



Crl.R.C.Nos.325 & 360 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.04.2023

PRONOUNCED ON : 21.04.2023

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.R.C.Nos.325 & 360 of 2021

Crl. R.C.No.325 of 2021

Radhakrishnan

... Petitioner

Vs.

1. State rep. by,
The Inspector of Police,
District Crime Branch , Namakkal,
Namakkal Post & District
(crime No.44 of 2004)

2. Boopathi

... Respondents



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Crl. R.C.No.360 of 2021

1. Rathinasabapathi

2. Ponnusamy

3. R.Krishnamoorthi

... Petitioners

Vs.

1. State rep. by,
The Inspector of Police,
District Crime Branch ,
Namakkal,
(Crime No.44 of 204)

2. Boopathy

... Respondents

PRAYER in Crl.R.C.No.325 of 2021 : Criminal Revision Case filed under Section 397 r/w.401 of Cr.P.C. to allow the criminal revision by setting aside the conviction and sentence made in Criminal Appeal No.17 of 2019 on the file of the Principal Sessions Judge, Namakkal, dated 06.01.2021 in reversing the judgment made in C.C.No.35 of 2008 on the file of the Judicial Magistrate, Rasipuram dated 28.01.2019.

PRAYER in Crl.R.C.No.360 of 2021 : Criminal Revision Case filed under Section 397(1) & 401 of Cr.P.C. to set aside the judgment of conviction



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and sentence passed vide judgment dated 06.01.2021 in C.A.No.17 of 2019 by the learned Principal District and Sessions Judge, Namakkal reversing the order of acquittal passed vide judgment dated 28.01.2019 in C.C.No.35 of 2008 by the learned Judicial Magistrate, Rasipuram and thereby convicting and sentencing them to undergo 3 years imprisonment coupled with a fine of Rs.1000/- , i/d. to undergo 6 months S.I for the offence u/s.120(b) of IPC, to undergo 3 years imprisonment coupled with a fine of Rs.1,000/- , i/d to undergo 6 months S.I. for the offence u/s.467 of IPC to undergo 3 years imprisonment coupled with a fine of Rs.1000/- i/d. to undergo 6 months S.I. for the offence under Section 419 r/w.120(b) of IPC and acquit them.

For Petitioner : Mr. A.Thiyagarajan &
in Crl.R.C.325/2021 Mr.M. Guruprasad

For Petitioners : Mr. S.V.Karthikeyan
in Crl.R.C.360/2021 for P1

: Mr. T.R.Sivaram
for P2 & P3

For Respondents : Mr. R.Vinothraja,
in both cases Gov. Advocate(crl.side)
for R1

: Mr. M.Elango,
for R2



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COMMON ORDER

Challenging the conviction and sentence passed by the learned Principal Sessions Judge, Namakkal, in Crl.A.No.17 of 2019 in reversing the acquittal made in C.C.No.35 of 2008 on the file of the Judicial Magistrate, Rasipuram, Namakkal, the present Criminal Appeal has been filed.

2. Since the issue involved in both the revision petitions are one and the same, both the Criminal Revision Petitions are disposed of by way of a common order.

3. The brief averment of the fact of the case is that the complainant Boopathi is the owner of the land in Survey Nos.70/1, 71, 71/A & 71/B in Vennandur Alavaipatty Village. On 30.06.2003, the impostor, who by impersonating as the defacto-complainant, namely, Boopathy, created a



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forged Power of Attorney in the name of Rathnasabapathi/A1. In the said Power of Attorney, Ponnusamy(A2) and Krishnamoorthi(A3) are witnesses and identified the impostor. The Power of Attorney was registered by Radhakrishnan(A4), Sub-Registrar, Rasipuram. In order to grab the property of the defacto complainant, all the four accused persons conspired together and created the abovesaid forged Power of Attorney. Hence, the case has been registered against the accused persons for the offences under Sections 120(b), 467, 419 r/w. 120(b) of IPC in pursuance of the complaint given by the defacto complainant.

4. Based on the above materials, the Trial Court framed charges as against the accused under Sections 120(b), 467, 419 r/w.120(b) of IPC and the accused denied the same as false. In order to prove the case of prosecution, as many as 16 witnesses were examined, 8 documents were marked and 2 documents were marked as Court documents.



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5. When the incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false, they did not choose to examine any witness nor mark any documents.

6. On consideration of the evidence of prosecution, the Trial Court found that the prosecution failed to prove the charges against the accused persons and acquitted the accused. Aggrieved by this acquittal, the defacto complainant filed the Criminal Appeal in C.A.No.17 of 2019 before the Principal Sessions Judge, Namakkal. On re-appreciation of the prosecution evidence, the Lower Appellate Court allowed the Criminal Appeal and set-aside the acquittal order passed by the Trial Court and found guilt of all the accused persons for the offences under Sections 120(b), 467, 419 r/w.120(b) of IPC and imposed the following sentences :

Accused	Conviction under Section	Sentence
A1 to A4	120(B) IPC	Imprisonment for 3 years each and to pay a fine of Rs.1,000/-each, in default, to undergo 6 months simple imprisonment.



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Accused	Conviction under Section	Sentence
A1 to A4	Section 467 IPC	Imprisonment for 3 years each and to pay fine of Rs.1,000/-each, in default, to undergo 6 months simple imprisonment.
A1 to A4	419 r/w.120(b) IPC	Imprisonment for 3 years each and to pay fine of Rs.1,000/-each, in default, to undergo 6 months simple imprisonment.

7. Challenging the abovesaid conviction and sentence, A4 filed Criminal Revision Case No.325 of 2021 and A1 to A3 filed Criminal Revision Case No.360 of 2021 before this Court .

8. The learned counsel appearing for the revision petitioners submitted that the Lower Appellate Court failed to appreciate the prosecution witnesses properly and failed to give acceptable reason for reversing the finding of the Trial Court and erroneously came to the conclusion that the prosecution proved the charges against the accused. The learned counsel further submitted that the alleged Power of Attorney dated 30.06.2003 was not evidenced before the Court by the prosecution.



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Further the prosecution had failed to identify who was the impostor. The Lower Appellate Court failed to consider the fact that the prosecution had failed to prove the Power of Attorney as a fraudulent and forged document. Further the Lower Appellate Court had not recorded any finding that the accused persons in the present case made any false document. Maker of false documents, i.e. Power of Attorney was not found and the same is also admitted by the Investigating Officer during the cross examination. In such circumstances, based upon the signature of the defacto complainant obtained in the court (Ex.C.1) and Ex.C2 compared with the signature in the Register of Sub-Registrar Office and upon the opinion of the Forensic Science Department Officer, Yuvanesan(P.W.11), the Lower Appellate Court had erroneously found the charges as against the accused persons are proved.

9. The learned counsel further submitted that there is neither any evidence available nor the witnesses examined by the prosecution to show any conspiracy between the accused for making false documents and that



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P.W15 Investigating Officer during the cross examination admitted that he did not take any steps to verify the identification of the alleged impostor of the Sub-Registrar Office. The evidence of P.W.16 Investigating Officer also in the same line. Further, the alleged impostor was not identified by the prosecution and even the name of the impostor was also not mentioned in the charge sheet. Therefore, the petitioners/accused are not liable to be convicted for the charges.

10. The learned counsel, to support his argument relied upon the following judgments: (1) ***CDJ 2018 MHC 3791 (Christopher Sam Miller /vs/ The Inspector of Police, District Crime Branch, Kanyakumari District;*** (2) ***CDJ 2020 SC 154(Rajeshbhai Muljibhai Patel & otrs /vs/ State of Gujarat & others);*** (3) ***S.B.Criminal Revision Petition No.746 of 2020 of the High Court of Rajasthan at Jodhpur(Shankar /vs/ State & 3 otrs) and*** (4) ***2018(7) SCC 581 (Sheila Sebastian /vs/ R.Jawaharaj & another).*** The learned counsel also reiterated the grounds raised in the grounds of revision and thus, pleaded to allow the revision and thereby, set



aside the impugned order.

11. The learned Government Advocate(Crl.side) appearing for the first respondent and the learned counsel appearing for the defacto complainant/2nd respondent supported the judgment of the Lower Appellate Court and pleaded to dismiss both the Criminal Revision Cases.

12. I have considered the matter in the light of the submissions made by the learned counsel for the parties and perused the materials available records carefully.

13. The charges against the accused persons are that the defacto complainant Boopathi is the owner of the land in Survey Nos.70/1, 71, 71/A & 71/B in Vennandur Alavaipatty Village. In order to grab the property, the accused Rathinasabapathi(A1), Ponnusamy(A2), Krishnamoorthi(A3) and Radhakrishnan(A4), Sub-Registrar conspired together and made false document of Power of Attorney on 30.06.2003 and thereby committed the



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offences punishable under Sections 120(b), 467, 419 r/w. 120(b) IPC.

Hence, they were prosecuted by the respondent police. I have gone through the prosecution evidence and documents. The prosecution failed to produce the alleged Power of Attorney, dated 30.06.2003 , which is said to be executed with the aid of impostor, who by impersonating as the defacto complainant,namely, Boopathi in favour of the Rathnasabapathi(A1). Therefore, there is nothing on record to prove that the alleged Power of Attorney, dated 30.06.2003, is a forged one.

14. Further, in this case, the maker of false document was not found or investigated by the Investigating Officers, viz., P.W.15 & P.W.16. In this aspect, the Investigating Officers admitted this fact during their cross examination. Further, nothing was on record and revealed or proved any relationship between the impostor and the accused persons. The Trial Court, on consideration of the evidence on record, rightly found that the prosecution had failed to succeed to prove the offence of forgery by adducing reliable evidence. But the Lower Appellate Court without any



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evidence of making a false document and without producing the alleged forged Power of Attorney before the Court for perusal, and without identifying the impostor, who by impersonating as defacto complainant, Boopathi, created the alleged Power of Attorney, dated 30.06.2003, found guilty is a perverse finding.

15. In the absence of the original Power of Attorney, the Trial Court rightly found the charges are not proved. But the Lower Appellate Court without any evidence found guilty, which is unsustainable.

16. In this case, the prosecution failed to identify the impostor, who by impersonating as the defacto complainant, created the alleged Power of Attorney on 30.06.2003 and also prosecution failed to prove making of false document. In this case, the accused persons are not maker of any false documents.



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17. A perusal of Sections 463 and 464 of IPC makes it clear about making of a false document is one of the must ingredients of forgery, but the prosecution failed in this case. Therefore, the Trial Court , rightly found the charges are not proved and acquitted the accused. But the Lower Appellate Court without any evidence, only upon the evidence of Forensic Department officials, Yuvanesan(P.W.11) come to the conclusion that the charges are made out against the petitioners/accused, which is erroneous, and the same is liable to be set aside.

18. Therefore, this Court finds that the charges against the accused persons are not made out and the prosecution failed to prove the charges against the accused persons. Therefore, the finding of the Lower Appellate Court is hereby setaside and the finding of the Trail Court is hereby confirmed.



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19. Accordingly, both the Criminal Revision Cases are allowed and the finding of the Lower Appellate Court is hereby set aside, thereby, the finding of the Trial Court is confirmed. The accused are acquitted from all the charges. Fine amount, if any, paid by them shall be refunded to them.

21.04.2023

mrp

To

1. The Principal Sessions Judge,
Namakkal.
2. The Judicial Magistrate,
Rasipuram.
3. The Inspector of Police,
District Crime Branch ,
Namakkal,



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V.SIVAGNANAM, J.,

mrp

Pre-delivery Common Order

in

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