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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.09.2025
PRONOUNCED ON : 10.10.2025

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.Nos.104 of 2021 & 719 of 2020

Crl.R.C.No.104 of 2021

S.Jerald Hendry Kumar @ Raja ... Petitioner

Vs.

State rep. by
The Inspector of Police,
Coimbatore City Crime Branch,
Coimbatore.Respondent

PRAYER: Criminal Revision Petition filed under Sections 397 and 401 of Criminal Procedure Code, to set aside the judgment and sentence passed in C.A.No.72 of 2019 dated 26.06.2020 by the learned 1st Additional District Sessions Judge, Coimbatore confirming the Lower Court judgment dated 29.01.2019 passed by the learned Judicial Magistrate No.III, Coimbatore in C.C.No.265 of 2011.

For Petitioner : Dr.S.N.Amarnath

For Respondent : Mr.L.Baskaran
Government Advocate (Crl. Side)

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Crl.R.C.No.719 of 2020

B.Gunasekaran ... Petitioner

Vs.

State rep. by
The Inspector of Police,
Coimbatore City Crime Branch,
Coimbatore.
Crime No.89 of 2009 ... Respondent

PRAYER: Criminal Revision Petition filed under Sections 397 r/w. 401 of Criminal Procedure Code, to set aside the judgment in C.A.No.60 of 2019 dated 26.06.2020 by the learned 1st Additional District Sessions Judge, Coimbatore confirming the order passed in C.C.No.265 of 2011 dated 29.01.2019 on the file of the learned Judicial Magistrate No.III, Coimbatore.

For Petitioner : Ms.S.R.Sumathy

For Respondent : Mr.L.Baskaran
Government Advocate (Crl. Side)

COMMON ORDER

The petitioner in Crl.RC.No.104 of 2021 is A1 and the petitioner in Crl.RC.No.719 of 2020 is A3.

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2.These criminal revision petitions are filed by the petitioners/A1 and A3 challenging the conviction and sentence passed by the Trial Court in C.C.No.265 of 2011 by judgment dated 29.01.2019 wherein A1 was convicted for the offence under Sections 120(B), 406 and 420 IPC and sentenced to undergo three rigorous imprisonment for each of the offence and to pay a fine of Rs.5,000/- for each of the offence, in default, to undergo nine months simple imprisonment each and A3 was convicted for the offence under Sections 120(b), 419 r/w. 120(B), 467 r/w. 120(B), 471 r/w. 120(B) IPC and sentenced to undergo three rigorous imprisonment for each of the offence and to pay a fine of Rs.5,000/- for each of the offence, in default, to undergo nine months simple imprisonment each.

3.Aggrieved against the conviction and sentence passed by the Trial Court, A1 preferred an appeal in C.A.No.72 of 2019 before the 1st Additional District Sessions Court, Coimbatore. The learned I Additional District Sessions Judge by judgment dated 26.06.2020 dismissed the appeal confirming the conviction and sentence imposed by the Trial Court. A2 preferred an appeal in C.A.No.60 of 2019 before the 1st Additional District

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Sessions Court, Coimbatore. The learned I Additional District Sessions Judge by judgment dated 26.06.2020 dismissed the appeal confirming the conviction and sentence imposed by the Trial Court. Against which, the present criminal revision petitions filed.

4.For the sake of convenience, the petitioners are referred to as per their rankings in the Trial Court.

5.The case of the prosecution is that the defacto complainant/PW1 lodged a complaint dated 28.10.2009 to the respondent complaining that in the year 2000, he borrowed a loan of Rs.20,000/- from the mother of A1/Jerald alias Raja, at that time, no undertaking or promissory note or any documents obtained. The defacto complainant on coming to know the demise of mother of A1, he enquired A1. At that time, A1 informed him that his mother spent all the amount by giving loans to various persons. The defacto complainant voluntarily informed him that he also borrowed loan of Rs.20,000 from her and he would repay the same. He also informed that he was paying the interest to his mother regularly. Thereafter, A1's father,

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Selvaraj was collecting the interest. Due to some financial crisis, the defacto complainant could not pay the interest to A1's father, who used to come often in a drunken state, demanding money and also abusing and creating a scene. The defacto complainant informed A1 that he would come and pay the interest to him directly. Subsequently, to tide over the financial crisis, the defacto complainant asked for a loan from A1, for which he insisted that if any document given as security, he can arrange for loan. The defacto complainant informed his wife of this. Thereafter, A1 came to the house of the defacto complainant met PW2 and collected Document No.3902/1991 of the land measuring to an extent of 2282 sq.ft. Plot No.48, Mahaganapathy Nagar, Vellaloor Village, Coimbatore, but not arranged any loan. PW2 forgot to inform PW1 immediately, but later she informed PW1. Thereafter, PW1 along with his colleague/PW4 went and demanded return of the original title deed from A1, who informed them that he would search for the document and hand over the same. Thereafter, sensing some mischief, the defacto complainant applied for encumbrance certificate and to his shock, found that a power of attorney document created on 26.12.2008 in Document No.2335 of 2008 impersonating the defacto complainant and

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thereafter subsequent sale deeds executed causing encumbrance to the property. A1 in conspiracy with other accused projected A2/Raja @ Wilson Raja as the property owner and executed power of attorney and subsequent documents. A3 and A4 are the brothers and in their house, the conspiracy was hatched. A5/Prabhu Chander the absconding accused, also actively took part in impersonation, creation of forged documents, alienating the property and causing encumbrance. The property sold to PW16 and thereafter to PW6. Though PW16 was a named accused in the FIR, later based on his explanation and finding that he was a genuine buyer who also filed a civil suit, he was taken as a witness. PW18 is the Inspector of Police who conducted the investigation and filed the charge sheet in this case. During trial, PW1 to PW19 examined and Ex.P1 to Ex.P35 were marked on the side of the prosecution. On conclusion of trial, the Trial Court convicted the petitioners as stated above which was confirmed by the Lower Appellate Court.

6.The contention of the learned counsel for the petitioner/A1 in Crl.R.C.No.104 of 2021 is that both the Courts below failed to consider and

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appreciate the evidence in the proper perspective. It is admitted by PW1/defacto complainant that the loan transaction was between PW1 and A1's mother and it is also admitted that the defacto complainant failed to pay the interest and principal amount to the mother of A1. It is further admitted by PW1 that he needed additional loan and funds for himself and for his wife, hence they gave the document for the purpose of collateral security. A1 arranged a loan through A2 and A3, who are land brokers to whom the documents were handed over for obtaining loans, thereafter A1 was not aware of any transaction between A2 and A3. As per the charge sheet, it is alleged that A1 along with the other accused falsely created a Power of Attorney document by impersonation and caused encumbrance to the property. But nowhere is it found that A1 fabricated or signed any documents. The Courts below failed to consider that the defacto complainant in offensive for the loan taken from the mother of A1, gave a false complaint. If at all there has been creation of encumbrance to the defacto complainant's property, it is between A2, A3, A4 and A5. He further submitted that the A1's mother was running an indigenous chit and PW2/wife of the defacto complainant subscribed and received the chit

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amount to the tune of Rs.2 lakhs, but she defaulted in repaying the chit amount. Thereafter, it was PW2 who requested A1 to raise a loan and when A1 requested security for raising a loan, it was PW2 who voluntarily handed over the document. These facts not considered by both the Courts below. Further handing over the document by PW2 voluntarily would not come under any entrustment or misappropriation under Section 406 IPC. There is no iota of evidence that A1 and the other accused had any meeting of mind for conspiracy. PW1 admits that during January 2008, he approached A1 for an additional loan, at that time, PW2/wife of PW1, handed over the document to A1, which was informed by PW2 to PW1 within four days after handing over the document, but till 31.03.2009, the defacto complainant not taken any steps, for return of document. Only after getting encumbrance certificate, in offensive a complaint was lodged. PW2 admits about the loan taken from the mother of A1 and payment of interest for the loan. PW4/Colleague of PW1 confirms that he saw A1 only during March 2009 and not prior to it. Hence, PW4 accompanying PW1 and asking for return of document does not arise.

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7.The learned counsel for the petitioner/A1 further submitted that PW3 and PW5 are witnesses for the arrest and confession of A1. It is seen that the complaint was given on 28.10.2009 and on the same day when A1 had gone for giving explanation, he was shown arrest without any verification of facts. PW3 and PW5 are brothers, who are projected as witnesses for the arrest and confession. PW6 is the person who purchased the property from PW16. It is seen that PW16 is a named accused in the FIR, but conveniently the Investigating Officer, without following any procedures, transposed him as a witness. PW16 received the Power of Attorney/Ex.P6 vide Document No.2335 of 2008 and entered into an agreement of sale with PW10 and thereafter this agreement was cancelled and a sale deed was executed by PW16 in favor of PW6 and all the documents/Ex.P2 to Ex.P8 marked through PW6. In none of these documents viz., Ex.P2 to Ex.P8, A1 had signed. After registration of the case, it was projected as though PW6 filed a civil suit in O.S.No.614 of 2014 against PW16 and on 12.12.2015, a compromise was entered into between PW6 and PW16, PW6 received Rs.8.4 lakhs from PW16 and this memo was marked as Ex.P9, which confirms that it is an afterthought to

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wriggle out the criminality and the above case, filed a civil suit in O.S.No.614 of 2014. PW7 is a friend of PW6 and PW8/Document Writer confirm that a Power of Attorney was executed by A2 in this case. The other witnesses are SROs/PW9 and PW15, PW10, friend of PW16 who connived in creation of documents. PW16 confirms that he knows A2, A3 and Prabhu Chander/A5. He approached the financial broker/PW10, who asked for documents for loan and thus the original document was produced by other accused to PW10. Thereafter, there was creation of forged Power of Attorney by impersonation and none of these witnesses stated anything against A1. Hence, merely on surmises and conjunctures, both the Courts below convicted A1.

8.The learned counsel for the petitioner/A3 in Crl.R.C.No.719 of 2020 submitted that in this case, the specific complaint by PW1 and PW2 is that PW1 borrowed loan from the mother of A1, thereafter he could not repay the loan. In the meanwhile, A1's mother passed away and he promised A1 that he would repay the loan. Further, PW1 and PW2 requested for further loan and A1 asked for a document as security. A1's case is that A1's

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mother was running an indigenous chit, PW2 is a subscriber to the chit, who collected the chit amount but not repaid. Thereafter for the purpose of repayment of the chit amount and for further financial commitments, PW2 handed over the document/Ex.P2. Thereafter, A2 is said to have impersonated as defacto complainant and executed a Power of Attorney in favor of PW16, who entered into an agreement for sale on the same day with PW10. The evidence of PW16 is that though A2 and A3 through financial broker/PW10 and the absconding accused Prabhu Chander/A5 all approached PW16 for financial help and PW16 insisted on a property document as security and thus Ex.P2 forged Power of Attorney produced. Though it is projected that A3 was along with PW10 and A2 in the registration office, A3 not signed any documents. It is PW10 and PW16 who created all the documents, Ex.P3 to Ex.P8 and created encumbrance to the property. It is to be seen that on the same day of creating the Power of Attorney, PW16 entered into an agreement for sale with PW10 and thereafter it was cancelled and PW16 executed a sale deed in favor of PW6. Hence the transaction between PW10 and PW16 cannot be said to be genuine and projected them as innocent persons. The Stamp Vendor,

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Document Writers, witnesses to the documents all clearly stated the role of both PW10 and PW16. In fact PW12, a witness to the document identifies his signature in the forged and disputed documents which are marked as Ex.P23 and Ex.P24 and he is a witness in this case. The only allegation against A3 is that he along with his brother A4 and other accused, all met in his house and they conspired in execution of the forged document. None of the witnesses spoken anything about any meeting or conspiracy. Though a feeble attempt was made to show as though petitioner/A3 was present in the registration office it is not in dispute that A3 had signed any documents in this case, A3 as land broker visiting SRO office is common. There is no iota of evidence to show that the petitioner/A3 benefited out of these transactions. On the other hand PW16 confirms that PW6 filed a civil suit against him and he entered into a compromise, repaid the amount of Rs.8.4 Lakhs to PW6. In this case, PW6 is the person who produced all the documents. The Forensic Expert/PW17 and Fingerprint Expert/PW18 confirm the forgery and the SRO confirms the photo and identification of A2, the person who executed the power of attorney document claiming himself as owner impersonating defacto complainant/PA1, A3 had no role

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in any of these transactions. He further submitted that the petitioner's brother A4 who is also similarly placed was acquitted by the trial court.

9.The learned Government Advocate (Crl. Side) filed his counter and submitted that P.W.1 lodged a complaint to the respondent police stating that the defacto complainant borrowed a sum of Rs.20,000/- from Al and failed to repay the same and he required more money for his domestic and business purpose. The defacto complainant wife handed over the original document of a vacant site of the complainant to Al, who in turn colluded with other accused cheated the defacto complainant by impersonation and sold the land to the third person. Based on the complaint, a case was registered in City Crime Branch, Coimbatore Crime No.89 of 2009, U/s.120B, 467, 471 & 420 IPC against the accused on 28.10.2009 by the Sub-Inspector of Police and he took up the case for investigation. During the course of investigation, the Inspector of Police went to the scene of occurrence, examined the defacto complainant and other witnesses and recorded their statements. Further the Inspector of Police collected relevant documents from the defacto complainant. Thereafter, Jerald Henry/Al,

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Wilsonraja/A2, Gunasekaran/A3 and Selvakumar/A4 arrested on various dates and recorded confession statements from them and produced them before the learned Judicial Magistrate No.III, Coimbatore for remand. After completion of investigation, charge sheet filed on 27.06.2011 against five accused. Accused Nos.1 to 4 and Prabhu Chander. Since the summons could not be served upon accused Prabhu Chander and A2/Raja alias Wilson Raja, the case against them remained pending without trial for a prolonged period. Consequently, the case against the said two accused was split up and renumbered as C.C.No.119 of 2017. In the present case, charges framed against Accused Nos.1, 3, and 4. Subsequently, summons was served to Raja alias Wilson Raja, who was initially the first accused and later re-numbered as A2. The case against Prabhu Chander/A5 was further separated and renumbered as C.C.No.253/2017. On 17.07.2017, C.C.No.265 of 2011 and C.C.No.119 of 2017 clubbed together to avoid procedural confusion and to facilitate examination of witnesses. The accused were charged under Sections 120(B), 419, 467 and 471 IPC. During trial, 19 witnesses examined, 35 exhibits marked and no material objects produced on the side of the prosecution. On the side of the defence,

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no witness examined and no documents marked. On conclusion of trial, the Trial Court had convicted the petitioners which was confirmed by the Lower Appellate Court. Hence, prayed for dismissal.

10.Considering the submissions made and perusal of the materials, it is seen that in this case, Ex.P2 is the parent document of Plot No.48, Mahaganapathy Nagar, Vellaloor Village, Coimbatore. PW1 owns the plot, not in dispute. PW1 had some loan transactions with the mother of A1. Later, he asked for further loan from A1, who insisted a property document as security, A1 collected the property document from PW2. Thereafter PW1 and his colleague/PW4 went to the house of A1, asked for return of document. A1 informed them that he would search for the document and return it, but not done so. Thus A1 collecting the property document Ex.P2 not in dispute. PW1 getting suspicion obtained encumbrance certificate and found encumbrance created as though PW1 executed a Power of Attorney in favor of PW16. Thereafter, subsequent documents Ex.P4 to Ex.P8 created. This fact clearly spoken by the respective Document Writers, SROs and witnesses to the documents. In this case, PW16 though a named accused,

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during enquiry, he appeared and informed that he believing A2 obtained Power of Attorney from A2 as owner of the property to deal with the property and money was paid to A2. Thereafter, PW16 executed agreement for sale on the same day to PW10. Later, PW10 identified PW6, who was interested in purchasing the property and thereafter, PW16 executed a sale deed in favor of PW6. During enquiry, PW6 produced Ex.P2 to Ex.P8, the same was collected and recorded in Form 95 and sent to the Court. A1 was called for enquiry, who was not able to give a proper reason for Ex.P2. A1 not seriously disputed the earlier loan by his mother to PW1 and collecting of document Ex.P2 from PW2. His only explanation in January 2008 the document was said to have been collected, but till 2009 for almost more than a year, there was no request for return of document, no notice or any written communication. For various reason and consideration, there might have been delay but this delay will not affect the foundational fact and the root of the case. Admittedly, Ex.P2 is the parent document of the property and in Ex.P3/Power of attorney A2 impersonated and executed document. A2's impersonation confirmed by the SROs by identifying the person with the photograph in the document. Furthermore, A2's father name differs. The

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forensic experts and fingerprint experts confirm A2's impersonation in this case. The petitioner/A1 had set up A2 to execute a forged power of attorney and handed over the original document to A2 to further deal with the property, thereby created encumbrance to the property, confirming the petitioner/A1 actively taken part in A2's impersonation, creation of forged document and thereafter using the forged document created encumbrance to the property. In this case, though PW16's explanation seems defensive on the face of it, but considering PW16 repaid the amount to PW6 and PW6 handing over all documents, absolve them of any criminality and confirm that they had genuine transactions, not taken part in any forgery or creation of forged documents. In this case, it is to be seen that A2 not challenged his conviction. The contention of A1 that he is not involved in the above case will hold no water. Both the Courts below, by a well-reasoned judgment rightly convicted the petitioner/A1. Hence, this Court finds no reason to interfere with the judgment of both the Courts below.

11.As regards A3 in this case, he is the brother of A4, who is also similarly placed. The specific overt act against A3 is that, A3, A4, PW10

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and Prabhu Chander absconding accused all hatched conspiracy in his house. There is nothing to show that when was the meeting of mind and conspiracy, who saw all the accused together and what was the conspiracy. No direct, indirect evidence and nothing to infer. The only allegation against A3 is that he was present in the SRO office. PW12 who is a witness to the documents/Ex.P6 and Ex.P7 confirms that A3 was present outside the SRO office at the time of execution. In fact, PW12 attested the disputed documents Ex.P23 and Ex.P24 confirms the same. It is clear that A3 was not present at the time of execution of the document and not signed any documents. On the other hand, PW12 though signed the disputed/forged documents, he was taken as a witness. The petitioner/A3 stands on a better footing as of PW12. Further, in this case, A4 brother acquitted by the Trial Court who is similarly placed as that of the petitioner/A3. Hence, this Court finds the conviction and sentence against the petitioner/A3 by the Trial Court, confirmed by the Lower Appellate Court both not sustainable.

12.Accordingly, Crl.R.C.No.719 of 2020 was allowed and the judgment delivered by the learned Judicial Magistrate No.III, Coimbatore in

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C.C.No.265 of 2011 dated 29.01.2019 confirmed by the learned I Additional District and Sessions Judge, Coimbatore in Crl.A.No.60 of 2019 dated 26.06.2020 both set aside. The petitioner/A3 is acquitted from all charges.

13.In the result, Crl.R.C.No.104 of 2021 filed by A1 stands dismissed and Crl.R.C.No.719 of 2020 filed by A3 stands allowed.

10.10.2025

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

1.The Inspector of Police,
Coimbatore City Crime Branch,
Coimbatore.

2.The Judicial Magistrate No.III,
Coimbatore.

3.The I Additional District and Sessions Judge,
Coimbatore.

4.The Public Prosecutor,
High Court, Madras.

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M.NIRMAL KUMAR, J.

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Pre-delivery order made in

Crl.R.C.Nos.104 of 2021 & 719 of 2020

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