IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16-02-2026

CORAM

THE HONOURABLE MR JUSTICE M. NIRMAL KUMAR

CRL RC No. 566 of 2022

Suresh Kumar
S/o. Velusamy, No.7/1, Jawahar Nagar,
Sahsc Post, Saibaba Colony,
Coimbatore – 641 043.

Petitioner(s)/Accused

Vs

The State Rep By
Inspector Of Police,
City Crime Branch,
Coimbatore City.
Cr.No.70/2010.

Respondent(s)

PRAYER: Criminal Revision Petition filed under Sections 397 r/w 401 of Cr.P.C., 1973 praying to set aside the judgment and sentence passed in Crl.A.No.4 of 2019 on the file of the V Additional District & Sessions Judge, Coimbatore, dated 31.03.2022 confirming the judgment and sentence passed in C.C.No.59 of 2011 on the file of the learned Judicial Magistrate No.3, Coimbatore, dated 14.12.2018 by allowing the criminal revision.

For Petitioner(s): Mr.B.Kumarasamy

For Respondent(s): Mr.S.Udayakumar
Government Advocate (Crl. Side)

For De facto complainant: Mr. D.Lakshmipathy

ORDER

The petitioner/accused in C.C.No.59 of 2011 was convicted by the trial Court by judgment dated 14.12.2018 for offence under Section 420 of I.P.C. and sentenced to undergo three years rigorous imprisonment and to pay a sum of Rs.1,09,95,000/- as compensation. Aggrieved against the same, the petitioner preferred an appeal before the Sessions Court in Crl.A.No.4 of 2019. The learned Sessions Judge, by the judgment dated 31.03.2022 dismissed the appeal confirming the conviction and sentence of the trial Court, against which, the present revision is filed.

2.During trial, the petitioner was charged for offence under Sections 406 and 420 of I.P.C. but he was acquitted under Section 406 of I.P.C. and convicted under Section 420 of I.P.C. Further during trial on the side of the prosecution, PW1 to PW16 examined, Exs.P1 to P30 marked. On the side of the defence, the accused examined DW1 and DW2 and marked Ex.D1.

3.The primary contention of the petitioner is that both the Courts below failed to consider that Exs.P1 to P12 are photostat copies, which were objected during trial and the same were marked subject to objection and at the time of final disposal the same can be considered. In this case, no finding has been given in the judgment. He further submitted that the entire case hinges on Ex.P1 dated 21.01.2008, which is a Memorandum of Understanding (MOU) said to have entered between the petitioner and PW1. On a demurrer submitted that it is a business transaction, wherein it was agreed to pay an interest of 12% per annum in addition to share of profit of 50% profit in the business. It is purely a business commercial transaction which was given criminal colour. The original of Ex.P1 not produced and the explanation given is, in Srl.No.8 in the MOU it is recorded that the original will be retained by the accused and the accused destroyed Ex.P1. But no such recording is there. The petitioner was arrested on 10.08.2010, on which day, the petitioner said to have given confession/Ex.P21. In the confession there is no reference to Ex.P1 as to how it was destroyed, admitted by PW16/Investigating Officer in his evidence.

4.He further submitted that the Investigating Officer admits that print and font size in Ex.P1 and complaint/Ex.P13 are identical. According to the petitioner, Ex.P1 is a created document which was issued by some vendor in the name of one Siva. DW2/Sub Registrar confirms that as per Ex.D1, stamp paper it was issued in the name of Siva but in Ex.P1, PW1-Guruprasath name is written. With regard to PW3, PW11 and PW13, Who are said to be similarly cheated by the petitioner, no complaint by them. How PW3, PW11 and PW13 came to know about the case and cited as witness, there is no clarity and explanation. He further submitted that the trial Court acquitted the petitioner from charge of Section 406 of I.P.C. finding that there is no entrustment and the Lower Appellate Court confirmed the same. In this case, on the evidence and materials it is seen that it is purely a business transaction. There were payments received by PW1 from the account of petitioner, which is confirmed by the ICICI Bank Manager/PW14. When it is proved that it is a business transaction, this case cannot be used for the purpose of recovering the dues and no intention of cheating at the inception stage. Default in business transaction cannot be termed as cheating. In this case, business transaction continued for two years, later some default in payment arose and it is projected that the petitioner cheated the complainant, which is not legally sustainable.

5.The petitioner was tried along with A2 and projected that the petitioner transferred the amount received from the de facto complainant to A2. The trial Court finding A1 and A2 had independent business transaction and no transaction between the de facto complainant and A2, hence discharged A2 from the case, against which, no appeal or revision filed and it attained finality. Further the case projected against the petitioner is that during the period from 07.01.2008 to 04.04.2010, the petitioner and the de-facto complainant having transactions to the tune of Rs.2,04,50,000/- and transactions were through bank and for this amount, petitioner paid Rs.37,50,000/- as advance Income Tax, based on the invoices received from DELL and the balance amount is Rs.1,09,95,000/-. Further, the petitioner also paid Service Tax through bank for the transaction between petitioner/A1 and A2. The trial Court caused doubt on Ex.P1, since Ex.P1 is a photostat copy but not sent for forensic examination. In such circumstances, Ex.P1 cannot be projected against the petitioner. As regards other bank witnesses, all admit the transactions between the petitioner and the de-facto complainant and nowhere it is stated that petitioner withdrawn the amount in cash and misappropriated or utilised the same for other purpose and made any undue enrichment. Thus if at all there is any due by the petitioner it can only be a civil dispute and the de-facto complainant can make a claim by filing civil suit and not resorting to criminal prosecution. Hence, prayed for acquittal of the petitioner.

6.The learned counsel for the de facto complainant submitted that the entire transaction between the petitioner and the de facto complainant was through bank. The petitioner received the amount through bank transaction not disputed. A portion of the amount transferred to the account of A2 claiming it as though A2 supplied some parts for assembling the computer. The petitioner projected that he was having good contacts with colleges and can arrange and supply computers. PW1 was running a computer service centre and petitioner used to do some service work, he came in contact with PW1 and they knew each other for past ten years. Due to this acquaintance and gaining confidence and on petitioner's representation, the de facto complainant paid the petitioner a huge sum of Rs.1,09,95,000/-. To gain confidence and to project business was genuine, he paid service tax and advance tax. This was only to deceive the de facto complainant. He further submitted that PW1 admits in his evidence that the Memorandum of Understanding/Ex.P1 was brought by the petitioner and it was typed in PW1's office and there petitioner signed the MOU. It is also admitted by PW1 that he prepared complaint using his Laptop in Commissioner Office and hence, font size naturally will be similar. For this reason alone Ex.P1 cannot be discarded.

7.He further submitted that Exs.P6 and P7 are the Income Tax Assessment order of PW1, the Income Tax Officer-PW8 and Ex.P9/Form 16A proves advance income tax paid by him and the transaction pertaining to Exs.P8 and P9 are for the business with the petitioner. He further submitted that statements Exs.P10 to P20, P23 and P24, confirms there were several transactions regularly between the petitioner and the de facto complainant. This transaction continued on the deception played by the petitioner. He further submitted that he had marked Exs.P27 to P29/the statement of accounts to prove petitioner received huge sums from the de facto complainant. Thus, the de facto complainant produced MOU, proof of advance Income Tax paid, Income

Tax returns, Form 16A to prove transactions for more than Rs.1 Crore between the petitioner and the de facto complainant and petitioner later cheated the de facto complainant.

8.The learned Government Advocate submitted that on the complaint of de-facto complainant, a case was registered in Ex.P30/F.I.R. Along with the complaint, the petitioner produced Ex.P1/MOU confirming that petitioner and the de facto complainant entered into a Memorandum of Understanding and following the same, the petitioner received huge sums of money running to more than Rs.1 Crore on an understanding that he would pay the interest for the amount received and also share the profit earned through the business. The petitioner received the amount is not seriously disputed and from the bank transaction and other documents it is seen that petitioner received amount, not repaid any amount to the de facto complainant, which would prove that it is a clear case of cheating. Further the petitioner though claims that he is running a business, he has not produced any document or material to show that he was really doing the business and supplying computers to colleges from the amount received. The entire transactions were only in paper and the petitioner neither assembled any computer nor supplied any computers to the colleges.

9.He further submitted that PW3, PW11 and PW13 are the other witnesses, who were also similarly cheated. The trial Court considered Ex.P1 along with signature of the petitioner at the time of initial charge framing, after evidence under Section 313 Cr.P.C. and the signature in the confession/Ex.P21 and given a finding that Ex.P1 is a photostate copy and Ex.P1 was not subjected to forensic examination but considered the signature invoking Section 73 of the Indian Evidence Act and found there were similarities and variations and observed that there is some doubt but Ex.P1 cannot be rejected. He further submitted that as per clause VIII in Ex.P1 original was retained by the petitioner and later he destroyed the same. For this reason original unable to be produced in this case. He further referred to the evidence of PW1 submitted that PW1 in his evidence marked Exs.P1 to P13. Ex.P1 is the MOU dated 21.01.2008, Exs.P2 to P5 are the bank transactions for payment of advance taxes. Exs.P6 and P7 are the Income Tax returns. Exs.P8 and P9 are Form-16A. Exs.P10 to P12 are the bank statements and Ex.P13 is the complaint. From the above documents PW1 proved the relationship between the petitioner and the de facto complainant and the petitioner’s representation is that he has fetched good orders and can make good profit, in supply of computers to colleges and received amount more than a Crore and all the transactions were through banks. In this case, the petitioner could not give any reason as to what happened to the money received and also not produced a single material to show that he had purchased or assembled any computer and supplied the same. The entire amount cheated.

10.He further submitted that PW2 is the friend of PW1, who is an attesting witness to MOU. The evidence of PW6, PW9 and PW14 confirm the bank transactions between the petitioner and the de facto complainant. They produced statement of accounts, which was not seriously disputed. PW16 is the Investigating Officer, who registered the F.I.R. conducted investigation, collected documents and arrested the accused and on completion of investigation filed the charge sheet in this case. He clearly narrated the sequences of investigation. DW1 is the stamp vendor, he states that normally in the register he records the name of the person who purchase the stamp paper but as regards this case it is not recorded in whose name the stamp paper was sold. DW2/Sub Registrar submits that the document Ex.P1 is recorded to have been sold to one Siva. He further submitted that it is a usual practice, it is the purchaser who gives the name and it is written by the stamp vendor and at times stamp papers are purchased without any name written. PW1 confirms that the stamp paper produced by the petitioner. The petitioner right from initial stage played deception, ensured that in the stamp paper PW1's name is recorded, at the same time in the Stamp Vendor register the name of Siva is recorded. This is not known to PW1 and it is within the exclusive knowledge of the petitioner. He further submitted that pursuant to the arrest and confession of petitioner, cheque books of South India Bank and ICICI Bank seized. Though several cheque leaves used, as reflected in the bank statement, in the cheque book sheet no name or any particulars written, which clearly prove that the petitioner right from the inception to cheat the de-facto complainant/PW1 had created documents. The Trial Court and Lower Appellate Court on the evidence and materials, had rightly convicted the petitioner. The petitioner faced two concurrent findings. Hence, prayed for dismissal of the revision petition.

11. Considering the submissions and on perusal of the materials, it is seen that PW1/defacto complainant was running a business in the name of 'Graphic Systems'. The petitioner/accused is the computer service engineer and also supply computers, he was doing service of computers in defacto complainant's firm from the year 2000 and there was good relationship between them. In the year 2007, the petitioner represented that there are good orders forthcoming for supply of computers to colleges and other Educational Institutions and promised that he can get these orders. For that purpose he requested the defacto complainant to become his partner to provide financial support and thereby they can make good profit on the investments made, which can be shared between them. Believing the representation, the defacto complainant entered into a Memorandum of Understanding on 21.01.2008.

12.The defacto complainant transferred a sum of Rs.1,09,95,000/- from his account and from his wife's account to the petitioner through bank transfer. The petitioner was projecting and giving details of business transaction. Further on the directions of petitioner, Advance Income Tax and Service Tax paid during the relevant period which is proved by Exs.P2 to P5. The Income Tax returns/Exs.P6 and P7 confirms the same. Exs.P8 and P9 are Form-16A-TDS certificate submitted by the petitioner. The Bank Statements/Exs.P10 to P12 confirms the transfer of funds. Later the defacto complainant found he was deceived by the false statements by the petitioner and came to know the cheating committed by the petitioner. Hence, lodged the complaint/Ex.P13.

13.In this case, PW2 is the attesting witness to MOU/Ex.P1. PW3, a rice Merchant having computer and for his computer service, the petitioner was introduced through his friend Naveen. In the said relationship, the petitioner had also taken a loan from PW3 and not repaid the same in full. PW4 running a business in the name of 'Navkar Infotech Private Limited', dealing in the sale of computer spare parts. The petitioner used to purchase computer parts in the name of Graphic System and it was the petitioner alone, who was representing Graphic System and PW4 never seen or met PW1/defacto complainant at any point of time. PW5 was also dealing in computer spare parts in the name of

'Ramdev Computers', who confirms that it was only the petitioner who was purchasing the computer spare parts. PW6, PW9 and PW14 are the Bank Managers of State Bank of India, South Indian Bank, and ICICI Bank, Coimbatore, respectively, who produced the statement of accounts of the petitioner confirming the transactions between the petitioner and the defacto complainant. PW11 is the friend of petitioner, on 10.08.2020, he accompanied petitioner for enquiry. On that day, the respondent arrested the petitioner and PW11 is the witness for arrest and confession of the petitioner.

14.In the presence of PW11, search conducted in the house of petitioner, in whose presence several documents seized. PW13 is the another witness, who confirms petitioner taking loan from him and not repaying the loan in full. PW16, the Investigating Officer, who clearly narrated the registration of the case, investigation conducted and seizure of documents from the house of the petitioner. The admitted portion of confession statement is Ex.P21, Search Mahazar/Ex.P22, cheque books/Exs.P23 and P24, bank documents and other documents all seized from the house of the petitioner/accused. Ex.P25 is copy of Encumbrance Certificate of a property standing in the name of petitioner's wife. The seizure of the bank documents and other documents along with evidence of Bank officials and materials confirms petitioner having transaction with the defacto complainant. Other witnesses namely, PW7, PW8, PW10, PW12 and PW15 are the bank officials, who speak about the transactions of one Thiyagarajan, who was originally A2 in this case and later discharged from the case.

15.The primary contention of the petitioner is that Ex.P1 to P12 are photostat copies. It is seen from the evidence that Ex.P1/MOU was originally retained by the petitioner for the purpose of business and later destroyed the same, which is confirmed by PW1, PW2 and PW11. The bank transaction confirmed by the statement of accounts provided by the bank officials. The petitioner not seriously questioned or disputed the same. The advance payment of Income Tax, Service Tax are only to further deceive the defacto complainant.

16.The further contention of the petitioner is that MOU/Ex.P1 is a photostat copy, the stamp paper was purchased in the name of one Siva and the Stamp vendor confirms the same, but the name of PW1/Guruprasad is written in the stamp paper. It is seen that the stamp paper produced and purchased by the petitioner in blank, the contents of MOU were typed in the stamp paper in the Computer available in PW1's office. The attesting witness confirms the same. Similarity font and letter style cannot be a serious discrepancy to totally reject the MOU/Ex.P1 and complaint/Ex.P13. It is seen that in electronic mode of printout, similarity bound to be there, only in mechanical typing there will be marked similarity or difference. Further, following MOU regular bank transactions taken place between the petitioner and the defacto complainant, payment made to the petitioner and the bank witness confirms the same. The bank transactions are not seriously disputed. The payment of advance Income tax and service charge will not absolve the petitioner from the charge of cheating. The attendant facts and circumstances will clearly confirm the petitioner committing the offence of cheating. Hence, both the Courts below convicted the petitioner by a well reasoned judgment. This Court finds no perversity or infirmity to interfere with the finding of the Trial Court.

17.In view of the above, this Court confirms the conviction of the petitioner but modifies the sentence alone from three years rigorous imprisonment to two years.

18.In the result, the Criminal Revision Case is partly allowed.

16.02.2026

Index : Yes/No
Internet : Yes/No
Speaking order/Non-speaking order
Neutral citation : Yes/No
rsi/cse

To

1.The V Additional District & Sessions Judge,
Coimbatore.

2.The Judicial Magistrate No.3,
Coimbatore.

3.The Inspector Of Police,
City Crime Branch,
Coimbatore City.

4.The Public Prosecutor
High Court, Madras.

M. NIRMAL KUMAR, J.

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