



CrI.R.C(MD).No.95 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 20.09.2023

CORAM:

THE HONOURABLE MR. JUSTICE P. DHANABAL

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Narayanasamy

...Petitioner

Vs

1. State rep. by
the Inspector of Police,
District Crime Branch,
Ramanathapuram District.
(Crime No.10 of 1999)

2.Thangaraj
3.Balasundrammal
4.Abdul Jabbar

... Respondents

PRAYER: Criminal Original Petition filed under under Section 399 r/w.401 of Criminal Procedure Code against the acquittal verdict pronounced by the learned Additional District and Sessions Judge, Paramakudi, Ramanathapuram District in C.A.No.11 of 2014 vide Judgment, dated 23.08.2018 confirming the Judgment rendered by the learned Magistrate, Paramakudi, Ramanathapuram District in C.C.No.329 of 2001 through Judgment, dated 26.07.2013 by acquitting the respondents 2 to 4.



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For Petitioner : Mr. R.Anand
For 1st respondent : Mr. R.M.Anbunithi
Government Advocate (Crl. side)
For Respondents 2 & 3 : Mr.S. Sasikumar

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ORDER

This Criminal Revision Case has been filed against the Judgment passed by the learned Additional District and Sessions Judge, Paramakudi, Ramanathapuram District in C.A.No.11 of 2014 vide Judgment, dated 23.08.2018 confirming the Judgment rendered by the learned Judicial Magistrate, Paramakudi, Ramanathapuram District in C.C.No.329 of 2001 vide Judgment, dated 26.07.2013 by acquitting the respondents 2 to 4.

2. According to the petitioner, the respondents 2 to 4 herein were arrayed as accused for the offences under Sections 468, 419, 420 r/w. 109, 120(B) IPC. The trial Court acquitted the the accused Nos. 1 and 2 i.e., the respondents 2 and 3 herein from the charges under Section 468, 419, 420 r/w. 109, and 120(B) IPC and also acquitted the 3rd accused / 4th respondent herein for the offence under Sections 419 r/w. 109, 120(B) IPC. Aggrieved over the said Judgment, the defacto complainant, who is the petitioner herein filed C.A.No.11 of 2014 and the same was also dismissed by confirming the



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Judgment of the trial Court, through the Judgment dated 23.08.2018

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3. The case of the prosecution is that the petitioner herein purchased to an extent of 88 Cents of land at Manjur Village in Parmakudi Taluk comprised in S.No.197/5, in the name of his wife Pushpa and the second accused / 3rd respondent herein impersonated the wife of the petitioner / appellant Pushpa and executed a sale deed, dated 06.03.1985 as if the wife of the petitioner Pushpa had sold the property to one Paranjothi and the 3rd and 4th accused / respondents 3 and 4 herein had attested in the above said sale deed, dated 06.03.1985. Further, the first and second accused mortgaged the property with Punjab National Bank by impersonating the wife of the defacto complainant and obtained loan on 01.06.1987 and 24.09.1991 respectively. Therefore, the petitioner gave a complaint before the District Crime Branch and the same was registered in Crime No.10 of 1999 for the offences under Sections 468, 477A, 419 and 420 IPC and after investigation, the District Crime Branch laid final report and then, the case was taken on file in C.C.No. 329 of 2001 on the file of the the Judicial Magistrate, Paramakudi. Thereafter, the trial Court framed the charges as against the accused Nos. 1 to 4 for the offences under sections 468, 419, 420 r/w. 109, 120(B) IPC.

4. On the side of the prosecution, PW.1 to PW.9 were examined and 14



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documents were marked as Exs.P1 to P14. On the side of the accused no one was examined and no documents were marked.

5. After completion of the prosecution evidence, the accused were examined under Section 313(1)(b) Cr.P.C., with regard to the incriminating circumstances as against the accused and they denied the same. After hearing the arguments of both sides and based on the evidences adduced by the prosecution, the trial Court has acquitted the accused from the charges levelled against them. During the pendency of the investigation, the 4th accused died, thereby, the charges abated as against him. Aggrieved over the Judgment of the trial Court the defacto complainant i.e., the petitioner herein filed Crl.A.No.11 of 2014 before the Sessions Judge, Ramnad and the same was made over to the Additional District and Sessions Judge, Pramakudi and the said said appeal was dismissed by the Appellate Court through the Judgment, dated 23.08.2018. As against the said Judgment, the defacto complainant, who is the petitioner herein filed this revision as against the accused / respondents 2 to 4 herein on the following grounds:

i) The Judgments of the Courts below are against law, weight of evidence and probabilities of the case.



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ii) The courts below erred in acquitting the respondents 2 to 4 since the finger prints of the accused No.2 is clearly tallied with the Ex.P6 which has been collected from the office of the Sub Registrar, Bogalur. The accused No.2, who was being present at the office of the Sub Registrar and executed the forged sale deed, dated 06.03.1985 in favour of PW.3 and the signature expert has given a report that the sample thumb impression lifted from the accused No.2 clearly matches with the impression found a place on the entry, dated 07.03.1985, thereby, proved the impersonation on of the sale deed, dated 06.03.1985 (Ex.P5) bears the name of PW.2 as an executant and the same was created as if the PW.2 had sold her properties in favour of PW.3.

iii) The Courts below erred in acquitting the respondents 2 to 4 since the mere non -sending of Ex.P5, sale deed, dated 06.03.1985 for the purpose of testing the same through experts from the laboratory cannot be a ground to disbelieve the version of prosecution. Ex.P5 also reveals that the accused on 01.06.1987 and 24.09.1991 moved an application before the Punjab National Bank for the purpose of obtaining loan by forging the signature of PW.2 and PW.7 Bank Manager has categorically deposed about the letter obtained by first accused. The above said aspects have not been considered by the Courts below.



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iv) The Courts below have relied on Police Standing Orders 801(4) (K) and the same cannot be a ground for rejecting the case of the prosecution. The Police Standing Orders have no *loco standi* and the same have been created solely on the ground of administrative guidelines and hence, it is not a ground to dis believe the case of prosecution.

v) The Courts below have erred in acquitting the respondents 2 to 4 since the reasons assigned for discording the testimony of PW.2 that she is not in a position to give details of the four boundaries mentioned in the sale deed, dated 06.03.1985 cannot have merit.

6. The learned counsel appearing for the petitioner would contend that A1 and A2 are husband and wife. The de facto complainant is brother of A2. PW.2 and A2 are siblings. The defacto complainant, PW.2 and the accused had entered into a partnership for doing brickkiln business. Taking advantage of the above said partnership business, A2 impersonated PW2 with the help of A1 and executed a sale deed, dated 06.03.1985 and also obtained loan from the Punjab National Bank, thereby committed the offence and then, the defacto complainant had given a complaint before the 1st respondent police and the first respondent registered a case and after investigation, final



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report was filed. Thereafter, the trial has been conducted and PW.1 and PW.2 have categorically deposed the offence committed by the accused on 12.03.1985. A1 impersonated his wife as if PW.2 - Pushpa executed a sale deed in favour of A3. In the year 1987, A1 and A2 borrowed a loan as if PW.2 was present and signed in the loan papers. In fact, PW.2 has not executed any sale deed and she has not signed in the loan documents. Thereafter, PW.1 to PW.9 were examined and Exs.P1 to P14 were marked. But, the trial Court has acquitted the accused on the ground that PW.2 is not in a position to give details of properties and also not followed Police Standing Orders 801(4)(K) while taking finger prints. Further, the original documents, dated 16.08.1985 was not collected and the finger prints has not been taken as per the procedure. The above said reasons are minor discrepancies and they would not affected the case of the prosecution. The Investigating Officer also has categorically spoken about the taking of the finger print and PW.1 to PW.3 having deposed about the prosecution case. But, both the trial Court as well as the First Appellate Court failed to consider the prosecution case and acquitted the accused. Therefore, this revision is liable to be allowed by setting aside the Judgment of the trial Court as well as appellate Court.

7. The learned counsel appearing for the respondents 2 to 4 would submit that PW.1 to PW.3 and accused A2 are close relatives. On 12.03.1985,



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they have entered into a partnership business and A1 is Managing Director and power was given to A1 to run the brickkiln business and the original document of sale deed is with the PW.2. The other accused A3 and A4 are attesting witnesses in the said sale deed. While obtaining the finger prints, procedures have not been followed and thereby, the trial Court acquitted the accused by giving a doubt. As per the Order No.801(4)(K) of the Police Standing Orders, it is mandatory as per the dictum laid down by this Court in Crl.A.Nos.759 of 2022 etc., batch at the time of taking finger prints the procedures under the Police Standing Orders 801(4)(K) have to be followed. But, in this case the police officials have not followed the procedures of Police Standing Orders 801(4)(K) for taking finger prints. Further, the Investigating Officer failed to collect the original documents which alleged to have forged and therefore, there are so many discrepancies and thereby, the accused were acquitted and no infirmity in the Judgment passed by the Courts below and thereby, this revision petition is liable to be dismissed.

8. Heard the learned counsel appearing on either side and perused the materials available on record.

9. The point for consideration in this revision are as follows:



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Whether the Judgment passed by the learned Additional District and Sessions Judge, Paramakudi, Ramanathapuram District in C.A.No.11 of 2014 vide Judgment, dated 23.08.2018 by confirming the Judgment rendered by the learned Judicial Magistrate, Paramakudi, Ramanathapuram District in C.C.No.329 of 2001 is sustainable in law and on facts?

10. In this case, it is admitted fact the defacto complainant and A1 started brickkiln business for which they have entered into a partnership deed and started a business from the year 1984. The date of alleged occurrence took place in the year 1985. The complaint was given in the year 1999. The main contention of the petitioner is that the trial Court has acquitted the accused on the ground that finger print was not obtained in accordance with law and the non following of the Police Standing Orders is not a sole ground to reject the prosecution case.

11. Per contra, the learned counsel appearing for the respondents would contend that as per Police Standing Orders 801(4)(K) the Superintendent of Police has to nominate a suitable person to take finger prints and that person only authorised to take the finger prints but in this case, the procedure



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prescribed under Section 801(4)(K) of Police Standing Orders has not been followed,, thereby, the accused are entitled for acquittal.

12. In support of his contention, the learned counsel appearing for the respondents relied on the Judgment of this Court reported in **2020(1)(MWN) (Cr.) DCC 158 (Mad)** in the case of **(B. Venkatesan Vs. V. Udayabanu)**. He has relied on the Judgment of this Court, dated 21.01.2014 made in Crl.A.Nos..759, 765, 858 and 198 of 2013, wherein the Division Bench of this Court in para Nos.15 and 16 held as follows:

15. In the year, 2002, when the incident in this case occurred, the State of Tamil Nadu had not framed any rules as per Section 8 of the Identification of Prisoners Act. The Procedure that was followed then was the one adumbrated under Order 836 of the Tamil Nadu Police Standing Orders (presently Order 801), Order 836(3)9f) defines the word “Proficient” as follows:

Order 836(3)(g) defines the word “expert” as follows:

“Expert” means an officer, who has been declared by the Deputy Inspector General of Police, Railways and Criminal Investigation Department, to be competent to examine, classify and give Order 836(4) (k) states that finger prints shall be taken only by the officers declared by the Superintendent.

16. From the reading of the above provisions of the Police Standing Orders, it is clear that finger prints of suspects must be taken by the person, who is declared by a Superintendent of Police in the Mofussil or Commissioner of Police, in the city of Madras, to be qualified to take clear and well-rolled impressions. This is a primary requirement in law.



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From the careful perusal of the Judgment it is clear that finger prints have to be obtained as provided in the Police Standing Orders. Those finger prints must be taken by the person, who is declared by by a Superintendent of Police in the Mofussil or Commissioner of Police, in the city of Madras, to be qualified to take clear and well-rolled impressions. This is a primary requirement in law.

13. In this case, the Investigating Officer, admitted that the above said procedure has not been followed and thereby, the trial Court as well as the First Appellate Court elaborately discussed about the lifting of finger print and came to the fair conclusion. In this context it is relevant to see para 18 of the Judgment of the Division Bench of this Court in ***Bala and others Vs. State, in Crl.A.Nos.759 of 2013 etc., batch*** wherein this Court held that “we are in agreement with the arguments advanced by the learned counsel for the appellants based on the rulings cited supra and hold that the prosecution had failed to prove satisfactorily that the finger prints of A-1, A-2, and A-4 were not taken in the manner prescribed by Order 836 (now, Order 801) of the Tamil Nadu Police Standing Orders and therefore, the evidence of the finger print expert (PW.23) cannot be relied upon to fasten criminal liability on the appellants herein.” In this case on hand also Finger Prints were not taken in



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the manner prescribed by Order 801 (4) (K) of Tamil Nadu Police Standing Orders and thereby, the said case law squarely applicable to the present facts of the case. In view of the said discussion and said Judgment the conclusion arrived by the Courts below are perfectly right. Therefore, the contention of the petitioner that mere non following of procedures in Police Standing Orders is not a ground for acquittal is not acceptable.

14. Further, the second contention raised by the petitioner that the trial Court has relied upon the fact that PW.2 is not in a position to give the details of the properties. According to the prosecution case, the 2nd accused impersonated PW.2 and executed a sale deed as if she is the original owner of the properties ie., in the name of Pushpha executed sale deed on 06.03.1985. Further, the trial Court in the Judgment categorically stated that the Investigating Officer has not taken any steps to collect the original documents. The case of the prosecution is that the accused impersonated the PW.2 and executed the sale deed to one Paranjothi. While so it is the duty of the Investigating Officer to obtain the original sale deed and send for comparison whether the documents was executed by the original owner or any other person. But in the present case, the documents available with the Registrar office were sent for comparison. The original document ought to have been produced before the Court by the prosecution. Though the



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petitioner has no role in the investigation, he could very well taken steps during pending trial, but not done so. However, the main dispute is with regard to the original sale deed, dated 06.03.1985 while so the main document has to be produced before this Court. But, in this case, the main document has not been seized by the Investigating Officer. Therefore, without the said document the Court cannot pass any order as against the accused.

15. As far as loan obtained by the accused is concerned, the trial Court in the Judgment categorically discussed about the partnership business between A1 and the defacto complainant for that partnership business already power was given to A1 and thereby, they obtained loan in the year 1985 on behalf of the partnership firm. But, till, 1999 the complainant has not questioned about the loan obtained by the accused. Now, due to the dispute between the parties the present complaint was lodged and further the trial Court has correctly discussed that the defacto complainant has not taken any steps to cancel the above said sale deed. Further, the lower Court also discussed about the original custody of the original sale deed.

16. Further, the Court below discussed that the Investigating officer admitted that the thumb impression of A2 and PW.3 were obtained by the



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Grade – I Police, but, the thumb impression of A3 has not been sent for comparison. When the thumb impression was obtained from A2 and PW.3, then why the thumb impression of PW.3 was not sent to lab, this creates doubt over the prosecution case. Further PW.4 also stated that at the time of disbursing the loan after following all the legal formalities they used to disburse the loan amount. The above said loan was obtained by A1 based on the power given by the other partners and PW.3 - Paranjothi also admitted that she put signature in the bank for the loan amount and she was also partner to the brickkiln business. Further as per the prosecution case A1 obtained loan by forging the documents, but the PW.3, herself, who is none other than the partner of the brickkiln business was also present on the date of obtaining loan and she also signed in the bank documents. The main witnesses to speak about the loan are PW.3 and PW.4 and their evidences shows that after following the procedures only the loan amount was paid to the accused. Therefore, as discussed supra the prosecution failed to prove the charges levelled against the accused and the trial Court as well as the appellate Court have arrived just and fair conclusion and acquitted the accused and therefore, the trial Court as well as the First Appellate Court correctly applied the law and acquitted the accused and hence, there is no warrant to interfere with the Judgments of Courts below.



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17. There is no infirmity or perverse in the above Judgments passed by the Trial Court as well as the Appellate Court and hence, this Criminal Revision Case has no merits and deserves to be dismissed and accordingly, this Criminal Revision case is dismissed.

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NCC : Yes/No
Internet : Yes/No
Index : Yes/No
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To

1. Additional District and Sessions Judge, Paramakudi, Ramanathapuram District
2. The Magistrate, Paramakudi, Ramanathapuram
3. The Inspector of Police,
District Crime Branch,
Ramanathapuram District.
(Crime No.10 of 1999)
4. The Additional Public Prosecutor
Madurai Bench of Madras High Court, Madurai



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P. DHANABAL,J.

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