

(2018) 01 MAD CK 0409

In the Madras High Court

Case No : 258, 265, 281, 287 and 301 of 2009

Rathnavel & Ors

APPELLANT

Vs

State by Inspector of Police & Anr

RESPONDENT

Date of Decision : 23-01-2018

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 427](#) - Sentence on offender already sentenced for another offence
[Indian Penal Code, 1860](#), [Section 420](#),
[Section 468](#)

Citation : (2018) 01 MAD CK 0409

Hon'ble Judges : G.Jayachandran

Bench : Single Bench

Advocate : V.Ramana Reddy, N.R.Anantha Ramakrishnan, A.V.Somasundaram, K.Srinivasan

Final Decision : Disposed Off

Judgement

Rank of

the

accused", Conviction under Section, Sentence imposed by the trial Court,

A1 to A6, "Under Sections 120-B r/w 420, IPC, under Section 5(2) r/w 5(1)(d) of PC Act, 1947 and Section 13(2) r/w 13(1)(d) of PC Act, 1988", "Each of them to undergo RI for 2 years and to pay a

fine of Rs.5,000/- i/d to undergo RI for 6 months",

A5, Under Section 420 IPC, "To undergo RI for 4 years and to pay a fine of Rs.5,000/- i/d to undergo RI for 6 months",

A6, Under Sections 467 IPC and 467 r/w 471 IPC each, "To undergo RI for 4 years each and to pay a fine of

Rs.5,000/- i/ d to undergo RI for 6 months",

A3,"Under Sections 406, 467, 467 r/w 471 IPC","To undergo RI for 4 years each and to pay a fine of

Rs.5,000/- i/d to undergo RI for 6 months",

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A2,"1.Under Section 419 IPC

2.Under Section 467 IPC, 467 r/w 471 IPC each","1.To undergo RI for 3 years and to pay a fine of

Rs.5,000/- i/d to undergo RI for 6 months

2.To undergo RI for 4 years each and to pay a fine of

Rs.5000/- in default to undergo 6 months",

A4,Under Section 419 IPC,"To undergo RI for 3 years and to pay a fine of

Rs.5,000/- i/d to undergo RI for 6 months",

A1,"Under Section 13(2) r/w 13(1)(d) of PC Act, 1988","To undergo RI for 2 years and to pay a fine of

Rs.5,000/- i/d to undergo RI for 6 months",

Saravana Lathe Works proves the existence of M/s Saravana Lathe Works. The trial Court has contrarily relied upon the evidence of PW4-,,,

postman, PW15- Commissioner of Tambaram Municipality and PW-16-CTO Tambaram Circle. The evidence of PW- 6[Mr.Kanniappan] is not",,,,

reliable since he has deposed in favour of the prosecution to save himself from the criminal case and civil liability for furnishing the property as,,,

collateral security.,,,,

14. The evidence of PW6 [Mr.K.Kanniappan] and PW7 [Mr.Govindasamy] and PW9 in respect of documents Exs.P9 to P12 have not been,,,

considered in proper perspective which will disprove the case of the prosecution that false and forged documents were dishonestly enclosed to,,,

avail the loan. While PW-18 admits creation of equitable mortgage of the property, the trial Court ought not to have held that equitable mortgage",,,,

was created by impersonation. Since Sanatorium Branch was not notified to create equitable mortgage, the parties have gone to Anna Nagar",,,,

Branch for creating equitable mortgage. This fact has been admitted by PW-2.

While so, the trial Court should not have relied upon the vigilance",,,
report Ex.P48 prepared by PW-18. When the prosecution has failed to prove
common intention, common design, conspiracy, meeting of mind",,,
etc., for fabrication of records, misappropriation, cheating by the appellant, the
trial Court purely based on hypothetical material had convicted the",,,
appellant without taking note of the fact that the entire loan amount had been
cleared pending trial. Hence, the trial Court judgment is liable to be",,,
set aside.,,,

15. Above all, the trial Court ought to have given due consideration for the
evidence of DW1 and DW3 who have categorically deposed that the",,,
entire loan amount arising out of the disputed VYAPARA Loan Scheme had been
discharged by A2[Palanivel] and there is no material to,,,
prosecute the appellants any further.,,,

16. T.N.Ravi[A6], who preferred Crl.A.No.268 of 2009 died pending appeal.
Hence, the appeal is abated.",,,

17. Per contra, learned Special Public Prosecutor for CBI Cases submitted that
the prosecution has proved beyond doubt that A1[J.S.Prabhu] as",,,

Bank Manager failed to conduct pre-sanction inspection or post-sanction
inspection regarding the loan sanctioned by him to non-existing firm, in",,,

connivance with A2[Palanivel]. The documents furnished along with loan
applications are proved to be fabricated documents. The patta, chitta,",,

encumbrance certificate were forged and fabricated by A3[Gunasekaran] with the
help of other accused and rubber stamp maker PW-,,,

17[Mr.Panchacharam]. While A2[Palanivel] had impersonated himself as
Ramasamy and Kannan to encash the cheque from the account of M/s,,,

Saravana Lathe Works. A4[Rathnavel] has impersonated as Kannippan the
guarantor and had cheated the bank. The evidence of PW-4,,,

[Mr.B.Abraham] postman of Tambaram Sanatorium Post office,
PW-15[Mr.S.Mohan Kumar] Municipal Commissioner, Tambaram Municipality",,,

and PW-16[Mr.M.Abdul Karim] CTO incharge of Tambaram Assessment Circle-I go
to show that there is no M/s Saravana Lathe Works in the,,,

said address and no license issued to Murugesan to run Lathe works. Thus, for
non-existing firm, SSI certificate had been obtained. Loan has been",,,

issued based on fabricated documents and fake guarantor. The accused persons
in pursuance to the conspiracy to cheat the bank had fabricated,,,

the documents and impersonated themselves as guarantor and proprietors of Hari Agency so as to siphon out the loan amount credited into the,,,

account of Murugesan Proprietor M/s Saravana Lathe Works. Having proved the case against the accused beyond doubt, the trial Court judgment",,,

has to be confirmed and these appeals are to be dismissed.,,,

18. Heard the learned counsels for the respective appellants and the learned Special Public Prosecutor for CBI Cases. Records perused.,,,

19. Points for consideration:,,,

Whether the trial Court erred in appreciating the facts and evidence while holding the appellant guilty?,,,

20. The trial Court, after considering the evidence let in by the prosecution and the defence, had framed 9 points for consideration and after due",,,

consideration and application of law, had held the accused guilty. On reappraisal of the evidence, this Court finds that M/s Saravana Lathe",,,

Works No.80, GST Road, Tambaram, Sanatorium, is a non-existing firm and Murugesan [A5] had made a loan application [Ex.P27] with false",,,

information as if he is dealing with auto mobile spares since 15.02.1999 and he need working capital of Rs.3 lakhs for purchase of raw materials.,,,

He has shown one Kanniappan as guarantor and his property at Kizmudhachambedu village as collateral security. It is proved through hand writing,,,

expert that the signature of Kanniappan found in Ex.P27 is that of A2 [Palanivel]. The evidence of Municipal Commissioner as well as CTO with,,,

whom any industry has to obtain permission and license, had deposed before this Court that within their jurisdiction there is no industry by name",,,

M/s Saravana Lathe Works Proprietor Mr.Murugesan in Door No.80 GST Road, Tambaram, Sanatorium.",,,

21. While so, the non-existing of firm M/s Saravana Lathe Works to which A1[J.S.Prabhu] has sanctioned the loan is proved beyond doubt. Had",,,

A1[J.S.Prabhu] honestly conducted pre-sanction inspection, he would have come to light about this non-existence. His failure to conduct pre-",,,

sanction inspection had led to sanction of loan in favour of Murugesan [A5]. The prosecution has examined PW4 [Mr.B.Abraham] postman of,,,

that area and also marked Ex.P7 the return registered cover addressed to Mr.Murugesan, Proprietor of M/s Saravana Lathe Works, Door No.80",,,

GST Road, Tambaram so as to establish the nonexistence of the said firm." ,,,

22. The trial Court has not merely relied on the evidence of PW4[Mr.B.Abraham] and returned cover [Ex.P7] to ensure the allegation of ,,,

nonexistence, the evidences of PW-15 and PW-16, which have been mentioned above, were also taken note by the trial Court to conclude that" ,,,

M/s Saravana Lathe Works does not exist in the given address. ,,,

23. As far as the documents accompanied with the loan application, they are proved to be forged documents through PW-6[Mr.K.Kanniappan]" ,,,

who has deposed that he approached one Meeran for loan of Rs.10,000/- , who in turn induced him to A3[Gunasekaran]. At the request of" ,,,

A3[Gunasekaran], who promised to arrange loan, PW-6 [Mr.K.Kanniappan] has handed over the sale deed [Ex.P9] and patta [Ex.P10] to" ,,,

Gunasekaran [A3]. After receiving these documents, A3[Gunasekaran] has given Rs.10,000/-. He has misappropriated these documents by" ,,,

making use of the documents given by PW-6[Mr.Kanniappan] as collateral security for the loan in the name of Murugesan. A3[Gunasekaran]by ,,,

forging the signature of Kanniappan in the documents like loan application Ex.P27, Statement of Assets and Liabilities Exs.P32 and P33," ,,,

Guarantee Agreement Ex.P19, Arbitration Agreement Ex.P20, Memorandum of deposit of title deed Ex.P21 had facilitated A1[J.S.Prabhu] to" ,,,

Rank of

the

accused",Convicted by the trial Court under Section,Sentence imposed by the trial Court,"Sentence modified by this

Court

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,,,

A1 to

A6","Under Sections 120-B r/w 420, IPC, under

Section 5(2) r/w 5(1)(d) of PC Act, 1947 and

Section 13(2) r/w 13(1)(d) of PC Act, 1988","Under Sections 120-B r/w 420, IPC, under

Section 5(2) r/w 5(1)(d) of PC Act, 1947 and

Section 13(2) r/w 13(1)(d) of PC Act, 1988",Remains unaltered

A5,Under Section 420 IPC,"To undergo RI for 4 years and to pay a fine of Rs.5,000/- i/d to undergo RI for 6 months","To undergo RI for 2 years. No change in the fine imposed by the trial Court.

A6,"Under Sections 467 IPC and 467 r/w 471 IPC each","To undergo RI for 4 years each and to pay a fine of Rs.5,000/- i/ d to undergo RI for 6 months","To undergo RI for 2 years each. No change in the fine imposed by the trial Court.

A3,"Under Sections 406, 467, 467 r/w 471 IPC","To undergo RI for 4 years each and to pay a fine of Rs.5,000/- i/d to undergo RI for 6 months","To undergo RI for 2 years each. No change in the fine imposed by the trial Court.

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Rs.5,000/- i/d to undergo RI for 6 months

2.To undergo RI for 4 years each and to pay a fine

of Rs.5000/- in default to undergo 6 months","(1)To undergo RI for 2 years.

No change in the fine imposed by the trial Court.

(2)To undergo RI for 2 years

each. No change in the fine

imposed by the trial Court.

A4,Under Section 419 IPC,"To undergo RI for 3 years and to pay a fine of Rs.5,000/- i/d to undergo RI for 6 months","To undergo RI for 2 years. No change in the fine imposed by the trial Court.

A1,"Under Section 13(2) r/w 13(1)(d) of PC Act,
1988","To undergo RI for 2 years and to pay a fine of
Rs.5,000/- i/d to undergo RI for 6 months",Remains unaltered