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Crl.R.C(MD) No.435 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.9.2023

PRONOUNCED ON : 17.11.2023

CORAM

THE HON'BLE MR.JUSTICE P.DHANABAL

Crl.R.C.(MD)No.435 of 2019

Karupasamy

... Petitioner

/Vs/

State rep by
The Sub-Inspector of Police,
Maraneri Police Station,
Virudhunagar District.

... Respondent

Prayer : This Criminal Revision Case filed under Sections 397 and 401 of Criminal Procedure Code 1973, to call for the records and set aside the conviction and sentence imposed by the Additional District Sessions Court, Virudhunagar District at Srivilliputtur in Crl.A.No.95 of 2007 on 21.06.2019 in confirming the conviction and modifying the sentence imposed by the Judicial Magistrate Court, Sivakasi in C.C.No. 247 of 2002 on 19.04.2007.



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For Petitioner : : Mr.M.Jothi Basu

For Respondent : : Ms.M.Aasha
Government Advocate (Crl.Side)

ORDER

This Criminal Revision Case has been filed by the petitioner/accused as against the Judgment passed in Criminal Appeal No.95 of 2007 on the file of the Additional District Session Court, Virudhunagar dated 21.06.2019 by modifying the Judgment dated 19.4.2007 passed by the Trial Court in C.C.No.247 of 2002 on the file of Judicial Magistrate Court, Sivakasi.

2. The Trial Court convicted the accused for the offences under Sections 406, 467, 468 and 471 of the Indian Penal Code (for short, the IPC) and sentenced him to undergo two years rigorous imprisonment for each of the offences and also imposed a fine amount of Rs.1,000/- and in default, to undergo simple imprisonment for three months. On appeal by the petitioner/accused, the Appellate Court confirmed the sentence for the offences under Sections 406, 467 and 468 of the IPC. The Appellate Court also confirmed the conviction for the offence under Section 471 of the IPC and modified the sentence to undergo simple imprisonment for 1 year. In all the other



aspects such as imposition of fine of Rs.1,000/-, the default clause and the direction to run the sentences concurrently, the judgment of the Trial Court was confirmed.

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3. The prosecution case is as follows :

(i) The accused was President of Nathikudi Panchayat and PW1 - Dhanbagyam was a Vice President. While so, on 13.8.2001, in order to clean the drainage of Nathigudi Panchayat, PW1 issued a cheque for a sum of Rs.1,000/- to the accused. Though the cheque was issued for a sum of Rs.1,000/-, the petitioner presented it before Mamsapuram Primary Agricultural Cooperative Bank and encashed for a sum of Rs. 60,000/-. Subsequently, this was noticed by the defacto complainant - PW1 and she gave a complaint - Ex.P1 before Maraneri police station. PW10, who was working as the Sub Inspector of Police, based on the complaint given by PW1, registered the first information report in Crime No.129 of 2001. Pursuant to that, the case was investigated by PW12 and after completion of the investigation, a charge sheet was filed before the concerned Magistrate Court as against the accused for the offences under Sections 406, 467, 468 and 471 of the IPC. Thereafter, copies of the records relied upon by the prosecution were furnished to the accused under Section 207 of the Criminal Procedure Code.

(ii) After hearing both sides and upon perusal of the records, the Trial Court had framed the charges for the offences under Sections 406, 467, 468 and 471 of the IPC



and the charges were read over and explained to the accused. The accused denied the charges claimed them to be tried before the Trial Court. Thereafter, the prosecution examined PW1 to PW12 and marked Ex.P1 to Ex.P10. However, no witnesses were examined and no documents were marked on the side of the accused.

(iii) After completion of prosecution side evidences when the accused was questioned under Section 313(1)(b) of the Criminal Procedure Code with regard to the incriminating circumstances found against the accused, he denied the same. The Trial Court, after evolving the oral and documentary evidence adduced on the side of the prosecution, found the accused guilty for the offences under Sections 406, 467, 468 and 471 of the IPC, convicted him as such and sentenced him to undergo two years rigorous imprisonment for each of the offences and also imposed a fine amount of Rs.1,000/- and in default, to undergo simple imprisonment for three months.

(iv) As against the conviction and sentence imposed by the Trial Court, the petitioner/accused preferred an appeal before the Sessions Court, Virudhunagar and the same was made over to the Additional District Sessions Court, Virudhunagar. The Appellate Court, after analysing the evidence, confirmed the conviction of the Trial Court for the offences under Sections 406, 467 and 468 of the IPC. The Appellate Court also confirmed the conviction for the offence under Section 471 of the IPC and modified the sentence the petitioner/accused to undergo simple imprisonment for 1



year. The Appellate Court also imposed a fine of Rs.1,000/- for each of the offences and in default to undergo 3 months simple imprisonment. As against the judgment of the Appellate Court, the above criminal revision case has been filed.

4. The petitioner raised the following grounds :

“1. The conviction and sentence imposed by the Courts below were against law, weight of evidence and probabilities of the case.

2. The Courts below ought to have seen that the prosecution had not proved the case beyond reasonable doubts.

3. The Courts below failed to note that though the alleged incident took place on 13.8.2001, PW1 lodged the complaint to the Police only on 14.9.2001 and the prosecution had not provided any explanation for lodging the complaint to the Police belatedly.

4. The Courts below should have seen that there was no eye witness to the occurrence. No witness stated



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that the petitioner/accused alone had forged the cheque marked as Ex.P2. The petitioner/accused was an uneducated person and he only knew to put signature.

5. The Courts below ought to have seen that the suggestion made by the counsel during the cross-examination was not a substantive piece of evidence and it could not be taken as a stand of the accused.

6. The Trial Court found that the Police had not properly investigated the case and if it was so, it is the duty of the Trial Court to acquit the accused from all the charges by providing the benefit of doubt.

7. The Appellate Court failed to note that the petitioner/accused had not made any correction in the cheque - Ex.P2 and if it was so, the evidence of the forensic expert - PW9 and his report - Ex.P9 were, in no way, useful to strengthen the prosecution case.

8. The Courts below ought to have seen that under the Identification of Prisoners Act, it is the duty of the prosecution to obtain a signature from the Accused in the



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presence of Magistrate and in the present case, it was not followed.

9. The Trial Court convicted the petitioner/accused under Sections 406, 467, 468 and 471 of the IPC and sentenced him to undergo 2 years rigorous imprisonment for each offence and ordered to pay a sum of Rs.1,000/- towards fine and in default to undergo 3 months simple imprisonment, which was illegal.

10. The Courts below ought to have seen that it is the duty of the prosecuting agency to obtain a sanction under the Tamil Nadu Panchayats Act, 1994 to prosecute a President of the Village Panchayat. In the particular case no sanction has been obtained from the competent authority before prosecuting the accused, which was illegal.

5. Mr.M.Jothi Basu, learned counsel appearing for the petitioner would contend that the accused has been charged for the offences under Sections 406, 467, 468 and 471 of the IPC. In order to prove the charges levelled against the accused the



prosecution examined PW1 to PW12 and marked Ex.P1 to Ex.P10. PW1 is the defacto complainant. The evidence of prosecution witnesses are not cogent and filled with doubts. In order to attract the criminal breach of trust, the accused has not forged any document as alleged by the prosecution and the prosecution failed to prove the case beyond reasonable doubts. None of the prosecution witnesses deposed about the alleged criminal breach of trust and forgery and the Trial Court has convicted the accused only based on the expert opinion. The Trial Court failed to consider the discrepancy and convicted the accused for the above said offences. The Appellate Court also, without appreciating the evidence in a proper perspective, confirmed the conviction for the offences under Sections 406,467,468 and 471 of IPC but modified the sentence imposed under Section 471 of IPC from 2 years imprisonment to 1 year imprisonment . Therefore the Judgment of Trial Court as well as the Appellate Court are liable to be set aside by allowing this Criminal Revision Case.

6. Per Contra, Ms.M.Aasha, learned Government Advocate (Criminal Side) appearing for the respondent would contend that the prosecution have examined witnesses PW1 to PW12 and marked Ex.P1 to P10. PW1-the defacto complainant deposed about the issuance of a cheque for a sum of Rs.1,000/- and the same was altered by the accused as Rs.60,000/-, and then the accused presented the cheque before



the Bank and encashed the cheque for a sum of oRs.60,000/-, PW9 deposed about the comparison of letters and also categorically stated that the accused altered the amount found in the cheque, both the numeric and words. The Bank Manager was also examined as a witness and he deposed about the encashment of the cheque. PW10 deposed about the registration of the FIR PW11 and PW12 deposed about the investigation and filing of final report. The Trial Court after analysing all the evidences correctly convicted the accused for the offences under Sections 406, 467, 468 and 471 of the IPC. The Appellate Court also, after elaborate discussion, confirmed the conviction under Sections 406,467, and 468 of IPC and modified the sentences the offence under Section 471 of IPC. Therefore, this appeal is liable to be dismissed.

7 This Court heard both sides and perusal the records. Upon hearing both sides and perusing the records, the judgments of a Courts below and the grounds, the point for determination in this revision is as to whether the judgment passed by the Appellate Court in Criminal Appeal No.95 of 2007 on the file of the Additional District Session Judge, Virudunagar at Srivillipudhur confirming the conviction of Trial Court in C.C.No.247 of 2002 for the offences under Sections 406,467 and 468 of IPC and modifying the sentence for the offence under Section 471 of IPC is sustainable in law and on facts.



8. The prosecution case is that the accused was the President of Nathigudi Panchayat and at that time the PW1, who was the Vice President of the Nathigudi Panchayat, issued a cheque dated 13.08.2001 in favour of the accused for a sum of Rs. 1,000/- towards the expenses of drainage cleaning. While so, the accused altered the figures in the cheque from 1,000/- to 60,000/- by altering the amount written both in numeric and words. Thereafter, the cheque was presented for collection and he obtained Rs.60,000/- from the Mamsapuram Primary Agricultural Co-operative Bank . Thereby, the accused was charged for the offences under Sections 406,467,468 and 471 of the IPC. In order to prove the charges levelled against the accused, the prosecution examined PW1 to PW12 and marked as Ex.P1 to Ex.P10. But, no documents were marked and no witnesses were examined on the side of the defence. In this case, PW1 is the defacto complainant and she deposed before the Trial Court that when she was the Vice President of Nathigudi Panchayat, on 13.08.2001, on account of Independence Day in order to clean the drainage, she issued a cheque for a sum of Rs.1,000/- to the accused. Thereafter on 13.09.2001 at about 3.00 PM, PW1 along with the Clerk of Panchayat went to Mamsapuram Primary Agricultural Co-operative Bank for some other purpose and at that time, she came to know that on 16.08.2001, the sum of Rs. 60,000/- was withdrawn by the accused. Thereafter, she gave a complaint before the



concerned Police. The said complaint was also marked as Ex.P1 and the cheque was marked as Ex.PW2. Therefore the evidence of PW1 would reveal that the cheque was issued to the accused for a sum of Rs.1,000/-, but the said cheque presented for collection was for a Rs.60,000/- and the accused had also withdrawn a sum of Rs. 60,000/- through the said cheque. The accused also not denied the receipt of a sum of Rs.60,000/- from the Bank through the above said cheque. Further, PW9-the Forensic Expert examined the handwriting of the accused along with the disputed handwriting in the cheque and he also deposed that the sample handwriting of the accused are tallied with the handwriting in the cheque. The Bank Manager was examined as PW5 and he also deposed that the cash was paid to the accused through the cheque. In order to disprove the prosecution witnesses, no effective cross examination was made on the side of the accused and moreover, the accused admitted the receipt of the amount and only denied the alterations made in the cheque.

9. It is an admitted fact that the cheque was issued in the name of accused. Therefore, the accused is liable to explain the alterations made in the cheque. There is no proper explanation offered by the accused with regard to the alterations made in the cheque. Per Contra, the prosecution evidence would clearly prove that the cheque was issued by the defacto complainant in favour of the accused for a sum of Rs.1,000/- but



the said cheque was presented before the Bank for a sum of Rs.60,000/- and the payment was also made for a sum of Rs.60,000/-. Therefore, from the prosecution witnesses it is clear that the cheque was altered and presented and the accused obtained the money.

10.As far as the offence under Section 406 of the IPC is concerned, in order to attract the ingredients of criminal breach of trust, no evidence was adduced by the prosecution that the entrustment of any property to the accused and he dishonestly misappropriated or converted the same for his own use. Therefore, there is no evidence to attract the offence under Section 406 of the IPC. But the Trial Court failed to look into the above aspect and wrongly came to the conclusion that the accused committed the offence under Section 406 of the IPC and convicted as such. The Appellate Court also failed to consider the above aspect and confirmed the conviction for the offence under Section 406 of the IPC without any evidence. Therefore, the conviction under Section 406 of IPC as against the accused is not sustainable and the same is liable to be set aside.

11. As far as the offences under Sections 467, 468 and 471 of the IPC are concerned. The prosecution evidence shows that the accused altered the figure "1,000" to "60,000" and thereby the accused forged the valuable security and for the purpose of



cheating forged the documents only, the forged document was presented before the bank as genuine. Therefore, the prosecution proved the charges levelled against the accused for the offences under Sections 467, 468 and 471 of the IPC. In this context, the Trial Court also elaborately discussed about the evidence correctly came to the conclusion that the accused forged the valuable security by altering amount from Rs. 1,000/- to Rs.60,000/- for the purpose of cheating and forged document was dishonestly used as a genuine document. The Appellate Court also, after elaborate discussion confirmed the conviction modified the sentence for the offence under Section 471 of IPC. However, the Appellate Court has discussed about the suggestions made by the learned counsel for the accused at the time of cross examination of prosecution witnesses. The suggestions made by the learned counsel during cross examination can be taken as admission but it cannot be a sole ground to convict the accused. In this case, the Appellate Court discussed about the suggestions made by the learned counsel during cross examination of prosecution witnesses, but that alone is not a ground to convict the accused and in view of the above discussions, the conviction and sentence imposed by the Courts below for the offences under Sections 467, 468 and 471 of IPC are confirmed.

12. Now coming to the point quantum of punishment, the Trial Court awarded



punishment for the offences under Sections 467,468 and 471 of the IPC. The accused was aged about 58 years at that time of awarding sentence by the Trial Court. The learned counsel appearing for the petitioner also argued that the accused is the sole Breadwinner of the family and is aged 65 years and thereby lesser punishment may be awarded. The Appellate Court also reduced the sentence for the offence under Section 471 of IPC from 2 years rigorous imprisonment to 1 year simple imprisonment. Considering the above said submissions of the learned counsel for the petitioner, considering the age and the fact that there was no previous case against the accused, this Court is inclined to reduce the sentence from 2 years to 6 months for each the offences to pay a sum of Rs.1,000/- as fine and in default to undergo 1 month.

13. In the result, this Criminal Revision Case is partly allowed and the judgment and conviction passed by the Trial Court for the offences under Sections 467,468 and 471 of the IPC are confirmed and the accused is sentenced to undergo 6 months simple imprisonment and to pay a sum of Rs.1,000/- towards fine and in default to undergo 1 month simple imprisonment for each of the offences. The sentences are directed to run concurrently the sentence already undergone by the accused shall be set off in terms of under Section 428 of IPC and the Trial Court is directed to secure the accused as per law. The accused is acquitted from the charge under Section 406 of the IPC and the



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conviction and sentence imposed by the Trial Court as confirmed by the Appellate Court for the offence under Section are set aside and the accused is acquitted of the charge under Section 406 of the IPC. The fine amount paid by the accused before the Trial Court for the offence under Section 406 of the IPC is ordered refunded to him.

17.11.2023

Index : Yes/No

Speaking Order / Non Speaking Order

adl

To

1. The Sub-Inspector of Police, Maraneri Police Station,
Virudhunagar District.
2. The Additional District Sessions Court,
Virudhunagar District, Srivilliputtur.
3. The Judicial Magistrate Court, Sivakasi.



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P.DHANABAL, J.

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**Pre Delivery order made in
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