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CrI.R.C.No.238 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 02.04.2025

Orders Pronounced on : 22.04.2025

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CrI.R.C.No.238 of 2024

Mr.Ibrahim, S/o Mr.Farook

.. Petitioner

Vs.

The State represented by
Inspector of Police,
Central Crime Branch,
EDF.1, Team-1,
Vepery, Chennai-600 007.

.. Respondent

Criminal Revision Petition filed under Section 397 read with Section 401 Cr.P.C. praying to call for the records and set aside the judgment dated 21.12.2023 passed in CrI.A.No.260 of 2013 on the file of XVII Additional Sessions-cum-District Judge, Chennai, which upheld the conviction and sentence imposed by the trial Court by judgment dated 08.03.2023 in C.C.No.5736 of 2018 on the file of Special Court of C.C.B. & CBCID Metropolitan Magistrate, Egmore, Chennai.

For petitioner : Mr.R.C.Paul Kanagaraj

For respondent: Mr.S.Sugendran, Addl.P.P.



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ORDER

This revision petition is filed praying to call for the records and set aside the judgment dated 21.12.2023 passed in Crl.A.No.260 of 2013 on the file of XVII Additional Sessions-cum-District Judge, Chennai, which upheld the conviction and sentence imposed by the trial Court by judgment dated 08.03.2023 in C.C.No.5736 of 2018 on the file of Special Court of C.C.B. & CB-CID Metropolitan Magistrate, Egmore, Chennai.

2. The petitioner is an accused in C.C.No.5736 of 2018 on the file of the Special Court of CCB and CB-CID cases.

3. The respondent-Police registered a case against the revision petitioner for the offence under Section 420 IPC. After investigation, charge-sheet was filed by the Police before the Special Court of CCB and CB-CID, and the said case was taken on file in C.C.No.5736 of 2018. After trial, the Special Court convicted the revision petitioner/accused for the offence under Section 420 IPC and sentenced him to undergo rigorous imprisonment for three years with fine of Rs.10,000/-, in default, to undergo six months' simple imprisonment. Challenging the said conviction and sentence passed by the trial Court, the

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revision petitioner/accused filed appeal before the first appellate Court and it was taken on file as Crl.A.No.260 of 2023 and after hearing the appeal on merits, the first appellate Court confirmed the conviction and sentence passed by the trial Court. As against this judgment, the accused has filed the present revision petition.

4. The learned counsel for the revision petitioner/accused contended that the revision petitioner is the Proprietor of M/s.Sky Roofing. He had dealings with the cement sheets and metal sheets. The de-facto complainant was the President of Sri Anjaneya Panchamuka Jayamaruthi Seva Temple Trust as Panchavadi. During the year 2010, the revision petitioner erected shed for the said Temple and also some other works were done by him in the year 2014, for which, the de-facto complainant was to pay around Rs.11 lakhs, out of which he paid only Rs.3 lakhs as advance and the balance Rs.8 lakhs was not paid. When the revision petitioner/accused approached the de-facto complainant to pay the balance amount for the work done by him, he introduced one Rajagopal of Mahatma Gandhi Medical College at Pondicherry and informed that he would engage him for some more years, so that the revision petitioner/accused could develop his business. Subsequently, the said Rajagopal also gave a quotation for Rs.1,12,00,000/-, which was agreed to Rs.1.5 crores. The petitioner also



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completed the work entrusted by the said Rajagopal. In that way, there was a due of Rs.46 lakhs, for which, the revision petitioner made a request for balance amount to be paid by the said Rajagopal through the de-facto complainant. Therefore, the de-facto complainant made false complaint against the revision petitioner. With the help of Police, a case was registered and the custody of the revision petitioner/accused was taken and forcibly, they have obtained the signature in the blank papers and made use of the said blank papers as if the revision petitioner has given acknowledgement and also the confession statement and the revision petitioner was remanded to custody and subsequently, charge-sheet was filed. The transaction between the revision petitioner and the de-facto complainant is that the business transaction and the money transaction, are purely civil in nature. In order to evade the payments due to the revision petitioner, the de-facto complainant made use of the close-ness with the respondent-Police and a false case was registered and report was filed.

5. The learned counsel for the revision petitioner contended that though in the complaint, the de-facto complainant has stated that the revision petitioner borrowed money, there is no document to show that the revision petitioner actually borrowed money from the de-facto complainant and the de-facto



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complainant admitted that for the money transaction over and above Rs.20,000/-, it has to be dealt with only as a Bank transaction by way of Demand Draft or cheque.

6. Learned counsel for the revision petitioner/accused further contended that all the witnesses examined by the prosecution, are interested witnesses and the ingredients of Section 420 IPC, has not been made out, but the prosecution also failed to substantiate the offence against the revision petitioner. However, the trial Court failed to appreciate the evidence and erroneously, a finding was rendered as if the revision petitioner/accused had committed the offence under Section 420 IPC and thus, he was convicted by both the Courts below.

7. When the petitioner approached the first appellate Court, the first appellate Court also being a final Court of finding of facts, failed to re-appreciate the evidence and simply endorsed the view of the trial Court and thereby, the appeal was dismissed by the first appellate Court. Since the dispute and the transaction are purely civil in nature, the respondent-Police gave a criminal colour to the civil dispute. Unfortunately, both the Courts below have failed to consider the fact that there is no criminal offence, much less the cheating under Section 420 IPC, and therefore, the learned counsel prayed that the revision

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petition may be allowed.

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8. Opposing the above facts, learned Additional Public Prosecutor appearing for the respondent/Police submitted that the de-facto complainant lodged a complaint against the revision petitioner stating that he received a sum of Rs.35 lakhs on two occasions to develop his business. He promised to repay the said loan borrowed by him with interest before September 2016. Since the revision petitioner did not repay the said amount within the date of promise made by him and when the de-facto complainant approached him, he also gave a letter of undertaking to repay the said loan, since he did not repay the same, he lodged a complaint before the respondent-Police and the Police also has registered a case and on investigation, it was found that the revision petitioner has committed the offence and therefore, they have laid the charge-sheet.

9. In order to substantiate the charges, on the side of the prosecution, seven witnesses were examined as P.Ws.1 to 7 and seven documents were marked as Exs.P-1 to P-7. On the side of defence, the accused was examined as D.W.1 and Exs.D-1 to D-3 were marked.

10. The prosecution was able to prove the charge framed against the

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revision petitioner and therefore, the trial Court rightly convicted the accused and on appeal, the first appellate Court also found that the prosecution has proved its case beyond all reasonable doubts.

11. Though the revision petitioner has taken a defence by examining himself as D.W.1 and marked three documents, he has not established the defence, and therefore, there is no merit in the present revision petition.

12. Heard both sides and perused the materials available on record.

13. Though admittedly, on a reading of the materials, the revision petitioner and the de-facto complainant are known to each other, the petitioner himself admitted that he was engaged by the de-facto complainant to carry out some work in the Temple and subsequently, he was also introduced to the said Rajagopal, who also engaged same work. According to the petitioner, there was balance to be paid for the work which was carried out by him to the de-facto complainant and the said Rajagopal. When he demanded, the de-facto complainant filed a false case.

14. On a reading of the entire materials on record, it is seen that there are

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no materials to establish that there was balance amount to be paid for the work carried out by him either to the de-facto complainant or the said Rajagopal. If at all there is any balance, the revision petitioner ought to have sent demand notice for recovery of the amount. But admittedly, he has not sent any such notice to the revision petitioner. Except the petitioner was examined as D.W.1, he has not examined any other witness to show that he carried out the work for a sum of Rs.1.5 crores and as there was balance amount, he made demand.

15. Though it is the prosecution to prove its case beyond all reasonable doubts, the revision petitioner/accused need not come to the witness box and establish his defence. However, the revision petitioner came to the witness box and he admitted that he has not sent any notice even for demand of any balance amount, and even otherwise, after filing the case, he has not preferred any complaint against the superior officers and also admitted that at the time of remand, he has not made any complaint before the Judicial Magistrate who remanded him. He has not examined either any independent witness, or oral and documentary evidence to substantiate that there was due from the de-facto complainant to the revision petitioner and he made demand, for which, he lodged a false complaint. Therefore, in the absence of the same, when proceeded with the complaint, the FIR was registered by the respondent-Police.

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It is clearly revealed that even at the inception, when he received money from the de-facto complainant, he had no intention to repay the said money.

16. In order to substantiate the borrowal of money by the revision petitioner, the prosecution examined P.Ws.1 to 6 and de-facto complainant deposed that the revision petitioner approached the de-facto complainant and he requested to lend money for developing his business and he received money on two occasions in the presence of P.W.2, and P.W.3 also had stated that they know both the de-facto complainant and the revision petitioner/accused and he borrowed a sum of Rs.35 lakhs for business transaction. Subsequently, the de-facto complainant demanded money from the revision petitioner and he refused to pay and therefore, they have made complaint.

17. On a reading of the evidence of P.Ws.1 to 4, it is crystal clear that the prosecution has established its case beyond all reasonable doubts, and that, though one of the defence taken by the revision petitioner is that there is no document to show that he borrowed Rs.35 lakhs, the de-facto complainant stated that believing the petitioner, since he is known to him, he borrowed the money for business transaction and thus, the de-facto complainant has not stated that he obtained the document like promissory note or cheque or any



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other bond. Believing his words only, the de-facto complainant helped the petitioner and thereafter, he has not paid and subsequently, the de-facto complainant issued letter Ex.P-2 for re-payment of the said money. Though the revision petitioner has stated that by coercion and undue influence, he got the signature which was obtained by the Police in the Police Station, the petitioner has admitted in the cross-examination that he has not made any complaint. Even otherwise, the revision petitioner has not sent any legal notice or any complaint either to the superior officers or even before Court at the time of remand or at the time of questioning and therefore, the defence taken by the revision petitioner is only an after-thought.

18. The learned Magistrate has properly appreciated the evidence of the prosecution and found the accused guilty of the offence and when the revision petitioner filed appeal, the appellate Court, as a final Court of fact finding, meticulously re-appreciated the evidence of the prosecution and the defence, and gave independent finding that the revision petitioner has committed the charged offence.

19. This Court, as a revisional Court, invoking Section 397 read with Section 401 Cr.P.C., need not re-appreciate the evidence and render

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independent finding. The Court, while exercising the revisional jurisdiction, has to see as to whether there is any perversity in appreciation of the evidence or any legal bar for the prosecution.

20. On a reading of the entire materials, especially the complaint given by the de-facto complainant and Ex.P-2 letter given by the revision petitioner and the evidence of the prosecution witnesses, especially P.Ws.1 to 4, this Court does not find any perversity in appreciation of the evidence by both the Courts below.

21. Though the revision petitioner has taken main ground that he has not borrowed the money, there was a balance from the de-facto complainant and the said Rajagopal, for the work done by him, for which, admittedly, there was no demand or notice.

22. Though the revision petitioner has taken another plea that Exs.P-2 and 3 were obtained by coercion and undue influence at the Police Station, admittedly, the revision petitioner has not sent any notice or complaint to the superior officer. Even at the time of remand, the revision petitioner/accused has not reported before the Magistrate who remanded him.

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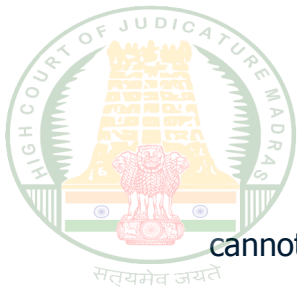


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WEB COPY 23. Ex.P-7 is the confession statement, which is not admissible and it will not fall under Section 27 of the Indian Evidence Act. Since there was no leading to recovery, however, the revision petitioner has stated that he has obtained money by threat, coercion and undue influence, but the revision petitioner has not retracted the said confession at a later point of time and therefore, on a reading of the evidence of P.Ws.1 to 4 and also Exs.P-1 and P-2, this Court does not find any perversity in appreciation of the evidence by both the Courts below.

24. It is settled proposition of law that the revisional Court, while deciding the revision petition under Section 397 and 401 Cr.P.C. cannot sit in the arm chair of the appellate Court and re-appreciate the evidence what the Court has to find out as to whether there is any perversity in appreciation of the evidence or the materials. Revision in the Criminal Procedure Code (Cr.P.C) is a mechanism where a higher court (High Court or Sessions Judge) reviews the proceedings of a lower court to ensure correctness, legality, and propriety. It is a form of supervisory power, not a direct appeal where evidence is re-examined. The purpose is to rectify the errors of law or jurisdiction, and not to re-appraise the evidence, unless there is a clear procedural flaw or a manifest error of law leading to miscarriage of justice. This Court in this case being a revisional Court,

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cannot interfere with the judgments of the Courts below, unless there exists perversity or illegality. The jurisdiction of the revisional Court under Section 397 read with Section 410 Cr.P.C. is very limited and it can only examine the legality, propriety and correctness of the order passed by the Courts below. The revisional Court, especially while dealing with the revision petition against the concurrent findings of the Courts below, should exercise its jurisdiction, where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the findings recorded are based on no material evidence and the judicial discretion has been exercised arbitrarily or perversely, however, it also requires justice to be done.

25. In the above context, it is worthwhile to refer a decision of the Supreme Court in the case of *Anil Kapoor Vs. Ramesh Chander and another*, reported in *2012 (9) SCC 460*, wherein the Honourable Apex Court held as under:

"12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the court to



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scrutinise the orders, which upon the fact of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. There are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits."

26. Hence, for all the reasons stated above, finding no merits, this revision petition is dismissed. Since the revision petitioner/accused is on bail pending this revision petition, the trial Court is directed to secure the revision petitioner/accused to undergo the remaining period of imprisonment, if any.

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Index: Yes/no

Neutral Case Citation: Yes/no

Speaking Order: Yes/no

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To

1. The Special Judge for CCB and CB.CID - Metropolitan Magistrate,
Egmore, Chennai
2. XVII Additional Sessions Judge - cum - District Judge, Chennai
3. The Inspector of Police,
Central Crime Branch,
EDF-1, Team-1, Vepery, Chennai-600 007.
4. The Public Prosecutor, High Court, Madras.



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P.VELMURUGAN, J

CS

Pre-delivery Order in
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Order delivered on
22.04.2025

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