of the trial court is liable to be set aside.

5. Learned Special Public Prosecutor for CBI Cases has submitted that the revision petitioner was an authorized agent of New India Assurance Company, Mettupalayam branch, Coimbatore, have committed criminal breach of trust of an amount of Rs.8253/- collected as premium and issued seven forged/ fabricated vehicle insurance policy certificates as genuine policies.

6. In order to prove the case of the prosecution, 23 witnesses were examined. Out of 23 witnesses, P.W.1 was the broker of United India Insurance Company and New India Insurance Company Limited during the relevant point of time. In the year 2006, the petitioner introduced himself as an



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authorized agent of New India Assurance Company, Mettupalayam Branch. In the month of January 2006, one Muniyandi approached P.W.1 for Insurance Policy Certificate for three Autos/Commercial vehicles. Out of the said vehicles, one is owned by Alphones Bearing registration No.TN-01-9860 and another one is owned by S.M.E.Ansari bearing registration No. TN-43-8282 and another one belonged to N.Ganesan bearing Registration No.TN-C-7822. He handed over the R.C books of the abovesaid vehicles to the revision petitioner/accused to obtain Insurance Certificates for those vehicles from New India Assurance Company. The Revision petitioner obtained three Insurance Policy Certificates and handed over the same to the vehicle owners. Later on verification, he came to know that the policies are fake policies. P.W.2 has categorically stated that during 2004 and 2005, he was an authorized agent of New India Assurance Company Limited, Mettupalayam and he knew the revision petitioner, since both of them belonged to same area. One Ganesan of Mettupalayam approached him to obtain insurance policy to his vehicle bearing Registration No.TDW-0964 and also for another vehicle. Hence he approached one Siva Kumar, RTO broker and obtained insurance policy through revision petitioner as an agent of New India Assurance Company.



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Later, they came to know that the abovesaid Insurance Policies are fake policies. Hence, they lodged a complaint before the New India Assurance Company, Mettupalayam Branch.

7. The said Siva Kumar was examined as P.W.3 who has also deposed that during 1997 to 2002, he was employed at TVS Registering vehicles and obtaining Insurance Policies to register the vehicle. During 2006, on the request of one Tajudeen who is P.W.2, he has obtained two insurance policies through the accused. Those were marked as Ex.P8 and Ex.P9. Later he come to know that the insurance policy certificates are fake documents.

8. P.W.4 who is the Special Investigation Officer of the New India Assurance Company has stated that during April 2006, he was appointed by the Vigilance Officer of the New India Assurance Company to investigate and submit his report on the complainants received in respect of the fake policies. The complaint given by one Kishore Kumar/P.W.1 was handed over to him to investigate about five Insurance Policies given by the accused. Apart from that, the complaints given by P.Ws. 2 and 3 were also given to him for



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investigation. During investigation, he found all the policies obtained by the revision petitioner are fake certificates. The Executive Officer of New India Assurance Company of Ooty Branch has examined as P.W.5 has clearly stated that some of the policies said to have been issued by the revision petitioner are fake. In the same way, the Assistant Manager of New India Assurance Company of Ooty Branch has been examined as P.W.6 and Executive Officer of New India Assurance of Ooty Branch has been examined as P.W.7 have categorically deposed that the policies said to have obtained through the revision petitioner were fake documents. Therefore, from the evidence of P.W.1 to P.W.7, the prosecution has proved that the policies said to have been issued by the revision petitioners are fake certificates/documents. The policy certificates have been sent for verification to the competent authority. After verification also, it was found that the policies said to have been issued by the revision petitioner are fake certificates/documents.

9. The revision petitioner was working as authorized agent of New India Assurance Company, Mettupalayam during the period of 2001-2006 and he was not authorized person to act as agent of any other branch than



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Mettupalayam. During that period, he misrepresented the public as if he was working as an authorized agent and he has received money and issued fake certificates. From the investigation, it reveals that the revision petitioner committed offence as stated above. The prosecution proved the same through prosecution witnesses. The trial court rightly appreciated oral and documentary evidence and found the petitioner guilty for the abovesaid charges and convicted him as stated above. When the revision petitioner approached the appellate court, as the final court of fact finding, re-appreciated the entire evidence found the revision petitioner guilty and dismissed the appeal by confirming the conviction and sentence passed by the trial court.

10. Scope of revision court is very limited and it cannot act as trial court or the appellate court to re-appreciate or revisit the entire evidence, unless there is a perversity in appreciation of evidence. This Court as revision court, on going through the entire materials found that there is no perversity in appreciation of evidence by the trial court and reappreciation of the evidence by the appellate court. Both the Courts below rightly appreciated the entire evidence, convicted the petitioner. This Court does not find any perversity in



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the order passed by both the Courts below. There is no merit in the Revision Case and the same is liable to be dismissed. Accordingly, the Criminal Revision Case is dismissed.

11. Since the revision petitioner is on bail, the trial court is directed to take steps to secure the custody of the accused to undergo the remaining period of sentence, if any. The period of sentence already undergone by the accused shall stand set off under Section 428 Cr.P.C.,

04.01.2023

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Index:yes/No
Internet:yes/No



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P.VELMURUGAN, J.

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To

1. The IV Additional District and Sessions Judge,
IV Additional District and Sessions Court,
Coimbatore.
2. The Chief Judicial Magistrate,
Chief Judicial Magistrate Court,
Coimbatore.
3. The Inspector of Police,
C.B.I., ACB, Chennai.
4. The Special Public Prosecutor,
High Court, Madras.

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