

R.Kannan Vs. State Through

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Court : Chennai

Decided On : Jun-30-2015

Judge : D.Hariparanthaman

Appellant : R.Kannan

Respondent : State Through

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED: 30.06.2015 CORAM THE HONOURABLE MR.JUSTICE S.NAGAMUTHU CrI.R.C.(MD).No.939 of 2007 R.Kannan .PetitioneRs.Appellant/Sole accused versus State through The Inspector of Police, Virudhunagar West Police Station, Virudhunagar.

(Crime No.198 of 1999) .Respondent/ Respondent/Complainant PRAYER Criminal revision filed under Section 397 and 401 of Cr.P.C.against the judgment, dated 11.12.2007 in C.A.No.57 of 2007 by the learned Additional Sessions Judge (Fast Track Court).Virudhunagar, confirming the conviction and sentence, dated 21.07.2007, made in C.C.No.193 of 2003, by the learned Judicial Magistrate No.I, Virudhunagar.

!For Petitioner : Mr.G.Karuppasamy Pandian (Legal Aid Counsel) ^For respondent : Mr.P.Kannithevan, Government Advocate, (Criminal side) :

ORDER

The petitioner was originally the fiRs. accused in C.C.No.193 of 2003.

One Mr.Muthaiah was the second accused in the said case.

Mr.Muthaiah died during the pendency of the case for trial.

Thus, the petitioner alone faced the trial.

He stood charged for the offence under Sections 420 and 465 r/w 34 IPC.

By judgment dated 21.07.2007, the trial Court acquitted him from the charge under Section 465 r/w 34 IPC, but convicted him under Section 420 IPC and sentenced him to undergo rigorous imprisonment for one year and to pay a fine of Rs.2,000/-, in default to undergo simple imprisonment for six months.

Challenging the same, the petitioner filed an appeal in C.A.No.57 of 2007.

The learned Additional Sessions Judge (Fast Track Court).Virudhunagar, by judgment dated 11.12.2007, dismissed the appeal, thereby confirming the conviction and sentence imposed by the trial Court.

Challenging the same, the petitioner has come up with this revision.

2.The case of the prosecution in brief is as follows; (a) The petitioner, along with the second accused, made a paper advertisement to the effect that they were making arrangements to get selection for the post of Jawans in the Indian Army.

On seeing the said advertisement, PWs.1, 2, 3 & 8 approached these accused at the place mentioned in the advertisement.

At that time, PW1 sought the help of these accused for getting a job in the Army for his son.

These accused demanded a sum of Rs.45,000/- for the said purpose.

Accordingly, in the month of March 1999, PW1 at about 12.00 noon, met the accused in a room in a complex at Pullakkottai Road and paid Rs.45,000/- to the petitioner herein.

The petitioner promised him that soon he would get a job for his son.

PW2 is the son of PW1, who has also spoken about the payment of Rs.45,000/- to this accused and the promise made by him to get him admission in the Indian Army.

(b) PW3 is yet another victim.

He has stated that he paid Rs.25,000/- to the petitioner on the promise made by him that he would get him a job in the Indian Army and subsequently, he did not secure any job.

When he demanded for return of the said amount, a sum of Rs.9,000/- was repaid by the petitioner to the father of PW3.

PW4 is yet another victim, who has stated that he paid Rs.5,000/- as advance for the said purpose.

But, after one month, he went back to the petitioner and wanted him to repay the amount as he was not willing to join in the Indian Army, but the money was not repaid.

(c) One of the allegations against the petitioner is that he created bogus school certificates for these victims as though they had studied upto 9th standard, which is the basic qualification for admission in the Indian Army.

PW5, who was the then Headmaster of T.Ramanathapuram Government High School, had stated that the certificates created for the purpose of the above transaction were all sent to him for verification and on verification, he found that those certificates were all bogus.

PW7 - Village Administrative Officer in whose presence the petitioner was arrested has stated that on the confession of the petitioner herein, the above school certificates were all recovered from his possession.

(d) PW8 is yet another victim, who has stated that he has paid Rs.5,000/- on the promise to get a job for him in Tamil Nadu Electricity Board.

But, he did not get any job for him and after one year, a sum of Rs.2,000/- was repaid, but Rs.3,000/- was not repaid by him.

With these allegations, a complaint was made upon which PW10 has registered the case, investigated the same and laid the charge sheet.

(e) Based on the above materials, the trial Court framed charges against the petitioner.

He denied the same as false.

In order to prove the case, on the side of the prosecution, as many as 10 witnesses were examined and eight documents were exhibited.

Out of the said witnesses, as I have already narrated, the persons, who have paid money on the false promise to the accused, have vividly spoken about the same.

The school certificates created by the accused also have been found to be bogus, according to the Headmaster of the School, who has been examined as PW5.

PW7 has spoken about the arrest and confession of the accused.

PW10 has spoken about the investigation done.

(f) When the above incriminating materials were put to the accused under Section 313 of Cr.P.C., the accused denied the same as false.

According to him, actually, the money was paid to one Mr.Subbaraj by these victims and since Mr.Subbaraj could not be traced, final report has been filed against the petitioner and other accused.

(g) Having considered the above materials, the trial Court convicted the petitioner and accordingly sentenced him.

The appeal filed by him was also dismissed.

That is how he is before this Court with this revision.

3.I have heard the learned counsel Mr.G.Karuppasamy Pandian, appointed as Legal Aid Counsel by this Court, since the counsel on record had not made appearance.

I have also heard the learned Government Advocate (Criminal side) appearing for the respondent.

4.The learned counsel appearing for the petitioner would submit that there is no document to show that the money was actually paid by so called victims to the petitioner.

He would further submit that though it is the case of the prosecution that the petitioner was arrested on 05.06.1999, the investigating officer has admitted that he was arrested as early as on 04.06.1999 itself and therefore, the recovery of the school certificates from his possession cannot be believed.

The learned counsel would further submit that Ex.P2, the paper publication, has not been proved to have been made by this petitioner.

Thus, according to the learned counsel, the prosecution has failed to prove the case.

5.The learned Government Advocate (criminal side) would vehemently oppose this revision.

According to him, the evidences of the victims would clearly go to show that they paid money on false promise made by the petitioner.

He would further submit that they have very categorically stated that the money was paid only to this petitioner and not to Mr.Subbaraj, as claimed by the petitioner.

He would further submit that though there is some small discrepancies in the investigation, it would not cause any dent in the case of the prosecution.

He would further submit that there is no denial that Ex.P2 was not issued by the petitioner.

6.I have considered the above submissions.

7.

There is no denial of the fact that in 'Dinathanthi' daily, the advertisement (Ex.P2) was published.

Of course, it is true that there is no direct proof that the publication was made by the petitioner.

But, the fact remains that when the victims went to the place mentioned in the advertisement, the accused, who is now no more, was present and there was a board put up outside the said room as '?Captain Security Service?'.The victims have very categorically stated that the money was paid only to the petitioner and at that time, he only promised to get job for them in the Indian Army.

According to these witnesses, the certificates showing that they have passed 9th standard were only prepared by the accused.

When these categorical statements project only against the petitioner herein, there is no reason to reject the same.

Though it is stated by the learned counsel for the petitioner that money was only paid to Mr.Subbaraj and not to this accused, absolutely there is no material even to infer the same to be true.

Thus, from the evidences of these victims.who have clearly deposed that on a false promise, the petitioner alone induced them to pay money to him and accordingly, he received money from them, the intention of the petitioner from the very beginning to cheat the victims is obvious, which has been clearly established by the prosecution.

Thus, I hold that the Courts below was right in convicting the petitioner.

8.Now, turning to the sentence, it is seen that innocent unemployed youths have been cheated by the petitioner by making false advertisement and by making false promise.

The offence is grave.

There are no mitigating circumstances available at all to reduce the sentence.

Thus, in my considered opinion, the sentence imposed by the trial Court is also very appropriate.

9.

In the result, I do not find any merit at all in this revision.

This revision fails and accordingly the same is dismissed.

The trial Court shall take steps to secure the accused and to commit him in prison so as to serve out the remaining period of sentence.

10.

The service rendered by the Legal Aid Counsel Mr.G.Karuppasamy Pandian is appreciated.

The Legal Aid Services Authority is directed to pay his remuneration, for which he is entitled to.

To 1.The Additional Sessions Judge (Fast Track Court).Virudhunagar.

2.The Judicial Magistrate No.I, Virudhunagar.

3.The Inspector of Police, Virudhunagar West Police Station, Virudhunagar.

4.The Government Advocate, Madurai Bench of Madras High Court, Madurai.

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