IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2023

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Criminal Revision Case No. 364 of 2019

A.Anusuya ...Petitioner

Vs.

State represented by
Inspector of Police,
SPE CBI EOW,
Chennai ... Respondent

Prayer: Criminal Revision filed under Section 397 r/w 401 of Criminal Procedure Code to call for the records and set aside the judgment of the Court below in C.A.No. 20 of 2015 dated 07.12.2018 by the learned XVIII Additional Sessions Judge, Chennai, confirming the judgment dated 23.01.2015 passed by the learned Addl.Chief Metropolitan Magistrate, Chennai in C.C.No. 6416 of 2007 and acquit the petitioner herein from all the charges.

For Petitioner : Mr. T.Saravanan, Legal Aid Counsel

For Respondent : Mr.K.Srinivasan, Spl.P.P for CBI Cases

ORDER

Challenging the judgment passed in C.A.No. 20 of 2015 dated 07.12.2018 by the learned XVIII Additional Sessions Judge, Chennai, confirming the judgment in C.C.No. 6416 of 2007, dated 23.01.2015 passed by the learned Addl.Chief Metropolitan Magistrate, Chennai, the present revision has been filed.

2. Brief facts leading to the present criminal revision petition is that the respondent police registered a case in RC.No. 6/E/2006 against the petitioner for the offences under Section 120(b) r/w 420 IPC. Initially a case was registered against three accused under Section 120(b) r/w 420 IPC, A1 in the charge sheet was absconded, hence the case against him was split up in C.C.No. 4017 of 2010. Subsequently the accused A2 & A3 were re-ranked as A1 & A2 and the split up case was taken against A1 & A2 in C.C. No. 6416/2007, the revision petitioner herein was arrayed as A2 in the said case. The learned Addl.Chief Metropolitan Magistrate, Egmore, Chennai after completing all the formalities, framed charges against the accused and subsequently convicted them for the offences charged. A1 & A2 were found guilty for the offence under Section 120 (b) IPC r/w 420 IPC and therefore

convicted and sentenced to undergo rigorous imprisonment for a period of five years each and to pay a fine of rupees three lakhs by A1 and pay a sum of rupees One Lakh by A2, in default to undergo further period of six months rigours imprisonment. Challenging the said judgment of conviction and sentence, A2 filed appeal before the Principal Sessions Judge, Chennai in Crl.Appl. No. 20/2015 and the same was made over to XVIII Additional Sessions Judge, Chennai. After hearing the same, the learned XVIII Addl. Sessions Judge, dismissed the appeal confirming the judgment of conviction and sentence passed by the trial Court. Aggrieved over the same, the present revision has been filed before this Court.

3. It is the specific case of the prosecution that A1 is a proprietrix in Orient Exports and her husband is the authorised signatory. The said concern is a merchant exporter of rough granite blocks dealing with international operations branch of Canara Bank, Chennai. A current account No. CA 4 was opened on 27.08.1999 by A1/proprietrix of the concern with the bank. A1 authorised her husband namely S.Rajesh to act on behalf of her for various transactions. The said authority letter dated 27.08.1999 was given by A1 to the bank and it was enclosed with the account opening

form and it was signed by both A1 and her husband and counter signed by A1. A letter of authorisation dated 27.08.1999 was duly signed by A1 as proprietrix concern was also enclosed with the account opening form along with other enclosures. The husband of A1, the authorised signatory of the concern, A1 the proprietrix concern and A2 were entered into a criminal conspiracy at Chennai during the period 2001 to 2004 to cheat the bank. In furtherance of the said criminal conspiracy, the husband of A1who is also accused in the original case was arrayed as A1, since the case was split up, A1 and A2 alone participated in calender case before the trial Court. A1 has not filed any revision. A2 alone has filed the present revision petition before this Court.

4. The specific allegation against the present revision petitioner is that the husband of A1 namely Rajesh entered into conspiracy with the present petitioner in which A1 and her husband submitted loan proposal to the bank for various credit facilities and at the time of sanctioning, petitioner submitted false collateral security against the facilities. In the process of availment of the said facilities, A1 and her husband fradulently discounted the export bills worth Rs.186.40 lakhs in the packing credit and FDB/FBE

limits and thereby caused wrongful loss to the bank and corresponding wrongful gain to themselves. A1 and her husband entered into criminal conspiracy by producing fake export bills and committed fradulent acts. The present revision petitioner had offered her property at Plot No. 97 and eastern half of plot no. 96 admeasuring in all 4200 sq.ft at Kottivakkam Village under Sub Registration District of Saidapet, Chennai as third party collateral security to the loan account of the A1 concern. She had also submitted a sworn affidavit dated 04.03.2022 before the Special Metropolitan Magistrate, Egmore, Chennai, wherein she had declared that she had not mortgaged the property earlier and that property is free from encumbrance. In the letter addressed to the manager of the bank, she had offered here property as mortgaged in the loan account of the A1 concern. But the investigation revealed that out of 4200 sq.ft , 1980 sq.ft had already been settled by the petitioner infavour of her daughter namely A.Hemalatha in the year 1989. Suppressing the said fact, she mortgaged entire extent of 4200 sq.ft with M/s. Repco Bank. Adayar. She had also mortgaged this property in two other branches of Canara Bank in two different accounts viz., M/s. Venu Enterpreises and M/s. RMN & Company against loans sanctioned by Canara Bank. Therefore, A1 and A2 with the husband of A1 committed offence punishable under Section 120 b r/w 420 IPC, thereby caused wrongful loss to the bank to the tune of Rs.266.65 lakhs during the period 2001 to 2014 and corresponding wrongful gain for themselves.

5. In order to substantiate the prosecution case, on the side of prosecution 28 witnesses were examined, 113 documents were marked. On the side of defence 2 witnesses were examined, 14 documents were marked. Out of 28 witnesses, Assistant Manager, Canara Bank, Teynampet who lodged complaint before CBI was examined as PW1. He deposed that he had lodged a complaint and he substantiated the complaint given by him. The senior manager of the bank was examined as PW2, he deposed about the bills negotiated through their bank by the concern to different parties at China and Singapore which were not honoured by the drawees and they were returned to the bank. One of the officials of the bank namely V.R.Krishnamurthy was examined as PW3, who deposed about the return of unrealised bills by the foreign bankers. Though other witnesses spoken about the transactions made by A2/husband of A1, PW9 who is the senior manager in Canara bank, Kellys branch, Chennai has spoken about the involvement of the present petitioner. PW10 who is an officer in Canara

bank, Guindy branch, Chennai also spoken about the involvement of the present revision petitioner. PW12 who worked as retired head clerk in subordinate courts also spoken about the involvement of the petitioner. Likewise PW13, PW15, PW16, PW17, PW18, PW19 and PW24 have also spoken about the involvement of the petitioner. The documents filed by the prosecution would clearly shows that the petitioner had suppressed about the earlier mortgage of property as collateral security and the settlement of portion of above property to her daughter and entered into new transactions as if she entitled to entire 4200 sq.ft free from encumbrance and shows as collateral security for the loan obtained by A1.

6. The learned counsel for the petitioner would vehemently contended that the husband of A1 had only created documents as if the revision petitioner mortgaged the property by created false documents. The husband of A1 absconded, the respondent police did not secure the person. The learned counsel would further submit that only xerox copy of the documents of the petitioner were marked before the Court and the revision petitioner gave only xerox copy of documents to the husband of A1 for the sale transaction, which were misused and given as collateral security, therefore

the petitioner was not aware of the fact that the property was mortgaged. All the original documents were not seized by the prosecution and not produced before the Court. Originally one Mukundan stood as guarantor for the loan obtained by A1, who had given the property as collateral security and subsequently, the said documents were replaced with the petitioner's xerox copy of documents as if the petitioner offered the property for collateral security. Without the original documents the bank would not accept the property as security. The bank officials would connivance with the husband of A1 as if the petitioner entered into conspiracy with A1 and her husband and cheated the bank.

7. On the other hand the learned Special Public Prosecutor appearing for the respondent police would submit that the petitioner suppressed about the earlier mortgage with other banks and also she entered into criminal conspiracy with the husband of A1 and she gave her property as security. Even when she appeared before the Court and gave affidavit that all the documents related to deposit of title deeds in the name of petitioner and the signature of the petitioner found in the loan documents which shows the petitioner and the husband of A1 alone have created documents. The

husband of A1 with the knowledge of petitioner entered into conspiracy with an intention to cheat the bank. They made false statement that the property was free from encumbrance. The evidence of prosecution witnesses and the documents culled out by the prosecution clearly shows that the petitioner has committed the charged offence.

8. Heard both sides and perused the documents available on record.

9. A perusal of entire records would clearly reveal the fact that the revision petitioner/A2 and the husband of A1 have entered into criminal conspiracy and cheated several banks by mortgaging the same property. Both the trial Court and the appellate Court have rightly appreciated and re-appreciated the entire materials and evidence and convicted the petitioner. This Court being a revision Court, while exercising the revisionary power, cannot re-appreciate the evidence and substitute its own views against the findings held by both the Courts below. Unless there is any perversity in appreciation of evidence and findings, this Court will not interfere with the appreciation of evidence by the Court below.

10. This Court finds no perversity or illegality in the decision arrived by both the Courts below and does not finds any merits in the revision and the same is liable to be dismissed. Though the learned counsel for the petitioner would submit that since the petitioner is 90 years old, some sympathy may be shown and the conviction and sentence awarded by the Court below may be reduced.

11. A reading of entire materials would clearly reveal that the revision petitioner herein/A2 had connivance with other accused and cheated the back and swindled the public money. Therefore considering the facts and circumstances that the prior to the disputed mortgage, the revision petitioner had already made several transactions with other banks and cheated them. She had mortgaged the same property for other loan transactions and also she suppressed the settlement of a part of disputed property in favour of her daughter. The present mortgage with the defacto complainant bank by collateral security for other loan are clearly proved by the prosecution that the petitioner had committed charged offences. Further, huge public money is involved in this case which was cheated by the petitioner with the help of other accused. Both the Courts below have rightly appreciated the evidence

and convicted the petitioner for the charged offences. There is no mitigating circumstances to show sympathy or reduce the sentence awarded by the Court below against the petitioner and criminal revision petition is liable to be dismissed.

12. In the result, the criminal revision petition is dismissed.

31.01.2023

Index : Yes/No
Internet : Yes
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To
The Inspector of Police,
SPE CBI EOW,
Chennai

P.VELMURUGAN,J.
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Crl. RC No. 364 of 2019

31.01.2023