



Crl.R.C.No.378 of 2017

In the High Court of Judicature at Madras

Dated : 02.3.2023

Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Criminal Revision Case No.378 of 2017

Abdul Razak

...Petitioner

Vs

State rep.by the Inspector of
Police, B-12 Ukkadam Police
Station, Coimbatore

...Respondent

REVISION under Sections 397 and 401 of the Criminal Procedure Code against the judgment and order 30.1.2017 made in Crl.A.No.31 of 2015 on the file of the Fourth Additional District and Sessions Court, Coimbatore modifying the judgment and order dated 20.1.2015 passed in C.C.No.143 of 2014 on the file of the Judicial Magistrate No.8, Coimbatore.

For Petitioner :

Mr.S.Yogarajasekar for
Mr.A.Praveenkumar

For Respondent :

Mr.L.Baskaran, GA (Crl.Side)

ORDER

This criminal revision case has been filed against the judgment and order passed by the learned Fourth Additional Sessions Judge,



Coimbatore, dated 30.1.2017 modifying the conviction and sentence passed by the learned Judicial Magistrate No.8, Coimbatore in C.C.No.143 of 2014, dated 20.1.2015.

2. The case of the prosecution is as follows :

(i) One Ibrahim (a) Kulai Ibrahim (A2) was charged for offences under Sections 147, 148 and 302 of the Indian Penal Code (hereinafter called the Code) in Cr.No.1548 of 1997 on the file of B1 Bazaar Police Station, Coimabore. He was convicted and sentenced by the learned Second Additional District Judge, Coimbatore in S.C.No.201 of 1999 by judgment dated 06.2.2001. As against the said conviction, a criminal appeal was filed before this Court in Crl.A.No.963 of 2001 and it was dismissed by judgment dated 15.10.2004. Ibrahim (A2) was undergoing sentence at the Central Prison, Coimbatore.

(ii) Ibrahim (A2) conspired along with his father Abdul Razak (A1) to obtain a false birth certificate to project as if Ibrahim (A2) was a juvenile at the time of commission of offence. In furtherance of the said conspiracy, Abdul Razak (A1) presented an application before the Registrar of Birth and Death, Coimbatore City Municipal Corporation seeking for issuance of a birth certificate for his son – Ibrahim (A2) stating as if he was born on 23.5.1980. On receipt of the application, a



non availability certificate was issued.

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(iii) Subsequently, Abdul Razak (A1) presented an application on 23.11.2012 before the Judicial Magistrate No.5, Coimbatore seeking for a direction to register the birth date of his son – Ibrahim (A2) as 23.5.1980. For securing such a declaration, Abdul Razak (A1) was said to have fabricated a document as if it was a record sheet issued by one M/s.Good Shepherd Primary School, Coimbatore (for short, the school), in which, the seal of the school and the signature of the Headmaster named Mr.Jesudhas were forged and this fabricated document was prepared. The above said forged document was produced before the Judicial Magistrate No.5, Coimbatore and based on the same, an order was passed on 13.2.2013 directing the Registrar of Birth and Death, Coimbatore City Municipal Corporation to register the birth date of Ibrahim (A2) as 23.5.1980. Accordingly, a birth certificate was issued by the Registrar of Birth and death.

(iv) The birth certificate that was issued was acted upon and a special leave petition in S.L.P.(Crl.) No.9412 of 2013 came to be filed before the Apex Court on the ground that Ibrahim (A2) was a juvenile at the time of commission of offence and accordingly, necessary relief was sought before the Apex Court. The Apex Court directed the genuineness of the certificate to be ascertained by the Police and to file a report.



(v) P.W.21, who was the then Inspector of Police, received the notice issued by the Apex Court and he immediately visited the school on 31.12.2013 and requested the principal of the school (P.W.1) to ascertain the genuineness of the record sheet (Ex.P.3), which was claimed to have been issued by the school, based on which, the birth certificate was issued to Ibrahim (A2). P.W.1, on receipt of the information from P.W.21, went through the records and found that Ex.P.3 is a forged document. He accordingly wrote a letter to P.W.21, which was marked as Ex.P.37. Based on the letter given by P.W.1, a first information report came to be registered on 31.12.2013 in Cr.No.1722 of 2013 on the file of the respondent Police against both Abdul Razak (A1) and Ibrahim (A2) for offences under Sections 467, 471 and 420 of the Code. The first information report was marked as Ex.P.26.

(vi) The investigation was taken up by P.W.21 and he started recording the statements of witnesses under Section 161(3) of the Criminal Procedure Code (for brevity, the Cr.P.C.). He also enquired the said Mr.Jesudhas (P.W.6), who was stated to have issued Ex.P.3 – record sheet. P.W.21 confirmed that the signature found in Ex.P.3 was not the signature of the said Mr.Jesudhas and a statement was also collected to that effect. Thereafter, P.W.21 prepared a report and had



sent it to the Apex Court.

(vii) Since P.W.21 was transferred, the investigation was subsequently taken up by P.W.23. He applied for the certified copies of the documents that were filed before the Judicial Magistrate No.5, Coimbatore and received the same. In the course of investigation, Abdul Razak (A1) was arrested on 10.7.2014 at about 9.30 AM and his confession was recorded and he was produced before the concerned Court and was remanded to judicial custody. Since P.W.23 found that there was a conspiracy between Abdul Razak (A1) and his son Ibrahim (A2), he prepared an alteration report, which was marked as Ex.P.40 and the offences were altered to Sections 120B, 467, 478, 471 and 420 of the Code.

(viii) P.W.23 thereafter obtained a sample signature of the said Mr.Jesudhas (P.W.6) and made a requisition before the concerned Court to send it for comparison with the signature found in Ex.P.3 and to get an expert opinion. P.W.23 arrested Ibrahim (A2) through a P.T.Warrant. Subsequently, P.W.23 collected all the relevant documents and also the opinion given by the experts and filed the final report before the Judicial Magistrate No.5, Coimbatore. Thereafter, the case was transferred to the file of the Judicial Magistrate No.3, Coimbatore and the same was taken on file in C.C.No.354 of 2014. The copes were furnished to the accused



persons under Section 207 of the Cr.P.C. As against Abdul Razak (A1) and Ibrahim (A2), charges were framed under Sections 120B, 468, 471 and 420 (two counts) of the Code.

(ix) The case was again transferred to the file of the Judicial Magistrate No.8, Coimbatore and it was assigned C.C.No.143 of 2014. The prosecution examined P.W.1 to P.W.23 and marked Ex.P.1 to Ex.P.47. One court witness was examined as C.W.1 and Ex.C.1 report was marked through C.W.1. The prosecution also identified and marked M.O.1 to M.O.3. The defence had marked Ex.D.1 to Ex.D.8 while cross examining the Investigation Officer.

(x) The incriminating portion of the evidence was put to the accused persons when they were questioned under Section 313(1)(b) of the Cr.P.C., and both of them denied the evidence as false.

(xi) The Trial Court, after considering the facts and circumstances of the case and on appreciation of the evidence available on record, came to the conclusion that the prosecution has made out a case against Abdul Razak (A1). Accordingly, Abdul Razak (A1) was convicted and sentenced in the following manner :

S.No.	Offence for which convicted	Sentence
1	Section 468 of the Code	3 years R.I., and to pay a fine of Rs.3,000/- and in default, to undergo 3 months S.I.
2	Section 471 of the Code	1 year R.I., and to pay a fine of Rs.1,000/- and in default, to undergo



S.No.	Offence for which convicted	Sentence
		2 months S.I.
3	Section 420 of IPC (two counts)	3 years R.I., for each count and to pay a fine of Rs.3,000/- for each count and in default, to undergo 3 months S.I., for each count.
The above sentences were directed to run concurrently.		

The Trial Court found that the prosecution had not proved the case against Ibrahim (A2) and accordingly, Ibrahim (A2) was acquitted from all charges.

(xii) Aggrieved by the judgment and order passed by the Trial Court, Abdul Razak (A1) filed Crl.A.No.31 of 2015 and the same was heard by the learned Fourth Additional District and Sessions Judge, Coimbatore. The Appellate Court, on re-appreciation of the oral and documentary evidence and after considering the findings of the Trial Court, partly allowed the appeal and modified the conviction and sentence in the following manner :

S.No.	Offence for which convicted	Sentence
1	Section 420 of the Code (one count)	2 years R.I.
2	Section 468 of the Code	2 years R.I.
3	Section 471 of the Code	5 years R.I.
In so far as the fine amounts are concerned, the amount fixed by the Trial Court was confirmed and all the sentences were directed to run concurrently. That apart, it was further directed that the period of imprisonment already undergone by Abdul Razak (A1) was directed to be set off under Section 428 of the Cr.P.C.		



(xiii) Aggrieved by the judgment of the Appellate Court, Abdul Razak (A1) has filed this criminal revision case.

3. I have heard the learned counsel for the petitioner and the learned Government Advocate (Criminal Side) appearing for the respondent.

4. The main ground that was raised by the learned counsel for the petitioner is that the prosecution has not established the fundamental fact as to who created the forged document in this case. The specific defence that was taken by the petitioner was that he made an application to P.W.1, who had given Ex.P.3, based on which, the birth certificate was obtained for Ibrahim (A2). The court witness, who was examined as C.W.1, had clearly stated in his report marked as Ex.C.1 that the handwriting found in Ex.P.3 - record sheet matches with the sample handwriting of P.W.1. In view of this report, the stand taken by the defence that it was P.W.1, who issued Ex.P.3 has been established.

5. The learned counsel for the petitioner further contended that P.W.1 lodged the complaint fearing damage to the goodwill of the school and even during his cross examination, P.W.1 was not aware as to



whether Ibrahim (A2) had undergone schooling at the school. Further, the evidence of P.W.2 to P.W.5 shows that all the records were in the control of P.W.1. P.W.6, whose signature was found in Ex.P.3, had stated that he was not aware about Ex.P.3 and he was only shown the record sheet dated 25.11.2011, which was not exhibited before the Trial Court.

6. The learned counsel for the petitioner, therefore, submitted that since the investigation was not done in the manner as to how the fabrication of the forged document had taken place, the benefit of doubt has to be necessarily extended to the petitioner.

7. Per contra, the learned Government Advocate (Criminal Side) appearing on behalf of the State submitted that the evidence of P.W.1 and P.W.6 read along with other documents, which were marked before the Trial Court, clearly established that Ex.P.3 is a forged document and the only person, who was benefited out of this forged document was the son of the petitioner. It was further submitted that both the Courts below have properly appreciated the evidence and applied the test under Section 106 of the Indian Evidence Act and found that the prosecution has proved the case against the petitioner. The learned



Government Advocate (Criminal Side) also submitted that the findings of both the Courts below did not suffer from any illegality or perversity and there is no scope to interfere with the same in exercise of the revisional jurisdiction and hence, sought for dismissal of this revision.

8. This Court has carefully considered the submissions made on either side and the materials available on record.

9. The specific defence that was taken by the petitioner was that he made an application to P.W.1 and it was P.W.1, who gave Ex.P.3 document. To substantiate this defence, the evidence of C.W.1 and the expert opinion marked as Ex.C.1 were relied upon. As per the opinion given by C.W.1, the writings of P.W.1 and the writings found in Ex.P.3 were tallying. This expert opinion was the only trump card that was used by the petitioner to dislodge the case of the prosecution.

10. The disputed document namely Ex.P.3 was carefully considered by this Court along with the evidence of P.W.1. The admission number that has been mentioned in this document is 5526 and the name of the student has been mentioned as A.Ibrahim. It contains the seal of the school. It also contains the signature of the said Mr.Jesudhas showing



him as the Headmaster of the school.

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11. The Trial Court and the Appellate Court, while appreciating this document, found that admission No.5526 pertained to a student named S.Thinakaran, S/O Sridharan. To prove the same, the prosecution had marked Ex.P.2, which is the admission register of the school, in which, it was found that admission No.5526 pertained to a student named S.Thinakaran. The Courts below found that Ex.P.3 signed by the said Jesudhas was issued on 15.11.2011. However, the said Jesudhas, who was working as the Headmaster of the school, had retired from service even on 31.5.2010 itself and to substantiate the same, Ex.P.5 was marked on the side of the prosecution.

12. The seal that was found in Ex.P.3 was compared with the original seals of the school and the same were marked as M.O.1 to M.O.3. The seal found in Ex.P.3 was also found to be forged and it did not tally with the original seals. To substantiate the same, the evidence of P.W.19 was relied upon, through whom, Ex.P.29 to Ex.P.33 were marked. Both the Courts below, after appreciating the evidence available on record, came to the categorical conclusion that Ex.P.3 was a forged document. This Court does not find any illegality in such a finding rendered by both the Courts below. Ex.P.3 perfectly satisfies the



requirements of Section 415 of the Code.

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13. The next question to be gone into is as to whether the evidence of C.W.1, through whom, Ex.C.1 report was marked, would come to the aid of the petitioner.

14. The report that was marked through C.W.1 is only a relevant fact under Section 45 of the Indian Evidence Act. That, by itself, is not a conclusive proof to come to a conclusion that it was P.W.1, who prepared Ex.P.3 and gave it to the petitioner. P.W.1, who was said to have issued the disputed document Ex.P.3, does not really gain anything by issuing such a document to the petitioner. On the other hand, it is the petitioner, who had used this document and proceeded to obtain a birth certificate for his son and this birth certificate was used to file a special leave petition before the Apex Court claiming juvenility and seeking for the release of his son. Therefore, between P.W.1 and the petitioner, it is the petitioner, who will be benefited out of Ex.P.3.

15. Section 3 of the Indian Evidence Act deals with the term 'proved'. Proof does not mean proof to rigid mathematical demonstration, because that is impossible and it must only mean such



evidence as would induce a reasonable man to come to a conclusion. In human affairs, everything cannot be proved with mathematical certainty and the law does not require it. The definition of the term 'proof' centers around probability. Hence, a fact is said to be proved when, after considering the evidence and also the circumstances, the Court either believes it to exist or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. The standard of proof that is provided under the Indian Evidence Act is only from the point of view of a prudent man and nothing more.

16. If the above test is applied to the facts of the present case, any prudent man, without any hesitation, will come to a conclusion that Ex.P.3 was prepared only by the petitioner, since it is the petitioner, who was benefited out of the said document. The petitioner has not even filed a single document to show that his son – Ibrahim (A2), at any point of time, did his schooling at the school.

17. If really Ibrahim (A2) had done his schooling at the school, the petitioner could have easily filed the relevant documents by examining Ibrahim (A2) or while cross examining P.W.1. Since the petitioner did



not take any such steps, it is apparent that Ibrahim never did schooling at the school and therefore, there was no occasion for P.W.1 to give a record to the petitioner.

18. Ex.P.3 was used only by the petitioner and it was well within his personal knowledge as to how he got this document. It is not fair on the part of the petitioner to just throw the blame on P.W.1 since P.W.1 did not benefit anything out of Ex.P.3 and it was proved beyond reasonable doubts that Ex.P.3 was a forged document since (i) the admission number pertained to some other student; (ii) the Headmaster, who had signed it in the year 2011, was not even in service at the relevant point of time; and (iii) the seal that was found in Ex.P.3 was also found to be forged.

19. This Court, in exercise of its revisional jurisdiction, can only interfere with the judgments of the Courts below if they are found to be perverse and not in line with the evidence available on record. No such perversity is found in the findings of the Courts below and it does not warrant any interference by this Court.

20. In the result, this criminal revision case is dismissed by confirming the judgment of the Appellate Court. The petitioner was



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enlarged on bail by an order dated 07.3.2017 vide Crl.M.P.No.3509 of 2017. Since this criminal revision case is dismissed, the petitioner is directed to surrender before the Trial Court within a period of two weeks from today and the Trial Court shall confine the petitioner to jail to undergo the sentence imposed by the Appellate Court. If the petitioner fails to surrender, the Trial Court shall take immediate steps to secure the petitioner and make him serve the remaining sentence as imposed by the Appellate Court.

02.3.2023

Index : Yes

Neutral Citation : Yes

To

- 1.The Fourth Additional District and Sessions Court, Coimbatore.
- 2.The Judicial Magistrate No.8, Coimbatore.
- 3.The Inspector of Police, B-12 Ukkadam Police Station, Coimbatore
- 4.The Public Prosecutor, High Court, Madras.

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