IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.01.2023

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN

Criminal Revision Case No.1076 of 2020
and
Crl.M.P.No.7532 of 2020

Venugopal ... Petitioner

Versus

State by
Inspector of Police,
Central Crime Branch,
Chennai. ... Respondent

Criminal Revision Case filed under Section 397 and 401 of the Criminal Procedure Code, to set aside the judgment passed in C.A.No.445 of 2018 on the file of the IV Additional District Sessions Judge, Chennai dated 26.09.2019 confirming the conviction order passed against the accused/petitioner in C.C.No.5639 of 2016 on the file of the Special Metropolitan Magistrate for Exclusive Trial of CCB Cases (relating to Cheating Cases in Chennai) and CBCID Metro Cases, Chennai dated 24.07.2018 confirmed and acquit the accused in the above case.

For Petitioner	:	Mr.P.Govindarajan for Mr.R.Rajasekaran
For Respondent	:	Mr.R.Murthi Government Advocate (Crl.Side)

O R D E R

This Criminal Revision Case has been filed against the judgment dated 26.09.2019 passed in C.A.No.445 of 2018 by the learned IV Additional District Sessions Judge, Chennai confirming the conviction order passed against the accused/petitioner in C.C.No.5639 of 2016 on the file of the Special Metropolitan Magistrate for Exclusive Trial of CCB Cases (relating to Cheating Cases in Chennai) and CBCID Metro Cases, Chennai dated 24.07.2018.

2. The case of the prosecution is that one Sreenivas Rao/P.W.1 is the owner of M/s.Vijaya Sales Corporation Company and Administrative Manager of Sudha Industries, Sri.Gowri Sangar Engineering Works. The accused was working under P.W.1 as a sales and collection agent, since the year 2002. He is alleged to have supplied motor pumps of PW.1 to various purchasers between the period 13.04.2005 and 12.07.2005 vide invoice bills, but failed to deposit the money in the Bank account of PW.1. Further, the accused was alleged to have delivered the motor pumps to some other third persons instead of delivering to the persons mentioned in the invoice bills and thereby, he swindled a sum of Rs.7,25,000/-. Thus, he has committed breach of trust and

cheated P.W.1. Therefore, the accused is charged for the offences under Sections 408 and 420 IPC.

3. On a complaint given by the *de-facto* complainant, the respondent-Police registered a case in Crime No.596 of 2005 against the petitioner for the offences under Sections 406, 408 and 420 IPC. After investigation, the respondent/Police filed a charge sheet before the learned III Metropolitan Magistrate, George Town, Chennai and the case was transferred to the file of Special Metropolitan Magistrate for Exclusive Trial CCN Cases Court, Allikulam, Chennai and the same was taken on file in C.C.No.16354 of 2006, subsequently, transferred to the Court of the Metropolitan Magistrate for Exclusive Trial of CCB Cases (relating to cheating cases in Chennai) and CBCID Metro Cases, Chennai and re-numbered as C.C.No.5639 of 2016 and charges were framed against the petitioner for the offences under Sections 408 and 420 IPC.

4. In order to prove its case before the trial Court, on the side of the prosecution, as many as 10 witnesses were examined as P.W.1 to P.W.10 and 10 documents were marked as Exs.P1 to P10 and one material object was marked as M.O.1. On the side of the defence no oral evidence was adduced and no documentary evidence was produced.

5. The trial Court, after hearing the arguments advanced on either side and also considering the materials available on record found that the petitioner/accused is guilty for the offences under Sections 408 and 420 IPC and he was convicted and sentenced as under :

Offence	***Sentence***
Section 408 IPC	Simple imprisonment for 6 months and to pay a fine of Rs.1,000/-, in default, to undergo one month simple imprisonment.
Section 420 IPC	Simple imprisonment for 6 months and to pay a fine of Rs.1,000/-, in default, to undergo one month simple imprisonment.
The aforesaid sentences were ordered to be run concurrently	

6. Challenging the said conviction and sentence, the petitioner has preferred an appeal in Crl.A.No.455 of 2018 before the learned IV Additional Sessions Judge, Chennai. The Appellate Court, as a final Court of fact finding re-appreciated the entire materials and dismissed the appeal and confirmed the conviction and sentence passed by the trial Court. Aggrieved by the same, the petitioner has filed the present revision before this Court.

7. The learned counsel for the petitioner would submit that there is no evidence to show that the petitioner/accused has received money from various purchasers of P.W.1 but not delivered the motor pumps. However, the petitioner has delivered the motor pumps to the purchasers, which is evident vide Exs.P2 to P11, P26 to P34 and P38. Apart from that, when the accused was arrested by P.W.9, he made confession statement. Based on his confession, P.W.9 recovered Exs.P26 to P34 and P38/Invoice delivery note of Lakshmi Ganapathy Water Pumps Industries dated 12.07.2005, in which, the accused has noted the details of the supply of motor pumps and cash received from each and every purchaser of motor pumps from P.W.1. He further submitted that no ingredients are made out for the offences under Sections 408 and 420 IPC. No witnesses spoke against him and there is no documentary proof to show that the accused misappropriated the amount and thereby, he has cheated the *de-facto* complainant. Except P.W.5, no witnesses have stated that the payments were made in cash through the petitioner, and on the other hand they used to issue cheques only in favour of the complainant Company. P.W.5 stated that he used to issue blank cheques to the complainant through the accused, but there is no evidence to show that the accused encashed the cheques for himself and spent for his own use. Further, there is no evidence to show that the accused received the amount in cash for any particular invoice and transferred into his own account. The trial Court as well as the lower Appellate Court failed to consider the evidence in a proper and perspective manner and gave a wrong finding and convicted and sentenced the petitioner, which warrants interference of this Court.

8. The learned Government Advocate (Crl.Side) appearing for the respondent would submit that the accused was working as a Sales and Collection Agent of P.W.1's Company, since the year 2002. The main allegation against the accused is that he supplied motor pumps of P.W.1 to various purchasers, but failed to deposit the money in the account of P.W.1. Further, the accused is alleged to have delivered the motor pumps to some other third persons instead of delivering to the persons mentioned in the invoice bills and thereby, swindled a sum of R.7,25,000/-. He further submitted that the petitioner has not denied that he was not the employee of P.W.1. To prove the allegations against the petitioner, the prosecution relied upon the evidence of P.W.1 to P.W.6, who are the purchasers of motor pumps from P.W.1 through the accused and also paid money for the same to the accused, for which they relied upon the Bank statements/Exs.P13A and P14 that were given by

P.W.7/Manager of Indian Overseas Bank, Muthialpet Branch and P.W.8/Manager of Indian Bank, George Town Branch. The above statements clearly show that the amount received by the accused from the customers of P.W.1 were misappropriated and deposited in his own account. Therefore, the prosecution proved its case from the evidence of P.W.1 to P.W.9 and documentary evidence that the accused has committed the charged offence. Both the Courts below have rightly appreciated the entire oral and documentary evidence, convicted and sentenced the petitioner. There is no merit in the revision and the same is liable to be dismissed.

9. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl.Side) appearing for the respondent and also perused the materials available on record.

10. P.W.1/*de-facto* complainant in his evidence has stated about the criminal breach of trust committed by the accused by selling motor pumps of P.W.1 to various purchasers and misused the money received from them and also sold some motor pumps to third persons instead of selling the same to the persons mentioned in the invoice. To prove the guilt on the accused P.W.1 has produced supportive documents.

11. P.W.2 to P.W.6, who are the purchasers, have clearly stated that they purchased motor pumps from P.W.1 through the accused and paid money by way of cash and cheques to the accused. Therefore, it is clear from the evidence of P.W.2 to P.W.6 that they have purchased motor pumps from P.W.1 through the accused and also paid money for the same through the accused. The purchase of motor pumps by PW.2 to P.W.6 are evident from the documents Exs.P2 to P11. The evidence of P.W.1 is corroborated with the evidence of P.W.2 to P.W.6.

12. P.W.7/Manager of Indian Overseas Bank, Muthialpet Branch and P.W.8/Manager of Indian Bank, George Town Branch, who clearly stated that on receipt of the letters from P.W.9/Investigating Officer, they issued statements of account of the accused, which were marked as Ex.P13A and Ex.P14. From the evidence of P.W.7 and P.W.8 and Exs.P13A and 14, it is clear that neither the accused remitted the collected amount from P.W.2 to PW.6 to the account of the *de-facto* complainant nor directly paid to the *de-*

facto complainant. On the other hand the accused deposited the same into his own account. Therefore, from the evidence of the prosecution witnesses and the documentary evidence, the trial Court found that the accused has committed the charged offences and convicted and sentenced the petitioner. The lower Appellate Court also re-appreciated the entire evidence and confirmed the judgment of the trial Court and dismissed the appeal.

13. 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.

14. On a combined reading of the evidence P.W.1 to P.W.6 and the supportive documents, this Court finds that the prosecution has proved that the petitioner has committed the charged offences and this Court as a revisional Court does not find any reason to discard the evidence of P.W.1 to P.W.6 and also does not find any substantive reasons or any perversity in the appreciation of evidence, illegality or infirmity in the judgment of the both the Courts below and there is no merit in the revision and the same is liable to be dismissed.

15. Accordingly, this Criminal Revision Case is dismissed and the judgment of both the Courts below are confirmed. The trial Court is directed to take steps to secure the custody of the accused to undergo the remaining period of sentence, if any and the same shall be set-off under Section 428 Cr.P.C. Consequently, connected miscellaneous petition is closed.

12.01.2023

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

1.The IV Additional District Sessions Judge,
Chennai.

2.The Special Metropolitan Magistrate for
Exclusive Trial of CCB Cases
(relating to Cheating Cases in Chennai) and
CBCID Metro Cases, Chennai.

3.The Inspector of Police,
Central Crime Branch,
Chennai.

4.The Public Prosecutor,
High Court, Madras.

5.The Section Officer,
Criminal Section,
High Court, Madras.

P.VELMURUGAN, J.

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