IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.02.2024

CORAM :

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

CRL.O.P.No.4189 of 2016 &
CRL.R.C.Nos.1117, 1146 and 1147 of 2014
and
CRL.M.P.Nos.2169 and 12315 of 2016

Crl.O.P.No.4189 of 2016 :

1.S.Udayakumar,
S/o.N.Sivakami

2.S.Suresh Babu,
S/o.C.V.Srinivasan

3.R.Ramesh Kumar,
S/o.C.V.Shanmugam ... Petitioners

Vs.

The State represented by,
The Inspector of Police,
CCIW, CID,
Coimbatore ... Respondent

PRAYER : Criminal Original Petition is filed under Section 482 of Code of Criminal Procedure, to set aside the judgment of the learned I Additional District and Sessions Judge, Coimbatore in C.A.No.182 of

2011, dated 16.07.2014 confirming the judgment of the learned Judicial Magistrate No.4, Coimbatore in C.C.No.34 of 2006, dated 26.07.2011 convincing the petitioners for the offence under Sections 120(B), 420 and 109 IPC and sentencing the petitioners to undergo 2 years simple imprisonment for both the offences and imposing a fine of Rs.500/-.

For P1	: Mrs.AL.Gandhimathi Standing Counsel for Mr.L.Palanimuthu
For P2 and P3	: Mr.V.S.Senthil Kumar
For R1	: Mr.S.Vinoth Kumar Government Advocate (Crl.Side)
For R2	: Notice Served

Crl.RC.No.1117 of 2014 :

R.Balraj ... Petitioner

Vs.

The State represented by,
The Inspector of Police,
CCIW, CID,
Coimbatore ... Respondent

PRAYER : Criminal Revision Petition is filed under Section 397 read with 401 of Code of Criminal Procedure, to set aside the order of conviction and sentence imposed on the petitioner made in Crl.A.No.181 of 2011 on the file of the I-Additional District and Sessions Court, Coimbatore, dated 16.07.2014 confirming the order made in C.C.No.34 of 2006 on the file of the Judicial Magistrate No.4, Coimbatore, dated 26.07.2011 and acquit the petitioner.

For Petitioner : Mr.A.E.Ravi Chandran

For Respondent : Mr.S.Vinoth Kumar
Government Advocate (Crl.Side)

Crl.RC.No.1146 of 2014 :

G.Sivabalakrishnan ... Petitioner

Vs.

The State represented by,
The Inspector of Police,
CCIW, CID,
Coimbatore ... Respondent

PRAYER : Criminal Revision Petition is filed under Section 397 read with 401 of Code of Criminal Procedure, to set aside the judgment of the learned I Additional District and Sessions Judge, Coimbatore in C.A.No.173 of 2011, dated 16.07.2014 confirming the judgment of the learned Judicial Magistrate No.4, Coimbatore in C.C.No.34 of 2006, dated 26.07.2011 convicting the petitioner for the offence under Sections 120(B) and 420 IPC and sentencing the petitioner to undergo 2 years simple imprisonment for both the offences and imposing a fine of Rs.500/-.

For Petitioner : Mr.P.Arumugavel

For Respondent : Mr.S.Vinoth Kumar
Government Advocate (Crl.Side)

Crl.RC.No.1147 of 2014 :

1.S.Udayakumar

2.S.Suresh Babu

3.R.Ramesh Kumar ... Petitioners

Vs.

The State represented by,
The Inspector of Police,
CCIW, CID,
Coimbatore ... Respondent

PRAYER : Criminal Revision Petition is filed under Section 397 read with 401 of Code of Criminal Procedure, to set aside the judgment of the learned I Additional District and Sessions Judge, Coimbatore in C.A.No.182 of 2011, dated 16.07.2014 confirming the judgment of the learned Judicial Magistrate No.4, Coimbatore in C.C.No.34 of 2006, dated 26.07.2011 convicting the petitioners for the offence under Sections 120(B), 420 and 109 IPC and sentencing the petitioners to undergo 2 years simple imprisonment for both the offences and imposing a fine of Rs.500/-

For P1	: Mrs.AL.Gandhimathi Standing Counsel for Mr.L.Palanimuthu
For P2 and P3	: Mr.V.S.Senthil Kumar
For Respondent	: Mr.S.Vinoth Kumar Government Advocate (Crl.Side)

COMMON ORDER

The petitioner in Crl.RC.No.1117 of 2014 is the 1st accused in C.C.No.34 of 2006 on the file of the learned Judicial Magistrate No.4, Coimbatore. The petitioners in Crl.R.C.Nos.1146 and 1147 of 2014 are the 2nd, 3rd, 4th and 5th accused in C.C.No.34 of 2006. As on date, the 1st petitioner/A3/Udayakumar in Crl.R.C.No.1147 of 2014 was dead and the petitioners 2 and 3 appeared.

2. Challenging the concurrent findings of the Courts below, these accused are approaching this Court. The learned counsel for the petitioners submits that the Courts below failed to take note of the fact that due to the purchase of land made by the Society from A2, A3, A4 and A5, there was no loss caused to the Society and there was no adjudication from

the registering authorities that there is an evasion of stamp duty. Without that, the police have no power to deal with the undervaluation for evasion of stamp duty. The learned counsel also submits that, by insertion of A3 to A6 as the members to the Society said to have purchased the land, but as on date those names were removed from the Society and because of those insertion, there was no loss caused to the Society. But the Courts below failed to take note of all these facts, however, convicted them and hence the judgment of Courts below is liable to be set aside.

3. Further, the learned counsel for the 1st accused/R.Balraj submits that insertion of the members i.e., the A3 to A6 as the members to the Society was not done by him but only with the instruction of A2, those persons were added as the members in the Society. That apart, the evidence of P.W.2 and P.W.21 also have not been properly appreciated. Without appreciating those evidences, A1 was wrongly convicted as if he was involved in such a malpractice. Further the learned counsel for the petitioner submits that if at all true facts have not been putforth, as per Section 27 of the Indian Stamp Act, 1899 contemplates as follows :

> *"27. **Facts affecting duty to be set forth in instrument** - (1) The consideration (if any) and all other facts and circumstances affecting the chargeability of any instrument with duty, or the amount of the duty with which it is chargeable, shall be fully and truly set forth therein."*

4. To that effect, the same can be penalized under Section 64 of the Indian Stamp Act, 1899 as follows :

> *"64. **Penalty for omission to comply with provisions of section 27 -** Any person who, with intent to defraud the Government, - executes any instrument in which all the facts and circumstances required by section 27 to be set forth in such instrument are not fully and truly set forth ; or being employed or concerned in or about the preparation of any instrument, neglects or omits fully and truly to set forth therein all such facts and circumstances; or does any other act calculated to deprive the Government of any duty or penalty under this Act; shall be punishable with fine which may extend to five thousand rupees."*

5. The penal provision of the Indian Stamp Act, 1899 clearly states

that if any omission is made by the person, he/she shall be punishable with fine which may extend to five thousand rupees. By relying on the aforesaid provision of law of the Indian Stamp Act, 1899, the learned counsel submits that if at all, true facts have not been submitted by A1 and A2, the registering authorities are empowered to collect penalty from them. But, as on date, no such adjudication was made by the registering authorities about the alleged evasion of stamp duty. Therefore, the learned counsel prayed to set aside the findings as the legal process have not been properly appreciated by the Courts below.

6. Considering the entire submissions made by both counsels as well as on seeing the facts of the case, it reveals that on behalf of the Society, property was purchased from the Accused A3 to A5. The facts of the case is that on 11.08.1997, a resolution was passed in the Society to purchase a land in order to convert the same into house plots and divide the properties as a part in order to give benefit to the members. Accordingly, the land was purchased from the Accused A3 to A5 for lesser value by suppressing the real value. Thereby, loss caused to the

Society. Furthermore, in order to evade the stamp duty, by abusing the concession given to the Society for the exemption of stamp duty, if any property is bought for the Society, thereby, loss caused to the Society. Accordingly, in order to evade the stamp duty, the Accused A3 to A5 were inserted as members of Society, since because other members of the Society are entitled to such house plots. Therefore, they have purchased the property for a sum of Rs.2,40,000/- and to that effect, they have not paid the stamp duty and also caused a loss and thereafter, they have sold the property for a sum of Rs.18,00,000/- to third parties. The properties were purchased by A1 and A2 colluding with A3 to A6 by showing the lesser price on record and misappropriated the amount of Rs.15,60,000/-. With regard to the purchase of land for the Society from one Jagannathan, loss caused to the Society by this petitioner. As discussed above, in respect of evading the stamp duty, there was an adjudication on the side of the Society that proper stamp duty was not paid by the Accused. But on the perusal of the First Information Report, based upon a complaint given by a member Balraj, FIR had been lodged in Crime No.3 of 2006, dated 26.03.2006. As per the allegation, there was a resolution passed in the

Society to purchase 3 acres of land in order to convert the same into house plots and divide the properties as a part in order to give benefit to the members.

7. But the accused persons have colluded together and created the documents for lesser value and also misappropriated the funds of the Society. Further, he had also alleged that with an intention to evade the stamp duty, three members were inserted as members, thereby, they have not paid the stamp duty for a sum of Rs.2,16,000/- for the land purchased by the Society. So, as discussed above, the adjudication on the part of the registering authorities, even if true facts were not made to scrutinize the provisions of the Indian Stamp Act, 1899, they were entitled to impose fine amount, but no action was taken by registering authorities. On perusal of entire findings of the Court below was there was no such order issued by the registering authorities for the evasion of the stamp duty against these petitioners. Therefore, the police official have no right to submit the final report without getting any such report from the registering authorities. Therefore, the arguments submitted on the side of the

petitioners is that, the investigating agency, without any adjudication received from the registering authorities, had filed a final report about evasion of stamp duty is not maintainable, as such, is sustainable in law and to the effect, the findings given by the Court below is liable to be set aside.

8. In respect of the accusation as against A1 that he inserted A3 to A6 but the evidence of prosecution witness itself says that three persons were inserted by A2, not by A1. There was a presumption made by the learned Trial Judge that A1 might have involved in the said insertion. When there is a concrete evidence that A1 was not involved in the said activity, the conviction given to him without appreciating the evidence, as such is liable to be set aside.

9. Admittedly, even the entire evidence of the prosecution also reveals that there is no loss caused to the Society to the tune of Rs.18,00,000/- since because, the properties are purchased to the members of the Society and subsequently, sold to the members, thereby, the Society

get profit of Rs.11,00,000/- as per evidence of prosecution.

10. However, by way of filing this Criminal Original Petition, the Society in Crl.O.P.No.4189 of 2016, prayed to enhance the punishment in Crl.R.C.No.79 of 2011 is not maintainable in law as rightly pointed out by the learned counsel for the respondents in Crl.O.P.No.4189 of 2016. Accordingly, this Criminal Original Petition in Crl.O.P.No.4189 of 2016 is dismissed as no merits in view of order passed in Crl.R.C.No.1117 of 2014.

11. Crl.RC.No.1146 of 2014 is pertaining to A2. As per the allegation against him, that he is the main person who inserted the Accused A3 to A5 as the members of the Society in order to misappropriate the funds of the Society, but the evidence of P.W.21 stated that A2 inserted the name by removing some of the members. But as rightly pointed out by the learned counsel that, no such members of the Society gave the complaint that they were falsely removed from the Society. Therefore, the complaint given against the petitioners are not

sustainable in law as discussed above.

12. Therefore, considering these facts, I am inclined to set aside the findings. Accordingly, the findings of the Courts below are hereby set aside.

13. Thus, Crl.R.C.Nos.1117, 1146 and 1147 of 2014 are allowed. Connected Miscellaneous Petitions are also closed.

14.02.2024

Index : Yes / No
Neutral Citation : Yes / No
Speaking/Non-Speaking Order

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To

1.The learned I Additional District and Sessions Judge,
Coimbatore.

2.The learned Judicial Magistrate No.4,
Coimbatore.

T.V.THAMILSELVI, J.

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CRL.O.P.No.4189 of 2016 &
CRL.R.C.Nos.1117, 1146 and 1147 of 2014
and
CRL.M.P.Nos.2169 and 12315 of 2016

14.02.2024