**(2016) 01 MAD CK 0147**

**In the Madras High Court**

**Case No :** Crl. R.C. Nos. 44, 45 and 48 of 2006

D. Krishnamoorthy APPELLANT

Vs

State RESPONDENT

**Date of Decision :** 27-01-2016

**Acts Referred:**
Penal Code, 1860 (IPC) — Section 120-B, Section 420

**Citation :** (2016) 01 MAD CK 0147

**Hon'ble Judges :** A. Selvam, J.

**Bench :** Single Bench

**Advocate :** V. Prakash, Sr. Counsel for K. Sudalaikannu, for the Appellant; K. Srinivasan, Spl. Public Prosecutor, for the Respondent

**Final Decision :** Dismissed

## Judgement

A. Selvam, J.—1. These criminal revision cases have been preferred against the concurrent judgments passed in Calendar Case Nos. 10079, 10078 and 10077 of 1989 and in Criminal Appeal Nos. 3, 2 and 1 of 1998 by the trial Court as well as by the appellate Court.

2. The case of the prosecution in Calendar Case No. 10079 of 1989 is that during the relevant period, the accused has served as a Clerk Grade-II, in Scenic Department of Doordarshan Kendra, Madras. The accused has changed his name as D.Ambrose and married his colleague Ms.Arokia Mary. He started a business under the name and style of ''Infant Jesus Traders'' and also opened an account in the State Bank of Mysore, K.K. Nagar Branch. On 20.01.1986 and 17.2.1986 in the name of ''Infant Jesus Traders'', he submitted three bills to Doordarshan Kendra as if goods mentioned therein have been supplied for a sum of Rs. 7,025/- by the said ''Infant Jesus Traders''. The accused has also made false entries in the concerned records and thereby cheated the Department of Doordarshan Kendra and committed an offence punishable under Section 420 of the Indian Penal Code.

 

3. The case of the prosecution in Calendar Case No. 10078 of 1989 is that during the relevant period the accused as served as a Clerk Grade-II in Scenic Department of Doordarshan Kendra, Madras. He changed his name as D.Ambrose and married his colleague Ms.Arokia Mary. He started a business under the name and style of ''Infant Jesus Traders'' and also opened an account in the State Bank of Mysore, K.K. Nagar Branch. On 20.1.1986 and 22.1.1986, in the name of ''Infant Jesus Traders'', he submitted three bills to the Department of Doordarshan Kendra as if goods mentioned therein have been supplied for a sum of Rs. 6,150/- by the said ''Infant Jesus Traders''. The accused has also made false entries in the concerned Register. Under the said circumstances, he has committed an offence punishable under Section 420 of the Indian Penal Code.

4. The case of the prosecution in Calendar Case No. 10077 of 1989 is that the first accused has served as a Clerk Grade-II in Scenic Department of Doordarshan Kendra, Madras, during 1984 to 1986. The first accused has entered into conspiracy with one Gunasekaran @ Joseph to cheat the department of Doordarshan Kendra. The first accused has changed his name as D.Ambrose and married his colleague Ms.Arokia Mary. The first accused has started a business under the name and style of ''Infant Jesus Traders'' and another business in the name of ''Sagayamadha Traders'', by way of showing that the second accused as its proprietor. The accused have opened accounts in the State Bank of Mysore, K.K. Nagar Branch in the names of the said two business. On 17.5.1985, in the name of ''Sagayamadha Traders'', he submitted a bill to the Department of Doordarshan Kendra as if the goods mentioned therein have been supplied for a sum of Rs. 3,250/-. The first accused has made false entries. Under the said circumstances, accused 1 and 2 have committed offences punishable under Sections 120-B r/w. Section 420 of the Indian Penal Code.

5. The trial Court, after considering the evidence available on record, has found the accused in Calendar Case No. 10079 of 1989 guilty under Section 420 of the Indian Penal Code and sentenced him to undergo six months rigorous imprisonment and also imposed a fine of Rs. 1000/- with usual default clause. In Calendar Case No. 10078 of 1989, the accused has been found guilty under Section 420 of the Indian Penal Code and sentenced to undergo six months rigorous imprisonment and also imposed a fine of Rs. 1000/- with usual default clause. In Calendar Case No. 10077 of 1989, both the accused have been found guilty under Section 120-B r/w. Section 420 of the Indian Penal Code and sentenced to undergo six months rigorous imprisonment and also imposed a fine of Rs. 1000/- with usual default clause. Against the conviction and sentence passed in Calendar Case No. 10079 of 1989, Criminal Appeal No. 3 of 1998; against the conviction and sentence passed in Calendar Case No. 10078 of 1989, Criminal Appeal No. 2 of 1998 and against the conviction and sentence passed in Calendar Case No. 10077 of 1989, Criminal Appeal No. 1 of 1989 have been preferred on the file of the first appellate Court.

6. The first appellate Court, after hearing arguments of both sides and upon

 

perusing the relevant records, has dismissed all the criminal appeals. Against the concurrent judgments passed by the Courts below, these criminal revisions cases have been preferred at the instance of the accused in Calendar Case Nos. 10079 of 1989, 10078 of 1989 and at the instance of the first accused in Calendar Case No. 10077 of 1989.

7. The learned counsel appearing for the appellant has repeatedly contended that the goods mentioned in the final reports have been actually purchased through the concerned bills and on the reverse sides of the same, specific endorsements have been made to the effect that all the goods have been verified and found correct and a higher official has put his signatures and simply because relevant entries have not been made in the stock registers, the Court cannot come to a conclusion that the accused has committed the offences mentioned in the final reports and if at all the accused has run a business under the name and style of ''Infant Jesus Traders'', at the most, a departmental action can be taken against him and the Courts below, without considering the documents filed on the side of the prosecution properly, has erroneously found the accused guilty under Sections 420, 120-B r/w. Section 420 of the Indian Penal Code and therefore, the concurrent judgments passed by the Courts below are liable to be set aside.

8. Per contra, the learned Special Public Prosecutor has also equally contended that during the relevant period, the accused has served as a Clerk Grade-II in Scenic Department of Doordarshan Kendra, Madras and he started a business under the name and style of ''Infant Jesus Traders'' and even without supplying goods, he falsely prepared certain bills as if goods have been supplied by the said ''Infant Jesus Traders'' and thereby withdrawn the amounts mentioned in the final reports. Under the said circumstances, he has committed the offences mentioned in the final reports and the Courts below, after considering the overall evidence available on the side of the prosecution, have rightly found the accused guilty under the Sections mentioned in the final reports and therefore, the concurrent judgments passed by the Courts below do not require interference.

9. Considering the fact that a common question of law and facts are involved in these proceedings, common order is pronounced.

10. The specific case of the prosecution is that during the relevant period, the accused has served as a Clerk Grade-II, in Scenic Department of Doordarshan Kendra and changed his name as D.Ambrose and married his colleague Viz., Arokia Mary and he started a business as ''Infant Jesus Traders'', and by way of submitting concocted bills as if goods have been supplied by the said ''infant Jesus Traders'', he has withdrawn the amounts mentioned in the final reports and thereby committed offence punishable under Section 420 of the Indian Penal Code.

11. The concerned purchase bills relating to Calendar Case No. 10079 of 1989 have been marked as Exs.P1, P6 and P9. Likewise, relating to Calendar Case No. 10078 of 1989, the concerned bills have been marked as Exs.P5, P6 and P10 and

 

in Calendar Case No. 10077 of 1989, the concerned bill has been marked as Ex.P3. The specific case of the prosecution in all the cases is that the goods mentioned in the purchase bills have not been actually supplied by the said ''Infant Jesus Traders'', but the accused has withdrawn the amounts mentioned therein and necessary endorsements have also been made on the reverse sides of the purchase bills by the accused and further, no entries have been made in the stock Register.

12. In fact, in all the cases, identical witnesses have been examined on the side of the prosecution. On the side of the prosecution, one Uma has been examined as P.W.1 and her specific evidence is that no entry has been made in the Stock Register. The prosecution witness viz., Durairaj (P.W.2) has spoken about the fact that he handed over the concerned Register to the accused and P.W.3, Padma Sankaran, has spoken about the issuance of cheques to the accused. Likewise, Sundari (P.W.4) has spoken to the fact that the cheques have been issued in the name of ''Infant Jesus Traders''. One Ramamoorthy has been examined as P.W.8 and his specific evidence is that the accused has conducted ''Infant Jesus Traders''. One Kishorekumar has been examined as P.W.12 and his specific evidence is that only as per the direction given by the accused, he prepared bills in the names of ''Infant Jesus Traders'' and ''Sagayamadha Traders''.

13. The entire defence put forth on the side of the appellant/accused is only on the basis of the endorsements made on the reverse sides of the concerned purchase bills. In fact, this Court has closely analysed the concerned purchase bills and ultimately found that in all the bills, endorsements have been made to the effect that the goods have been received and found correct and a higher official has put his signature.

14. The specific case of the prosecution is that all those endorsements have been made only by the accused. Further, the accused has also put his signature as Ambrose. For the purpose of proving the said contentions put forth on the side of the prosecution, service of an expert by name Dr.M.A. Ali (P.W.10) has been utilized.

15. The specific evidence given by P.W.10 is that he compared the disputed signatures as well as letters found in the concerned documents with admitted writings as well as signatures of the accused and ultimately found both the disputed writings as well as signatures and admitted writings as well as signatures have been written by one and the same person.

16. Considering the testimonies of the witnesses mentioned supra, the Court can easily come to a conclusion that the accused has concocted purchase bills in the names of ''Infant Jesus Traders'' and ''Sagayamadha Traders'' and by utilising the same, he has withdrawn amounts mentioned in the final reports even without supplying goods and further, the prosecution has clearly established the fact that all endorsements made on the reverse sides of the purchase bills have been written only by the accused to suit his convenience.

 

17. In the instant cases, it is pertinent to note that a replete evidence is available on the side of the prosecution for the purpose of coming to a conclusion that necessary entries have not been made in the Stock Register. If the goods mentioned in the purchase bills have been really purchased, definitely necessary entries would have found place in the Stock Register. But as pointed out earlier, no entries have been made.

18. Even assuming without conceding that failure to make necessary entries in the Stock Register has not supported the case of the prosecution, the prosecution has clearly established that the accused has run the two business, mentioned supra, by way of changing his name and only on the basis of his direction, P.W.12, Kishorekumar has prepared bogus bills in the names of ''Infant Jesus Traders'' and ''Sagayamadha Traders''. Therefore, viewing from any angle, the contentions put forth on the side of the appellant/accused cannot be accepted.

19. The Courts below, after considering the available evidence on record, have rightly found the appellant/accused guilty under Section 420, 120-B r/w. Section 420 of the India Penal Code. In the light of the discussion made earlier, this Court has not found any error nor illegality in the concurrent judgments passed by the Courts below and therefore, these criminal revisions are liable to be dismissed.

In fine, these criminal revision cases are dismissed. The concurrent judgments, passed in Calendar Case Nos. 10079, 10078 and 10077 of 1989 as well as in Criminal Appeal Nos. 3, 2 and 1 of 1998, by the Courts below, are confirmed.

 