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Crl.R.C.No.1797 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.10.2024
PRONOUNCED ON : 9.01.2025

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.1797 of 2024 and
Crl.M.P.Nos.14724 & 14725 of 2024

Suresh

... Petitioner

Vs.

State by SI of Police,
R-5, Virugambakkam Police Station,
Chennai.

... Respondent

PRAYER: Criminal Revision Petition is filed under Section 397 r/w 401 of Code of Criminal Procedure, to set aside the conviction and sentence imposed against the petitioner in C.C.No.4969 of 2014 on the file of the XXIII Metropolitan Magistrate Court, Saidapet modifying the conviction and sentence in C.A.No.48 of 2023 pending on the file of the IV Additional Sessions Judge, Chennai pending disposal of the Crl.R.C on the file of this court.

For Petitioner : Mr.V.K.Sathiamurthy

For Respondent : Mr.A.Damodaran,
Additional Public Prosecutor

ORDER



The petitioner was convicted *vide* judgment, dated 13.12.2022 in C.C.No.4969 of 2014 by the learned XXIII Metropolitan Magistrate, Saidapet, Chennai (Trial Court) and sentenced to undergo one month Simple Imprisonment and to pay a fine of Rs.500/- in default to undergo one week Simple Imprisonment for offence under Section 294(b) IPC; to undergo three months Simple Imprisonment and to pay a fine of Rs.1,000/- in default to undergo two weeks Simple Imprisonment for offence under Section 323 IPC; to undergo three months Simple Imprisonment and to pay a fine of Rs.500/- in default to undergo one month Simple Imprisonment for offence under Section 506(i) IPC; to undergo two years Simple Imprisonment and to pay a fine of Rs.10,000/- in default to undergo two months Simple Imprisonment for offence under Section 420 IPC. Aggrieved over the same, the petitioner preferred an appeal before the learned IV Additional Sessions Judge, City Civil Court, Chennai (Lower Appellate Court) in Crl.A.No.48 of 2023 and the same was partly-allowed *vide* judgment, dated 21.08.2024 setting aside the conviction and sentence for offence under Sections 294(b) and 506(i) IPC and confirming the conviction and sentence for offence under Sections 323 and 420 IPC. Challenging the same, the present criminal revision case has been filed.

2.Gist of the case is that the petitioner was known to the defacto



complainant (PW1) through PW3, a real estate broker. On 01.01.2014, the defacto complainant (PW1) entered into an agreement for sale (Ex.P2) with the petitioner for purchase of his house for sale consideration of Rs.19,00,000/- and also paid a sum of Rs.7,00,000/- in cash to the petitioner in his house. It was agreed that within six months of the sale agreement, a sale deed would be executed and the entire possession would be handed over to the defacto complainant. PW3 is a witness to the sale agreement (Ex.P2). During the month of February, 2014, when the defacto complaint had gone to the petitioner's property to see the design and structure of the flat (Vasthu Sasthram) with Vasthu expert, at that time the defacto complainant was informed that the persons (Kaviya and Moorthy), who were staying above the flat, already entered into an agreement with the petitioner for purchase of the same flat. When the defacto complainant questioned the petitioner, he informed that the said Kaviya applied for housing loan and since it was rejected, the sale could not be executed and the advance amount received from the erstwhile agreement holder of Rs.3,15,000/- repaid through cheque. On enquiry, it was found that the said repayment cheque to Kaviya and Moorthy got dishonoured. The defacto complainant on 02.05.2014 again enquired the petitioner and the petitioner agreed to return the advance amount given by the defacto complainant and issued three cheques (Ex.P3) which got dishonoured.



On 26.05.2014, the petitioner had gone to typewriting centre of the defacto complainant where he picked up quarrel with the defacto complainant, which ensued into exchange of blows and thereafter a complaint (Ex.P1) lodged to PW8. PW8, the Sub Inspector of Police received the complaint (Ex.P1), assigned C.S.R.No.202 of 2014, thereafter registered FIR against the petitioner in Crime No.1080 of 2014 for offences under Sections 294(b), 323, 420 and 506(ii) IPC. On conclusion of investigation, charge sheet filed before the Trial Court.

3.During trial, on the side of the prosecution, eight witnesses examined as PW1 to PW8 and eight documents marked as Exs.P1 to P8. On the side of the defence, no witness examined and no document marked. On conclusion of trial, the Trial Court convicted the petitioner as stated above.

4.The learned counsel for the petitioner submitted that the defacto complainant not produced the sale agreement (Ex.P2) entered with the petitioner to the respondent Police and it was belatedly produced only during the course of trial. In such circumstances, how the investigation conducted and charge sheet filed in this case is not known. PW8, the Sub Inspector of Police admits that he initially received the complaint (Ex.P1), assigned CSR and



thereafter only FIR registered, entire investigation conducted and charge sheet filed. In this case, the person who registered the FIR himself, had filed the charge sheet, is also not proper. The learned counsel further submitted that PW1 had given exaggerated version as could be seen from the contradictions between the evidence of PW1 and PW4, PW5 who are eye witnesses to the alleged occurrence. The Lower Appellate Court finding that there have been improvement and contradictions in the evidence of PW1, rightly acquitted the petitioner for the offence under Sections 294(b) and 506(i) IPC. When the Lower Appellate Court disbelieved the evidence of PW1 in part, the Lower Appellate Court ought to have set aside the conviction and sentence for offence under Sections 323 and 420 IPC. The learned counsel further submitted that it is purely a civil transaction *i.e.*, a dispute in execution of the sale agreement. The defacto complainant never stated that she was ready to handover the balance sale consideration and despite calling for execution of sale deed, the petitioner had refused. There is no question of deception at the inception in this case, hence no offence under Section 420 IPC made out. The Trial Court placing reliance on Exs.P2 and P3 and the evidence of PW1, PW2 (husband of PW1) and PW3, an interested witness, who attested Ex.P2, had convicted the petitioner. Despite there is no corroboration in the evidence of these witnesses, the Courts below convicted the petitioner on assumption and presumption. In



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5.The learned Additional Public Prosecutor, on the other hand, strongly opposed the petitioner's contention and submitted that the petitioner is now raised factual points which cannot be entertained in a revision. PW1 & PW2, who are spouses, clearly stated about visiting the petitioner's house, after negotiation entering into sale agreement with the petitioner for purchase of flat and thereafter the sale agreement was entered between the petitioner and the defacto complainant which has been attested by PW3. These witness confirmed that the petitioner entered into sale agreement (Ex.P2) with the defacto complainant which was attested by PW3, an independent witness. Though the learned counsel for the petitioner questioned the legality and admission of the contents of the documents citing there was some corrections, the Trial Court as well as the Lower Appellate Court on the evidence and materials found that the petitioner had not disputed the signature in Ex.P2 and it is not the case of the petitioner that he never executed Ex.P2. Added to it, the evidence of PW3, an independent witness, corroborated the evidence of the



defacto complainant.

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6.It is further submitted that in this case, the cheques (Ex.P3), which were given for return of part amount of the advance received from the defacto complainant, got dishonoured and the issuance of the cheques by the petitioner is not disputed. The signature in the cheques and in the sale agreement confirmed that it is the petitioner who had executed these documents. The learned counsel for the petitioner had only raised some technical objections which were overruled. The evidence of PW4 and PW5 confirmed that the petitioner had gone to the typewriting centre of the defacto complainant, picked up quarrel, abused and threatened her. Immediately, the defacto complainant informed the same to her husband PW2. Thus, on the evidence of PW1, PW2, PW3 & PW4 and Exs.P2 & P3, the Trial Court convicted the petitioner for offence under Sections 294(b), 506(i), 323 and 420 IPC. The Lower Appellate Court on independent analyse of evidence and materials set aside the conviction of the petitioner for the offence under Sections 294(b) and 506(i) IPC, but confirmed the conviction and sentence for offence under Sections 323 and 420 IPC. In view of the independent consideration of both the Courts below, the judgments of the Courts below need not be interfered with.

7.Considering the rival submissions and on perusal of the materials, it is



seen that the Trial Court as well as the Lower Appellate Court on independent analyse of evidence and materials had convicted the petitioner. In fact, the Trial Court had convicted the petitioner for offence under Sections 294(b), 506(i), 323 and 420 of IPC and the Lower Appellate Court had independently assessed the evidence and materials had set aside the conviction and sentence for offence under Sections 294(b) and 506(i) IPC and confirmed the conviction and sentence for offence under Sections 323 and 420 IPC. In this case, the petitioner executed Exs.P2 and P3 which are not disputed. The sale consideration for purchase of flat is to the tune of Rs.19,00,000/-, out of which, the defacto complaint paid a sum of Rs.7,00,000/- in cash to the petitioner and thereafter, the petitioner issued cheques (Ex.P3) in repayment of the part of the cheque amount, which got dishonoured. Except for technical objections, no plausible or reasonable objections raised by the petitioner that Exs.P2 and P3 not executed by the petitioner. Added to it, the execution of Exs.P2 & P3 confirmed, corroborated by PW3, an independent witness. As regards abuse, threat and wordy altercation by the petitioner against PW1, the evidence of PW4 and PW5 confirms the same.

8.In view of the above, the Trial Court as well as the Lower Appellate



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Court on independent analyse of evidence and materials, had rightly convicted the petitioner. This Court finds there is no illegality or infirmity in the judgment, dated 13.12.2022 in C.C.No.4969 of 2014 passed by the learned XXIII Metropolitan Magistrate, Saidapet, Chennai (Trial Court) except for the offence under Sections 294(b) and 506(i) IPC and the judgment, dated 21.08.2024 in Crl.A.No.48 of 2023 passed by the learned IV Additional Sessions Judge, City Civil Court, Chennai (Lower Appellate Court). Both the judgments are hereby confirmed.

9.In the result, this Criminal Revision Case stands dismissed. The Trial Court is directed to take all earnest steps to secure the petitioner for sufferance of remaining period of sentence, without delay. Consequently, connected Criminal Miscellaneous Petitions are closed.

9.01.2025

Speaking Order/Non Speaking Order

Index : Yes/No

Internet : Yes/No

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M.NIRMAL KUMAR, J.

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To

- 1.The IV Additional Sessions Judge,
City Civil Court, Chennai.
- 2.The XXIII Metropolitan Magistrate, Saidapet,
Chennai.

PRE-DELIVERY ORDER IN
CrI.R.C.No.1797 of 2024

9.01.2025