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**(2015) 09 SC CK 0173**  
**In the Supreme Court Of India**  
**Case No : Criminal Appeal No. 1693 of 2010**

K.M. Krishnaraj

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

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**Date of Decision :** 16-09-2015

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 313  
Penal Code, 1860 (IPC) — Section 419, 420, 467, 468, 471

**Citation :** (2015) 4 RCR(Criminal) 523

**Hon'ble Judges :** H.L. Dattu, C.J.I. and Arun Mishra, JJ.

**Bench :** Division Bench

**Advocate :** G.M. Akbar Ali, Sr. Advocate, V. Balaji, Atul Sharma, Asaithambi, Sripradha and Narendra Kumar, Advocates, for the Appellant; M. Yogesh Kanna and Jayant Patel, Advocates, for the Respondent

**Final Decision :** Allowed

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## Judgement

1. This appeal is directed against the judgment and order passed by the High Court of Judicature at Madras in Criminal Revision Case No. 1700 of 2004, dated 10.11.2009. By the impugned judgment and order, the High Court has confirmed the order of conviction and sentence passed by the Court of Additional District and Sessions Judge, Chennai convicting the Appellant for the offence Under Sections 467, 468, 471 read with Sections 468, 419 and 420 of the Indian Penal Code, 1860 (for short, "the IPC"). Brief facts of the prosecution case are:

On 21.03.1994, the Appellant impersonated himself as Rajabathr and obtained a demand draft bearing No. 9837/2510 for Rs. 10/- from Union Bank of India, Anukkavur Branch, South Arcot District. The Appellant altered the amount mentioned in the demand draft from Rs. 10/- to Rs. 1,35,000/- and gave the said demand draft to M/s. Ramesh Automobiles and Finance Consultants. He thereafter purchased a car (Standard 2000) bearing registration No. TSA 4536 for Rs. 1,25,000/- on 23.03.1994. The demand draft was presented before the Andhra Bank, Triplicane Branch.

2. One N. Gopalaswamy (PW-1), Manager of Union Bank suspected the demand draft and intimated the bank. He later came to know that the amount has been already withdrawn by Mr. Ramesh, proprietor of M/s. Ramesh Automobiles and Finance Consultants. PW-1 had gone to M/s. Ramesh Automobiles and Finance Consultants, along with his staff. At that time, Mr. Ramesh had identified the Appellant. The Appellant was caught hold of and handed over to the police on 25.03.1994. One Syed Razak, Sub-Inspector of Police (PW-6) registered a case Under Sections 419, 420, 467, 468, 471 Indian Penal Code read with 468 of the Indian Penal Code and prepared the FIR. PW-6 then examined the Appellant in the presence of Krishnamoorthy (PW-2) and N. Sankar (PW-3). The Appellant gave a confession stating that he was ready to hand over the car, which was in breakdown stage. On 26.03.1994, PW-6 seized the car in presence of one Venkataraj and on the same day he also seized Rs. 9000/- from Mr. Ramesh. Further, specimen and signatures of the Appellant were sent to the Forensic Sciences Department and the expert gave his report. After the completion of investigation charge-sheet was filed. The charges were framed Under Sections 419, 467, 468, 471 read with Section 468 and Section 420 of the Indian Penal Code to which the Appellant pleaded not guilty and the case was committed to trial.

3. The prosecution examined six witnesses in order to substantiate its case. After the closure of the prosecution evidence, statement of the Appellant Under Section 313 of the Code of Criminal Procedure, 1973 was recorded and he denied the evidence.

4. The learned Magistrate after examining the evidence on record observed that the Appellant in his defense had pleaded that he was a mentally affected person during the period in 1992-1996 and during that period he was incapable of understanding what he has done. It was observed that the Appellant has not adduced sufficient evidence in that regard, and only submitted the prescriptions. The learned Magistrate came to the conclusion that the Appellant is guilty and convicted him Under Sections 467, 468, 471 read with 468, 419 and 420 and imposed a sentence of one year rigorous imprisonment and a fine of Rs. 500/- for each count and in default of payment of fine, further rigorous imprisonment of three months for each of the offences, by order dated 05.09.2000. The sentences were ordered to run concurrently.

5. Aggrieved by the order so passed by the learned Magistrate, the Appellant preferred an appeal before the First Appellate Court. After a detailed examination of oral and documentary evidence on record, the First Appellate Court concurred with the findings of the learned Magistrate and affirmed the order of conviction and sentence passed by the learned Magistrate, by order dated 05.09.2004.

6. Aggrieved by the order so passed by the First Appellate Court, the Appellant filed Criminal Revision before the High Court. The counsel for the Appellant therein would contend that the owner of M/s. Ramesh Automobiles and Financial Consultants and the person who had issued the demand draft have not been

examined. Further, it was submitted that the Appellant was suffering with mental ailment and did not understand his actions during the period in 1992-1996.

7. The High Court observed that what needs to be considered in the present case is whether the Appellant has impersonated himself as Rajabather and committed cheating, thereby, dishonestly induced delivery of property and committed forgery of valuable security while using it as genuine document. In this set of circumstances, the non-examination of Mr. Ramesh is not fatal to the case of prosecution. Further, the High Court observed that considering the evidence of PW-1, PW-2 and PW-3, the non-examination of the person who gave the demand draft is not fatal. The officer who issues the demand draft deals with a lot of customers everyday while discharging his official duties. The demand draft has been proved to be fabricated, as per the evidence of PW-5, who is the handwriting expert the fabrication is committed by the Appellant-herein. In the above set of circumstances the non-examination of the person who has issued the demand draft does not destroy the case of the prosecution.

8. The High Court further observed that in so far as the defense of mental ailment is concerned, as it has also been observed by the learned Magistrate and the First Appellate Court, there is not sufficient evidence to prove the same. The doctor who treated the ailment as per the case of the Appellant has not been examined. Further except the prescriptions, no other documents or certificates have been filed. In the prescriptions, the name of the Appellant has been mentioned but the address and age are not mentioned. The High Court on the basis of examination of the evidence concurred with the findings of the First Appellate Court and dismissed the revision filed by the Appellant while confirming the order of conviction and sentence passed by the learned Magistrate and the First Appellate Court.

9. Aggrieved by the aforesaid order, the Appellant is before us in this appeal.

10. We have heard learned Counsel for the parties to the lis.

11. The learned Senior Counsel for the Appellant would submit that in the absence of examination of the bank official who issued the demand draft and the proprietor of M/s. Ramesh Automobiles and Finance Consultants, the case of the prosecution cannot be sustained.

12. We have considered the submissions made by the learned Senior Counsel for the Appellant. In our considered opinion the contentions raised have already been adequately addressed by the High Court wherein the High Court has rightly observed that the non-examination of the bank official and the said proprietor would not prove to be fatal to the case of prosecution considering the other incriminating evidence available on record and the circumstances of the present case.

13. On the question of sentence the learned Senior Counsel would submit that the incident is of 1994 and long time has elapsed since then, hence the sentence

be reduced. We are of the view that taking into account the serious nature of the offence committed the sentence cannot be reduced.

14. In light of the aforesaid, we are of the considered opinion that there is no good ground for interference in the impugned judgment and order by the High Court. Accordingly, the appeal is dismissed. The Appellant's sentence has been suspended by order dated 06.09.2010. Since, we are dismissing the appeal, the concerned authorities are directed to take him into custody forthwith to serve the remaining period of sentence, if not already served.

Ordered accordingly.