
(1998) 07 MAD CK 0025

In the Madras High Court

Case No : Criminal Revision Case No. 707 of 1996

Vadivelu and Another

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 20-07-1998

Acts Referred:

Penal Code, 1860 (IPC) — Section 419, 468, 471

Citation : (1999) CriLJ 369

Hon'ble Judges : M. Karpagavinayagam, J

Bench : Single Bench

Advocate : K. Srinivasan, for the Appellant; C.M. Gunasekaran, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

M. Karpagavinayagam, J.—The convention imposed upon the petitioners for the offences under Sections 419, 468 and 471, I.P.C. is the

subject-matter of challenge in this Revision.

2. The case of the prosecution is this. The petitioners, A1 and A2, were employed as Clerk and Cashier respectively in Madras Elastimas

Company, P. W. 4 used to supply fire wood to the said company. A1 received four cheques for a total sum of Rs. 23,378-40 towards the supply

of fire wood on behalf of P.W. 4 from the company. Instead of handing over the cheques to P.W. 4, A1 opened a S.B. A/c at the Central Bank at

Maraimalai Nagar in the name of P.W. 4 on being introduced as P.W. 4 to the bank by A2, who was having account with the said bank.

Thereafter, A1 deposited those cheques in the said account and encashed the same by way of withdrawal slips. Thus, the petitioners committed

fraud on the bank as well as on P.W.4.

3. During the course of trial, the prosecution examined 10 witnesses and filed Eix.P-1 to Ex.P-26. The trial Court convicted the petitioners for the offences referred to above. The lower appellate Court as well concurred with the finding of the trial Court and confirmed the same. Hence, the Revision.

4. Mr. Srinivasan, the learned Counsel appearing for the petitioner, would submit that the identity of A1 has not been established by P.W. 8, who is the bank officer and that in the absence of any test identification parade, the prosecution case cannot be accepted. It is further submitted that as regards A2, the part played by A2 is only that he introduced A1 to the bank and nothing more and (hat therefore, in the absence of any other evidence, A2 ought not to have been convicted.

5. On these aspects, the learned Government Advocate is heard.

6. Admittedly, P.W. 4 supplied fire wood to the company for which P.W. 5 is the proprietor. It is also established that towards the receipt of supply, the cheques were being issued in the name of P.W. 4 by the company. The prosecution case is that A1, who belonged to the same place, of P.W. 4, received the cheques on behalf of P.W. 4 and that he opened an account in the name of P.W. 4 and got the cheques encashed.

7. There are two formidable materials available in the case on record as against A1. First, the writing in the withdrawal slips and the signature as "Nigeswiran" was found to be tallied with the writing of A1 as found by P. W. 7. Secondly, the pass book issued by the bank in Maraimalai Nagar opened in the name of P.W. 4 by A1 was seized from the house of A1.

8. This apart, P.W. 8 the Bank Officer would say that A1 came to the bank for the purpose of opening an account for which she advised to bring another account holder to recommend and that thereafter, A1 brought A2, an account holder in the said bank, who. recommended, him and thereby, the account was opened. P.W. 8 also would say that the cheques issued by P.W. 5 company in favour of Nageswaran were put in the same account and collected then and there. Therefore, it cannot be said a separate identification parade is necessary to place reliance on the evidence of P.W. 8.

9. Furthermore, P.W. 8 happened to see A1 on several occasions in day time in the bank. In such a situation, the evidence of P.W. 8 relating to

the identity of A1 cannot be rejected. Thus, in my view, the conviction upon A1 is correct and unassailable.

10. As regards, A2, it is contended by the Counsel for the petitioner, by placing reliance on the decision of the Apex Court reported in (1995) 2

Mad LW 426 (Vellaiyan R.M. v. State of Tamil Nadu) that mere introduction of A1 by A2 to the bank for opening an account in the bank would

not be sufficient to hold that he was a party to the crime committed by A1.

11. No doubt, in the said decision, it was held that the act of the accused, introducing the other accused representing a firm, for opening a Current

Account, which was found to be fictitious, cannot fasten criminal liability so as to attract the penal provisions. But the facts of that case do not

apply to the case on hand.

12. In the said case, the appellant before the Apex Court introduced the co-accused, representing a firm, for opening Current Account without

knowing that it was a fictitious firm. In fact, it was held in the said judgment that there was no material to show that the appellant had known that

the other accused had floated a fictitious firm.

13. So, it is in that context, the Apex Court acquitted the appellant with the observation that tonnes of suspicion are nothing in contract with an

ounce of proof. But, in this case, Ex. P-14 would make it clear that A2 recommended A1 as "Nageswaran" knowing fully well that he was not

"Nageswaran".

14. That apart, A1 and A2 were working in the same company. It is the evidence of P.W. 8 that she told A1 that account can be opened only

when it was recommended by an account holder and on that A2, an account holder, was brought by A1. P.W. 8 would specifically state that the

form for opening the account was filled up by the accused and the same was signed by them in her presence. She would state, both in chief and

cross-examination, that after A1 signed as Nageswaran in the form in Ex. P-13 in the specimen signature column, A2, an account holder,

introduced A1 to her and put his signature and that thereafter, she signed in the said form.

15. In the light of this evidence, I am of the view, that there is no suspicion whatsoever to the fact, that A2 Chokalingam introduced A1 Vadivelu

as "Nageswaran" with full knowledge that he was not "Nageswaran".

Therefore, there are sufficient materials to hold that both the petitioners jointly committed the offences and as such, the Revision filed by them does not have any merit.

16. In the result, the Revision is dismissed.