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CrI.R.C.No.821 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.02.2023

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN

Criminal Revision Case No.821 of 2020

and

CrI.M.P.No.6213 of 2020

Sivarajan

... Petitioner

Versus

State Represented by
Inspector of Police,
Madathukulam Police Station,
Tiruppur District,
Crime No.65 of 2005.

... Respondent

Criminal Revision Case filed under Sections 397 and 401 of Criminal Procedure Code to set aside the judgment dated 26.8.2020 made in C.A.No.16 of 2016 on the file of the III Additional District and Sessions Judge, Tiruppur at Dharapuram, partly confirming the judgment dated 22.01.2016 made in C.C.No.289 of 2009 on the file of the Judicial Magistrate No.II, Udumalpet.

For Petitioner : Mr.V.Ramamurthy
For Respondent : Mr.S.Sugendran
Additional Public Prosecutor



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ORDER

The Criminal Revision Case is arising out of the judgment dated 26.8.2020 made in C.A.No.16 of 2016 by the learned III Additional District and Sessions Judge, Tiruppur at Dharapuram, confirming the judgment dated 22.01.2016 made in C.C.No.289 of 2009 by the learned Judicial Magistrate No.II, Udumalpet.

2. The case of the prosecution is that the petitioner/accused joined in the Government Service as a Village Administrative Officer at Thungavi Village, Udumalpet Taluk on 04.03.1999 and at the time of joining duty he submitted his SSLC mark sheet. When the same was sent for verification, it was found that the mark sheet produced by the petitioner is a forged and fabricated one. As the petitioner by producing the forged mark sheet joined duty as a Village Administrative Officer and cheated the appointing authority as if the mark sheet produced by him is a genuine one, the accused has committed the offences under Sections 465, 466, 468 and 471 IPC. Hence, P.W.1 Sub Collector lodged a complaint/Ex.P1.



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3. On the complaint given by the *de-facto* complainant/Sub Collector the respondent/Police registered a case in Crime No.65 of 2005 against the petitioner for the offences under Sections 465, 466, 468 and 471 IPC. On completion of the investigation, the respondent/Police laid a charge sheet before the learned Judicial Magistrate No.II, Udumalpet and the same was taken on file in C.C.No.289 of 2009 and charges were framed against the petitioner for the aforesaid offences.

4. In order to prove its case before the trial Court, on the side of the prosecution, as many as 6 witnesses were examined as P.W.1 to P.W.6 and 4 documents were marked as Exs.P1 to P4 and no material objects were exhibited.

5. After examining the prosecution witnesses, the incriminating circumstances culled out from the evidence of the prosecution witnesses were put before the accused and he was questioned under Section 313 Cr.P.C., wherein he denied all the incriminating circumstances as false and pleaded not guilty. On the side of the defence, no oral evidence was adduced and no documentary evidence was produced.



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6. The Court below, after hearing the arguments advanced on either side and also considering the materials available found guilty of the petitioner for the offences under Sections 465, 466, 468 and 471 IPC and convicted and sentenced as under:

<i>Offence</i>	<i>Sentence</i>
Section 465 IPC	to undergo rigorous imprisonment for a period of two years
Section 471 IPC	to undergo rigorous imprisonment for a period of two years
Section 466 IPC	to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment for a period of six months.
Section 468 IPC	to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment for a period of six months.
	Both the sentences were ordered to be run concurrently.

7.Challenging the said conviction and sentences, the petitioner preferred an appeal before the learned Principal District and Sessions Judge, Tiruppur, which was taken on file in C.A.No.16 of 2016 and made over to



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the learned III Additional District and Sessions Judge at Dharapuram. By judgment dated 26.8.2020, the learned Additional Sessions Judge partly allowed the appeal and confirmed the conviction and sentence imposed on the petitioner for the offences under Sections 465, 468 and 471 IPC and acquitted the petitioner for the offence under Section 466 IPC. Aggrieved over the same, the petitioner has filed the present revision before this Court.

8.1 The learned counsel for the petitioner submitted that initially the petitioner served as a Hereditary Village Administrative Officer. Thereafter, in the year 1980, the post of Hereditary Village Administrative Officer was abolished and the Village Administrative Officers were appointed. The qualification for the Village Administrative Officer is 10th standard. The petitioner appeared for examination and appointed as Village Administrative Officer by producing 10th mark sheet/Ex.P2 and served in various places.

8.2 The learned counsel for the petitioner further submitted that according to the prosecution Ex.P2 mark sheet is not a genuine one and the registration No.442836 mentioned in Ex.P2 belongs to one K.Kudiyarasu



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and he was not examined as a witness by the prosecution. Non-examination of K.Kudiyarasu is fatal to the case of the prosecution. Further, the original mark sheet of K.Kudiyarasu has not been produced, which creates doubt on the prosecution. As it is claimed by P.W.2 that the mark sheet with registration No.442836 pertains to one K.Kudiyarasu and the same is very well available in the Secondary School Education Department, but the prosecution failed to produce the same to prove its case. The registration numbers found in Ex.P2 and Ex.P3 are one and the same, but TMR Code only differs, however, the same has not been properly explained by the prosecution. P.W.2 stated that she cancelled Ex.P2 mark sheet by making an endorsement on it, however, if it is a bogus certificate the same cannot be cancelled by simply making an endorsement on it. Before cancelling the said document, there must be a proceedings to that effect. He further submitted that the petitioner has admitted the signature in Ex.P2, but only the registration number is disputed. There is a possibility of error in issuing the mark sheet/Ex.P2 and Ex.P3/extract of Tabular mark register with identical register numbers is not ruled out. Further, the forged document



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Ex.P2 has not been sent for any forensic lab. There are discrepancies in the evidence of the prosecution witnesses regarding the alleged forged mark sheet Ex.P2 and the same has not been proved in the manner known to law. Therefore, the prosecution without proving the same, simply cancelled the mark sheet and registered the case against the petitioner is against law. Both the Courts below have failed to appreciate the fact that Ex.P2 was not forged by the petitioner for the purpose of getting employment. In the absence of the same, the judgments of conviction and sentence rendered by the both the Courts below are liable to be set aside and the revision may be allowed.

9. The learned Additional Public Prosecutor for the respondent submitted that the petitioner/accused joined as a Village Administrative Officer in the year 1974 and worked as a Hereditary Village Administrative Officer. Thereafter, the said post was abolished and he was removed from his service. After passing the VAO examination in the year 1993, again he was appointed as Village Administrative Officer and served in various places from 04.03.1999 to 15.09.2004. The main allegation against the



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petitioner is that at the time of joining duty, he has fraudulently produced the forged SSLC mark sheet knowing well it is a forged one and cheated the appointing authority and got employment. P.W.2 Secretary and Director of Government Examination who verified the mark sheet Ex.P2 found that the particulars mentioned in the mark sheet belongs to one K.Kudiyarasu and the petitioner has forged the mark sheet. The prosecution witnesses are official witness and they had no animosity against the petitioner to falsely implicate him. The prosecution has proved its case beyond reasonable doubt. Both the Courts below have rightly scrutinized the evidence and records and come to the right conclusion and convicted and sentenced the petitioner/accused. As there is no merit in the revision, the same is liable to be dismissed.

10. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor for the respondent and also perused the materials available on record.

11. In order to substantiate the case of the prosecution the *de-facto*



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complainant/Sub Collector was examined as P.W.1 and he lodged the complaint/Ex.P1. P.W.2 is the Secretary and Director of Government Examination, who verified the forged mark sheet Ex.P2 with the original documents available in the office and found that Ex.P2 is a forged one. P.W.3 is the Tashildar who states that he suspended the petitioner from service. P.W.4 is the Sub Inspector of Police who received the complaint and registered F.I.R Ex.P4. P.W.5 is the Investigating Officer who conducted investigation from 30.09.2005 till 28.02.2006 and got retired. Thereafter, the investigation was carried out by P.W.6, who completed the investigation filed charge sheet before the trial Court.

12. The defence taken by the learned counsel for the petitioner is that the prosecution has not examined K.Kudiyarasu as a witness and they have not produced the original mark sheet of K.Kudiyarasu before the Court below. He further added that as to the Secretary who signed Ex.P2 has not been investigated. However, P.W.2 in her evidence has deposed that when she was working as a Joint Director and Secretary to the Board of State



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Government Examinations, in the year 2004, she received letters from the District Revenue Officer, Coimbatore, requesting to verify the veracity of the mark sheets which was sent by him. The mark sheet has been verified with TMR Register maintained in the office of the Secondary School Examination and found that Register No.442836 was not allotted to the petitioner and it was allotted to one K.Kudiyarasu. To substantiate the evidence of P.W.2, the extract of TMR was marked as Ex.P3. From the evidence of P.W.2 the prosecution proved that the entries found in the Register No.442836, which is mentioned in Ex.P2/mark sheet produced by the appellant is not related with the other entries such as TMR Code etc., and the same belongs to one K.Kudiyarasu. She further deposed that issuing authority of the mark sheet in the State is the Secretary, Board of Secondary School Examination and she was the officer in that institution at the time of verification. Therefore, non examination of K.Kudiyarasu and the Secretary who signed Ex.P2 will not affect the case of the prosecution.

13. The further defence taken by the learned counsel for the petitioner



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is that P.W.2 has not stated any reason for cancelling Ex.P2 and mere making an endorsement "cancelled" will not serve any purpose. It is well known fact that the Board of Secondary School Education is the authority to issue certificate to the students, who appeared in the concerned examination and on verification if they found any certificates as fake or forgery they can cancel the same. In the case on hand, after appointment of the petitioner, the qualification certificate of the petitioner was sent for verification to the Directorate of Secondary School Education. P.W.2, who is the competent authority, after comparing Ex.P2 with the concerned registers maintained in her office found that the certificate, which was produced by the petitioner/accused, was not issued in favour of the petitioner and it was issued to one K.Kudiyarasu and therefore, she cancelled the same.

14. On the combined reading of the entire materials, it would reveal that the alleged mark sheet/Ex.P2 was sent to the Secretary, Board of Secondary School Education for verification. On verification of the said certificate, the Educational Department found that the signature found in Ex.P2 pertaining to the Secretary, Secondary Board of Education,



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Tamil Nadu and not belonged to any of its officials and after comparing the document it found that the mark sheet produced by the petitioner is a fake and forged one. The prosecution proved that Ex.P2 mark sheet produced by the petitioner is a fake one and he knowing well that the mark sheet is not a genuine one and only in order to cheat the appointing authority and to get the employment, he produced the fake mark sheet and that he has committed the charged offences. The trial Court after appreciating the entire materials rightly convicted and sentenced the petitioner as mentioned above. The appellate Court as a final Court of fact finding re-appreciated the entire evidence and dismissed the appeal.

15. The scope of revision is very limited. The Trial Court and the Lower Appellate Court had already appreciated and re-appreciated the entire evidence and also given findings and while exercising the revisional jurisdiction, this Court cannot sit in the arm chair of the Appellate Court and re-appreciate the evidence. However, this Court has to see whether there is any perversity or infirmity in the judgments of the Courts below.



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16. This Court, while re-appreciating the entire evidence and the judgments of both the Courts below finds that the prosecution proved that Ex.P2/mark sheet produced by the petitioner is a false and forged mark sheet. The petitioner knowing well that Ex.P2 is a forged one, he cheated the appointing authority by submitting the same as if it is a genuine one and got employment. Admittedly, the petitioner submitted the mark sheet/Ex.P2 in the year 1999 (i.e. at the time of appointment), but the officials not sent the same immediately for verification, they allowed the petitioner to continue his service till 2004 and subsequently, he was removed from service. Now the petitioner lost his job and he is not able to survive his life.

17. Considering the age of the petitioner and also considering the mitigating circumstances, this Court is of the opinion that the conviction and sentence imposed on the petitioner by the trial Court is liable to be modified as the sentence already undergone by the petitioner was treated as sentence of imprisonment. As the petitioner worked as a Village



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Administrative Officer without any qualification from 04.03.1999 to 15.09.2004, he is liable to repay the amount which was received from the Government by way of salary.

18. With the above directions, this Criminal Revision Case is partly allowed by modifying conviction and sentence imposed on the petitioner as the sentence already undergone by the petitioner was treated as sentence of imprisonment and the petitioner is directed to remit the sum of Rs.3,69,725/- to the Government. Consequently connected miscellaneous petition is closed.

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Index: Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
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To

- 1.The III Additional District and Sessions Judge,
Tiruppur at Dharapuram.
- 2.The Judicial Magistrate No.II,
Udumalpet.
- 3.The Inspector of Police,
Madathukulam Police Station,
Tiruppur District.
- 4.The Public Prosecutor,
High Court, Madras.



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P.VELMURUGAN, J.

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