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Crl.RC.No.806 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.02.2023

Coram:

THE HONOURABLE **MR. JUSTICE P.VELMURUGAN**

Criminal Revision Case No.806 of 2020

Vetriselvam @ Vetriselvan

... Petitioner

Vs.

The State

Rep by Sub Inspector of Police

District Crime Branch

Ariyalur

(Crime No.259 of 2012)

... Respondent

Prayer: Criminal Revision filed under Section 397 and 401 of Criminal Procedure Code, against the order passed by the learned Principal District and Sessions Judge, Ariyalur in Crl.A.No.13 of 2018 by Judgment dated 30.07.2020 and confirming the conviction passed by the learned Judicial Magistrate No.1, Jeyankondam in C.C.No.78 of 2014 by the Judgment dated 17.09.2018 and set aside the Judgments of the Courts below and acquit the petitioner.

For Petitioner : Mr.M.Karunanithi

For Respondent : Mr.S.Sugendran
Additional Public Prosecutor



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ORDER

This Criminal Revision Petition has been filed seeking to set aside the order passed by the learned Principal District and Sessions Judge, Ariyalur in Crl.A.No.13 of 2018 dated 30.07.2020 confirming the conviction passed by the learned Judicial Magistrate No.1, Jeyankondam in C.C.No.78 of 2014 dated 17.09.2018 and acquit the petitioner.

2. The respondent police registered the case against the petitioner and 3 others in Crime No.259 of 2012 for the offence under Sections 420 and 506 (2) IPC and after investigation, laid charge sheet before the Judicial Magistrate-1, Jayankondam. The learned Magistrate after completing the formalities, framed the charge against the 1st accused for the offence under Section 420 IPC and as against A2 to A4 for the offences under Sections 420 and 506(2) IPC and after trial, found the guilt of the 1st accused for the offence under Section 420 IPC. The other accused were not found guilty for the above said charges and therefore, they were acquitted. The petitioner alone was convicted for the charge



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under Section 420 IPC and sentenced to undergo 3 years rigorous imprisonment and to pay fine of Rs.2,000/- in default, to undergo simple imprisonment for a further period of one month. Aggrieved over the said Judgment of conviction and sentence, the 1st accused filed an appeal before the Principal District and Sessions Judge, Ariyalur. The learned Principal District and Sessions Judge taken the appeal on file in C.A.No.13 of 2018 and after hearing the arguments and perusal of records, dismissed the appeal and confirmed the Judgment of conviction and sentence passed by the trial Court. Aggrieved over the said Judgment of dismissal of appeal, the 1st accused in the said case has filed the present revision before this Court.

3.The specific case of the prosecution is that the petitioner and 3 others, by stating as Cotton Merchants, approached the defacto complainant and other Cotton Farmers and purchased Cotton from them to the tune of Rs.11,07,354/- on the promise of paying the amount within a stipulated time. Thereafter, they did not pay the money as promised.



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Therefore, the defacto complainant along with the 60 other Cotton Farmers who supplied Cottons to the petitioner, approached the petitioner and demanded money. At that time, the accused 2 to 4, threatened them with dire consequences. Hence, this case.

4. The learned counsel for the petitioner would submit that earlier the petitioner had purchased Cotton from the deacto complainant and promptly paid the money to the value of the cotton purchased by him and subsequently, due to unavoidable circumstances, he could not make payment and it is not the case that at the first instance while purchasing the cotton from the Cotton Farmers, the petitioner had guilty intention and in order to cheat the witnesses/cotton Farmers, he purchased cotton and subsequently cheated them without paying the money. The evidence of P.W.1 itself clearly shows that on the earlier occasion, the petitioner purchased Cotton from various Cotton Farmers and promptly paid the money and only subsequently, when he purchased cotton, he did not make payment. Therefore, the ingredient for the offence under Section 420 IPC would not attract. A dispute regarding non payment of any



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money, would come only under the Civil Case, whereas in order to get the money from the petitioner, they have given criminal colour to the civil dispute and tried to take coercive steps to recover the money. He would further submit that Exs.P.2 to P.39 have not been proved by the prosecution in the manner known to law and that the signature of the petitioner is not found place in Exs.P.2 to P.39. Hence, the petitioner cannot be fasten liability under the said documents. Further, when the charges were framed, Exs.P.2 to P.39 were not available with the Court. So, there was no charge related to the said documents. The trial Court failed to consider that though Exs.P.2 to P.39 came into the hands of the Investigating Officer during investigation itself, why it was not filed before the Court at the time of filing of the final report and that no copies of the said documents were furnished to the petitioner. Hence, the mandatory provision of Section 207 Cr.P.C. was not complied with and therefore, Exs.P.2 to P.39 ought not to have been considered by the trial Court. He would further submit that the necessary ingredient of Section 420 IPC was not made out and there is no positive evidence adduced by



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the prosecution to substantiate the same. Further, from the very same evidence and materials, the trial Court acquitted the other accused viz., A2 to A4 by extending the benefit of doubt in favour them, however, from the very same materials and evidence, erroneously convicted the petitioner alone for the charge under Section 420 IPC. Therefore, the conviction and sentence recorded by the trial Judge and confirmed by the appellate Judge are liable to be set aside and the revision has to be allowed and the petitioner has to be acquitted. Further, as stated above, the prosecution has not proved that the petitioner had guilty mind and had intention to cheat the witnesses/the Cotton Farmers at the time of purchasing Cotton from them. The respondent police have filed the case on misconception and both the Courts below have also inadvertently failed to consider the same and recored conviction which warrants interference.

5. The learned Additional Public Prosecutor would submit that the petitioner/1st accused who is a Cotton Merchant, had earlier purchased Cotton from the defacto complainant and other Cotton Farmers during



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harvesting time and later on, paid the amount for the purchased Cotton.

Based on the earlier transaction, when the petitioner again approached, the defacto complainant and other Cotton Farmers supplied Cotton to the 1st accused/petitioner. Thereafter, the 1st accused/petitioner did not pay the amount for the Cotton purchased for the 2nd time. Thereafter, when they demanded money, the 1st accused/petitioner threatened them through his men. Therefore, the defacto complainant preferred a complaint. Though the learned counsel for the petitioner submitted that at the first instance, the petitioner paid the money for the Cotton purchased by him which would show that the petitioner had no intention to cheat the Farmers and therefore, the offence under Section 420 IPC would not attract, in the evidence, the defacto complainant and other Cotton Farmers who were examined as prosecution witnesses, have clearly stated that since the petitioner had promptly paid the money on the earlier occasion, under the bonafide intention, they supplied cotton subsequently to the petitioner. Thereafter, since he evaded payment, all the 61 Cotton Farmers approached the 1st accused/petitioner and requested him to pay



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the money. However, he failed to pay the money and he did not stop with that but also threatened them through their men with dire consequences. Thereafter, the Cotton Farmers/prosecution witnesses came to understand that only in order to cheat them, the 1st accused/petitioner received the cotton from them without payment which clearly shows that the petitioner had intention to cheat the defacto complainant and the other Cotton Farmers. Therefore, the ingredient of cheating was made out. Hence, the trial Court and the appellate Court rightly appreciated and re-appreciated the evidence and found that the petitioner had intention to cheat the Cotton Farmers, rightly convicted the petitioner. Therefore, there is no merit in the revision and the revision is liable to be dismissed.

6. Heard the learned Counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondent police and also perused the materials available on record.



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7. As already stated, the specif case of the prosecution is that the petitioner is a Cotton Merchant and he had purchased Cotton from the defacto complainant and other Cotton Farmers during harvesting period and subsequently, failed to make payment and when they demanded money, the petitioner threatened them through his men. Therefore, the case.

8. In this case, on the side of the prosecution, totally 58 witnesses were examined as P.W.1 to P.W.58 and 40 documents were marked as Exs.P.1 to P.40. Out of the 58 witnesses, 56 witnesses are Cotton Farmers who had supplied Cotton to the 1st accused/petitioner. Exs.P.1 to P.39 are the acknowledgment receipts given by the 1st accused/petitioner to the Cotton Farmers regarding supply of Cotton.

9. The evidence of P.W.1 clearly shows that on 25.04.2012, he gave cotton to the petitioner and after one month, requested the petitioner to make payment and thereafter, went to the house of the 2nd petitioner



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and requested to make payment during which, the other accused were also available and they did not reply properly. When they again made request, the 3rd accused threatened them with dire consequences by showing Machete (Aruval).

10. P.W.2 has stated that when they demanded money for the cotton supplied to the petitioner, though the petitioner replied that he would pay the money, the other accused entered into quarrel with the Cotton Farmers and at that time, the 3rd accused threatened them with dire consequences by showing Machete (Aruval).

11.P.W.3 has stated that three times he approached the petitioner and asked for money for the supplied Cotton and lastly, went to the house of the 2nd accused and asked for money during which, the 3rd accused threatened them with dire consequences by showing Machete (Aruval).



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12. P.W.4 has stated that though the petitioner had stated that he would pay the money for the supplied Cotton within a week, he did not pay the same and when P.W.4 went to the shop and house of the petitioner, they were locked. Thereafter, when he went to the house of the 2nd accused/father-in-law of the petitioner, initially accepted to pay the money however, since the money was not paid, again went there. At that time, the 3rd accused threatened with Machete (Aruval).

13. Further, some of the witnesses have stated that more than once they approached the petitioner and demanded the money however, he did not pay the money. Some of the witnesses have stated that after purchasing Cotton from them on the promise of paying money within a stipulated time, the petitioner did not pay the money and subsequently, he absconded.

14. The evidence of prosecution witnesses clearly show that the petitioner has not paid the money for the Cotton purchased by him from



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the witnesses/Cotton Farmers. Further, all the documents clearly show that the petitioner had purchased Cotton from the witnesses/Cotton Farmers and there is no document to show that the petitioner paid money to the Cotton Farmers. The trial Court found that the petitioner had no intention to settle the amount to the Cotton Farmers and even after repeated request made by the Cotton Farmers, he failed to make payment and thereby, recorded conviction as stated above.

15. On a perusal of the evidence of the prosecution witnesses, this Court finds that the petitioner has failed to pay the amount to the Cotton Farmers towards the purchase of Cotton and he never made any attempt to pay the money to them and as and when, he was asked to pay the money, he has evaded payment. Therefore, this Court finds that the petitioner has cheated the Cotton Farmers without making payment. Further, the petitioner did not stop with that and he has also threatened the Cotton Farmers through his men. Though the trial Court acquitted the other accused/A2 to A4 for the offences under Sections 420 and 506(2) IPC, the fact remains that the petitioner has purchased Cotton from the



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Cotton Farmers and thereafter, failed to make payment for the same and when the Cotton Farmers demanded him to make payment, he has not responded in a proper manner.

16. As a revisional Court, this Court cannot exercise the powers of the appellate Court and re-appreciate the entire evidence and substitute its own views in the findings already given by the final Court of fact finding namely the appellate Court. The powers of the revisional Court is very limited. This Court while exercising the revisional jurisdiction, has to see whether there is any perversity in the appreciation and re-appreciation of evidence and illegality in the the findings of the Courts below.

17. As stated above, from the evidence of the prosecution witnesses and materials, this Court finds that the petitioner has committed the offence under Section 420 IPC. Both the trial Court and the appellate Court rightly appreciated and re-appreciated the evidence.



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This Court does not find any perversity in the appreciation of evidence by the Courts below. Therefore, there is no merit in the revision and revision is liable to be dismissed.

18. Accordingly, this Criminal Revision Case is dismissed. The respondent police is directed to secure the petitioner to undergo the remaining period of sentence if any.

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To
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1. The Principal District and Sessions Judge, Ariyalur
2. The Judicial Magistrate No.1, Jeyankondam
3. The Sub Inspector of Police
District Crime Branch
Ariyalur
4. The Public Prosecutor
High Court, Madras



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