BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 12.04.2023

PRONOUNCED ON : 20.04.2023

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C(MD)No.758 of 2017

1.Narasimhan
2.Rajeswari ... Petitioners/ Respondents/Accused

Vs.

The Inspector of Police,
CBCID OCU,
Madurai City. ... Respondent/ Appellant/ Complainant

PRAYER: Criminal Revision Case filed under Section 397 r/w Section 401 of the Code of Criminal Procedure, to set aside the impugned Judgment of conviction and sentence passed by the learned Additional District and Sessions Judge, Ramanathapuram, dated 20.09.2017 in Crl.A.No.26 of 2013 against the Judgment of acquittal passed by the learned Judicial Magistrate No.2, Ramanathapuram, dated 16.03.2012 in C.C.No.91 of 2006.

For Petitioners : Mr.R.Srinivas
Senior Counsel
for Mr.N.Dilip Kumar

For Respondent : Mr.T.Senthil Kumar
Additional Public Prosecutor

ORDER

This revision has been filed as against the Judgment passed in Crl.A.No.26 of 2013, dated 20.09.2017, on the file of the learned Additional District and Sessions Judge, Ramanathapuram, thereby convicted the petitioners and reversed the order of acquittal passed in C.C.No.91 of 2006, dated 16.03.2012, on the file of the learned Judicial Magistrate No.2, Ramanathapuram.

2.The case of the prosecution is that the first petitioner/Accused No.1 was working as a Superintendent and later as Personal Assistant to the Deputy Inspector General of Police, Ramanathapuram and the second petitioner/Accused No.2 is the wife of the first petitioner. Both the petitioners had run a textile business in the name of Shri Raja Rajeswari Textiles and readymades and in the name of Shri Rajeswari Silks at Ramanathapuram. From the year 1998 to 2003, in order to develop their business, both the accused entered into a criminal conspiracy to collect huge investments from the public by executing promissory notes, bonds, and savings cards and promising high rates of interest and by executing promissory notes to 24 persons, collected a sum of Rs.21,46,400/- from 31 persons. The petitioners did not pay back the amount of Rs.21,46,400/- to the victims as promised and thereby committed the offence by cheating under Section 420 of I.P.C. Further, both the petitioners have collected investments of Rs. 2,74,366/- from six persons through savings cards of their shops and did not pay back the amount as promised to the victims and also collected a sum of Rs.7,00,000/- from three persons through bond papers as security for developing their business and did not pay back the amount as promised and thereby committed the offence of cheating. In continuation of the criminal conspiracy, in order to develop their business, both the petitioners by inducing high-interest rate and collected a sum of Rs.7,02,500/- as a loan from six persons without furnishing any security and also collected a sum of Rs.2,00,000/- from one person by giving a bank cheque as security and did not pay back the amount as promised to the above 7 persons and thereby both the petitioners committed the offence of cheating.

3.Further, the case of the prosecution is that pursuant to their criminal conspiracy, both the petitioners had made a false promise to 9 policemen/staff working in Ramanathapuram that they would pay a high rate of interest and induced them that they have the influence to avail loans from Banks. In this regard, the first petitioner had issued pay certificates without any authority with false details in them and by using the same, the above six persons availed loans to the tune of Rs.6,50,000/- from the Banks. Both the petitioners in turn received the said amount from the abovesaid 6 persons by making false promises of giving high-interest rates. But, they did not pay back the amount to the victims as promised and thereby they committed the offence punishable under Sections 465, 468 and 471 of I.P.C. The first petitioner had received a sum of Rs. 7,000/- from one Muthupandi for selling his two-wheeler by hiding the fact that the said two wheeler was already under the hire purchase agreement and thereby the first petitioner committed the offence of cheating punishable under Section 420 of I.P.C. Thereby both the petitioners have collected a sum of Rs.46,80,266/- from 40 persons by way of cheating and forgery. Based on the complaint, the respondent registered the F.I.R in Crime No.12 of 2003 for the offences under Sections 120(b), 420, 465, 468 and 471 of I.P.C as against the first petitioner and for the offences under Sections 120(b) and 420 of I.P.C as against the second petitioner. After completion of the investigation, the respondent filed a final report and the same has been taken cognizance in C.C.No.91 of 2006 on the file of the learned Judicial Magistrate No.2, Ramanathapuram.

4.In order to bring the charges to home, the prosecution had examined P.W.1 to P.W.53 and marked Exs.P.1 to P.370. The prosecution also marked material objects which was marked as M.O. 1 to M.O.3 and on the side of the accused, no one was examined and no documents were exhibited.

5.On perusal of oral and documentary evidence, the trial Court found the first accused not guilty for the offences under Sections 120(b), 420, 465, 468 and 471 of I.P.C and the second accused not guilty for the offence under Section 120(b) and 420 of I.P.C and acquitted them from all the charges under Section 428(1) of Cr.P.C. Aggrieved by the same, the respondent preferred an appeal in Crl.A.No.26 of 2013, on the file of the learned Additional District and Sessions Judge, Ramanathapuram and the Appellate Court allowed the appeal and convicted the first accused for the offence under Sections 120B r/w 420, 420 468 and 471 of I.P.C and convicted the second accused for the offence under Section 120B r/w 420 and 420 of I.P.C and sentenced the first petitioner to undergo simple imprisonment for a period of three years and ordered to pay a fine of Rs.10,000/- in default of fine, to undergo simple imprisonment for a period of six months for the offence under Section 120B r/w 420 of I.P.C; sentenced the first petitioner to undergo simple imprisonment for a period of three years and ordered to pay a fine of Rs.10,000/- in default of fine, to undergo simple imprisonment for a period of six months for the offence under Section 420 of I.P.C; sentenced the first petitioner to undergo simple imprisonment for a period of two years and ordered to pay a fine of Rs.10,000/- in default of fine, to undergo simple imprisonment for a period of six months for the offence under Section 468 of I.P.C and sentenced the first petitioner to undergo simple imprisonment for a period of two years and ordered to pay a fine of Rs.10,000/- in default of fine, to undergo simple imprisonment for a period of six months for the offence under Section 120B r/w 420 of I.P.C and sentenced the second petitioner to undergo simple imprisonment for a period of one year and ordered to pay a fine of Rs.10,000/- in default of fine, to undergo simple imprisonment for a period of three months for the offence under Section 120B r/w 420 of I.P.C and sentenced the second petitioner to undergo simple imprisonment for a period of one year and ordered to pay a fine of Rs.10,000/- in default of fine, to undergo simple imprisonment for a period of three months for the offence under Section 420 of I.P.C. Challenging the same, the petitioners have preferred the present revision.

6.The learned Senior Counsel appearing for the petitioners would submit that originally the trial court framed charges for the offences under Sections 120(b), 420, 465, 468 and 471 of I.P.C as against the first petitioner and framed charges for the offences under Sections 120(b) and 420 of I.P.C as against the second petitioner. Whereas the Appellate Court without even framing any charges for forgery and fabrication of documents in respect of Ex.P.15 mechanically convicted the petitioners. In fact, no question was framed under Section 313 of CrPC in respect of Ex.P15-the alleged loan application. Even according to the case of the prosecution there was no charge for producing a false salary certificate and borrowed a loan from the bank and later cheated the bank. When that was not the prosecution case, the Appellate Court concluded that the first petitioner had the intention to cheat the banker from the inception and had forged his pay particulars for the purpose of cheating the bank. In fact, P.W.1 deposed that the petitioners borrowed a loan for the marriage expenses of their daughter and having repaid a part of the borrowed amount thereafter they defaulted in repaying the loan amount. Therefore, there is absolutely no material to conclude that the petitioners had the intention to cheat the witnesses from the inception. All the prosecution witnesses deposed that they advanced a loan to the first petitioner for which the second petitioner had executed promissory notes, in which the first petitioner stood as a witness. However, the complainant failed to take any action in order to recover the dues. Therefore, the defraud committed by the petitioners in respect of repaying the loan amount would not attract an offence of cheating. The textile shop owned by the second petitioner was completely ransacked by P.W.14 and P.W.24 along with 10 other persons and they had looted materials worth several lakhs of rupees. Therefore the second petitioner lodged the complaint in which the FIR was registered in crime No.236 of 2002 on the file of the Inspector of Police, Bazaar Police station, Coimbatore. Therefore the petitioner could not able to repay the loan amount. Hence, they had no intention of cheating and as such no offence under section 420 of IPC is made out.

7.The learned Senior Counsel appearing for the petitioners would further submit that the first petitioner is authorized and empowered to issue salary certificates to the police personnel and the same had also been duly accepted by the Appellate Court. The specific charge levelled against the first petitioner is that without having any authorization he had issued salary certificates and the same had been disproved and accepted by both the Courts below. However, the Appellate Court wrongly concluded that the salary certificates were issued by the first petitioner and the pay bills were not part and parcel of the final report. The prosecution suddenly marked the same before the trial Court which was not supplied to the petitioners as contemplated under Section 207 of Cr.P.C. In fact, those documents were neither recovered by the police under Form 95 nor produced before the Court after the completion of the investigation. There is absolutely no wrongful loss by committing forgery or producing false documents to the defacto complainant. The prosecution also failed to prove the charge of conspiracy under Section 120B of IPC and no material was produced by the prosecution.

8.In support of his contention, the learned Senior Counsel appearing for the petitioners relied on the following Judgments:-

> *"(i) Mohammed Ibrahim and others Vs. State of Bihar and another reported in (2009) 8 SCC 751.*
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> *(ii) Jafarudheen and others Vs. State of Kerala reported in (2022) 8 SCC 440.*

(iii) Vijay Kumar Ghai and others Vs. State of West Bengal and others reported in (2022) 7 SCC 124.

(iv) Padum Kumar Vs. State of Uttar Pradesh reported in (2020) 3 SCC 35 and

(v) Samsul Haque Vs. State of Assam reported in (2019) 3 MLJ (Crl) 673 (SC)".

9.The respondent filed a counter affidavit.

10.The learned Additional Public Prosecutor appearing for the respondent would submit that the Appellate Court rightly reversed the findings of the trial Court and convicted the petitioners. The reasoning of the trial Court in discarding the evidence of Ex.P.50 which was marked through P.W.31 with regard to the false pay certificate was glaring perversity. That trial Court also omitted the evidence of Ex.P.366 which was marked through P.W.50 relating to Ex.P.176, Ex.P.186, Ex.P.207, Ex.P.280 and Ex.P. 281 to 285 which were so glaring perversity and as such the Appellate Court rightly reversed the findings of the trial Court. The salary certificate issued by the first petitioner to himself and others contain false particulars. Therefore, it amounts to the forgery of salary certificates for the purpose of cheating punishable under Sections 465, 468 and 471 of I.P.C. The petitioners categorically admitted the documents which were marked as Ex.P.50. The first petitioner had written several promissory notes for the borrowal of loan by the second petitioner. He also signed as a witness in the promissory note by affixing his official seal as Superintendent, Office of the District Police Office, Ramanathapuram. Therefore, it was not a civil dispute, and it was a clear case of forgery and cheating by producing false documents. The pay bills were admitted documents. The loan application was also an admitted document which was marked as Ex.P.50 through P.W.31.

11.The learned Additional Public Prosecutor appearing for the respondent would submit that the salary certificate in which the gross salary, deductions and net salary has been wrongly stated and issued by the first petitioner. By the said fraudulent documents, the first petitioner induced the Pandyan Grama Bank to lend a loan. The handwriting expert was examined as P.W.50 and he deposed that the handwriting of the first petitioner in promissory notes, chit passbooks and other documents are of the first petitioner. The first petitioner also admitted the said documents. Therefore, the first petitioner had falsely hiked his net salary by showing less deductions purely for the purpose of inducing the banker to lend a loan to him. At the inception of the transaction under Ex.P.50 itself, the first petitioner had the intention to cheat the banker. He had knowingly made false entries and had given a false pay certificate to himself and used the same as genuine for the purpose of cheating the Bank. On perusal of those documents, the banker had parted with the money. Therefore, the offences under Sections 420, 465, 468 and 471 of I.P.C are clearly made out. The first petitioner was being a Government servant who cannot engage himself in any commercial business as per the Government Servant Conduct Rules. He had actively indulged and engaged himself in the business run by the second petitioner. Hence, the first petitioner was actively hand in glove with the second petitioner in receiving money from the office of the police department. The first accused induced his subordinates to lend loans to his wife/the second petitioner. Therefore, both the accused had acted in concert with each other. The handwriting of the first petitioner in the pass books was also proved through handwriting expert opinion. It was also proved that the writings in the pass books were the writings of the first petitioner and had actively received money and made entries in the pass books of Mugavai Shree Raja Rajeswari Finance Limited, No.8, Palace Inside, Ramanathapuram. The said address was proved to be the residence of the petitioners herein. Therefore, the conspiracy between the petitioners has been categorically proved by the prosecution. Therefore, the Appellate Court rightly convicted the petitioners and it does not warrant any interference by this Court.

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

13.The trial Court acquitted the petitioners from the charges for the offences under Sections 120(b), 420, 465, 468 and 471 of I.P.C as against the first petitioner and for the offences under Sections 120(b) and 420 of I.P.C as against the second petitioner. The Appellate Court reserved the trial Court findings and convicted the petitioners and sentenced them. The crux of the complaint is that when the first petitioner was working as a Superintendent and later as Personal Assistant to the Deputy Inspector General of Police, Ramanathapuram along with the second petitioner/Accused No.2, had running a textile business in the name of Shri Raja Rajeswari Textiles and readymades and in the name of Shri

Rajeswari Silks at Ramanathapuram. From the year 1998 to 2003, in order to develop their business, they collected investment from the general public by executing promissory notes, bonds, and savings cards and they also promised to give a high rate of interest to them. Thereby they had collected a sum of Rs.46,80,266/- from persons by way of cheating and forgery.

14.In this regard, it is relevant to rely upon the Judgment of the Honourable Supreme Court of India in **Mohammed Ibrahim and others Vs. State of Bihar and another** *reported in* **(2009) 8 SCC 751**, wherein, the Honourable Supreme Court of India held as follows:-

> "14. An analysis of section 464 of Penal Code shows that it divides false documents into three categories:
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> 1. The first is where a person dishonestly or fraudulently makes or executes a document with the intention of causing it to be believed that such document was made or executed by some other person, or by the authority of some other person, by whom or by whose authority he knows it was not made or executed.
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> 2. The second is where a person dishonestly or fraudulently, by cancellation or otherwise, alters

a document in any material part, without lawful authority, after it has been made or executed by either himself or any other person.

3. The third is where a person dishonestly or fraudulently causes any person to sign, execute or alter a document knowing that such person could not by reason of (a) unsoundness of mind; or (b) intoxication; or (c) deception practised upon him, know the contents of the document or the nature of the alteration.

In short, a person is said to have made a `false document', if (i) he made or executed a document claiming to be someone else or authorised by someone else; or (ii) he altered or tampered a document; or (iii) he obtained a document by practicing deception, or from a person not in control of his senses."

Thus, the documents which were executed by the petitioners do not fall under the second and third categories of false documents.

15.On perusal of the records revealed that the petitioners borrowed a loan on the execution of promissory notes. As per the promissory notes, they assured to pay interest. Accordingly, all the victims were paying interest for several months.

They also categorically admitted that they received interest on the principal amount as per the promissory note. They also marked their respective loan passbooks. However, no one had filed suit on the promissory note for the recovery of money. Therefore, mere breach of contract cannot give rise to criminal prosecution for cheating unless fraud or dishonest intention is shown at the beginning of the transaction. In the absence of intention, it will be a simple case of civil dispute. All the prosecution witnesses, namely P.W.2, 4, 5, 8, 9, 11, 12, 13, 14, 17, 18, 19, 20, 21, 23, 24, 27, 29, 30, 31, 32, 33, 37, 38, 40, 41, 42 and 45 deposed that the petitioners had executed promissory notes, and they did not file any suit for recovery of money on the said promissory note. The prosecution also failed to prove the intention of the petitioners in order to cheat the victims at the very inception while borrowing loans.

16.In so far as the offences under Sections 465, 468 and 471 of I.P.C are concerned, P.W.34 deposed that the first petitioner was not authorized to issue salary certificates. However, he failed to state that who is the competent person to issue a salary certificate. That apart, on perusal of Ex.P.51-the loan application, which consisting the annexure to be filled by the employer with regard to salary details. All the annexures were signed by the Senior Superintendent of the Department concerned. That apart, both the Courts below concluded that the first petitioner is authorized and empowered to issue salary certificates to the police personnel. Therefore, the prosecution miserably failed to prove that the first petitioner without any authorization or power had given a salary certificate.

17.In this regard, it is relevant to rely upon the Judgment of the Honourable Supreme Court of India in **Vijay Kumar Ghai and others Vs. State of West Bengal and others** *reported in* **(2022) 7 SCC 124**, wherein, the Honourable Supreme Court of India held as follows:-

> *"38. There can be no doubt that a mere breach of contract is not in itself a criminal offence and gives rise to the civil liability of damages. However, as held by this court in Hridaya Ranjan Prasad Verma & Ors. Vs. State of Bihar & Anr.26, the distinction between mere breach of contract and cheating, which is criminal offence, is a fine one. While breach of contract cannot give rise to criminal prosecution for cheating, fraudulent or dishonest intention is the basis of the offence of cheating. In the case at hand,*

complaint filed by the Respondent No. 2 does not disclose dishonest or fraudulent intention of the appellants."

Therefore, the prosecution miserably failed to prove the charge of cheating.

18.Further, the case of the prosecution is that in order to cheat the victims, they closed their textile shop and absconded. However, PW.14 and P.W.24 along with 10 others trespassed into the shop of the second petitioner and ransacked the entire shop. Therefore, they lodged a complaint before the Inspector of Police, Bazaar Police Station, Coimbatore, in which the F.I.R has been registered in Crime No.236 of 2003. It was categorically admitted by P.W.51. In fact, the prosecution witnesses also admitted that if the textile shop was not ransacked, they would have settled the entire loan amount. Therefore, in order to establish the offence of cheating, the prosecution is required to show that the accused had the fraudulent or dishonest intentions at the time of making the promise or representation. In the absence of dishonest and fraudulent intention, the question of committing offence under Section 420 of I.P.C does not arise.

19.First of all, the first petitioner did not sign the salary certificate and it was signed by the authority concerned, that too in the annexure annexed with the loan application. Further, it is not the case of the prosecution that any one of the victims was cheated by producing such a false certificate and in the absence of any wrongful loss the allegation of cheating, committing forgery or cheating a false document does not arise. Further, the alleged promissory notes were not produced during the investigation and were not served to the petitioners. That apart, those documents were not subjected to Forensic analysis. Therefore, the petitioners were not given an opportunity to go through those documents since they were not supplied those copies as contemplated under Section 207 of Cr.P.C.

20.The view taken by the trial Court is a possible view having regard to the evidence on record. The trial Court has also recorded cogent and valid reasons in support of its findings for acquittal. Under Section 378 of Cr.P.C, no differentiation is made between an appeal against acquittal and an appeal against conviction. The general principles regarding the powers of the appeal as against an order of acquittal, the Honourable Supreme

Court of India in the case of Chandrappa Vs. State of Karnataka reported in (2007) 4 SCC 415, wherein the Honourable Supreme Court of India held as follows:-

"42.*From the above decisions, in our considered view, the following general principles regarding powers of appellate Court while dealing with an appeal against an order of acquittal emerge:*

(1) An appellate Court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded;

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law;

(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasize the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

21.Thus, it is clear that if the view taken by the trial Court is a possible view, the Appellate Court ought not to have reversed the acquittal to that of the conviction. Further, if the possible view of the trial Court is not agreeable to the Appellate Court then such a possible view recorded by the trial Court cannot be interdicted. So long as the view of the trial Court can be reasonably formed, regardless or whether the Appellate Court agrees with the same or not, the verdict of the trial Court cannot be interdicted and the Appellate Court cannot supplant over the view of the trial Court.

22.In view of the above, the conviction and sentence imposed by the Appellate Court is liable to be set aside.

23.Accordingly, the conviction and sentence imposed in Crl.A.No.26 of 2013, dated 20.09.2017, on the file of the learned Additional District and Sessions Judge, Ramanathapuram, is set aside and the Judgment passed in C.C.No.91 of 2006, dated 16.03.2012, on the file of the learned Judicial Magistrate No.2, Ramanathapuram is confirmed.

24.In view of the above, this Criminal Revision Case is allowed. The petitioners/accused are acquitted. Bail bond, if any executed by the petitioners/accused, shall stand cancelled and a fine amount if paid is ordered to be refunded to the petitioners/accused forthwith.

20.04.2023

NCC : Yes
Index : Yes
Internet : Yes
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To

1.The Additional District and Sessions Court,
Ramanathapuram.

2.The Judicial Magistrate No.2,
Ramanathapuram.

3.The Inspector of Police,
CBCID OCU,
Madurai City.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

G.K.ILANTHIRAIYAN, J.

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Pre-Delivery Order made in
Crl.R.C(MD)No.758 of 2017

20.04.2023