

Devendran Vs. State by Sub-inspector of Police

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Court : Chennai

Decided On : Dec-16-2005

Reported in : 2006(1)CTC440

Judge : K.N. Basha, J.

Acts : Evidence Act - Sections 114; Indian Penal Code (IPC) - Sections 420, 465, 468, 470, 471 and 511

Appeal No. : Criminal Revision Case No. 607 of 2004

Appellant : Devendran

Respondent : State by Sub-inspector of Police

Advocate for Def. : V. Jayaprakash Narayanan, Govt. Adv.

Advocate for Pet/Ap. : S. Ashok Kumar, Sr. Counsel for ;R. Jothimanian, Adv.

Disposition : Petition allowed

Judgement :

ORDER

K.N. Basha, J.

1. The Revision Petitioner is a qualified engineer, who suffered concurrent findings of conviction and sentence imposed on him by the courts below, for the alleged

offences punishable under Sections 468, 471 and 420 read with 511, I.P.C.

2. The trial court, by judgment dated 6.1.2003, passed in C.C. No. 717/1999, convicted the Revision Petitioner/ accused and sentenced him under Section 468 I.P.C. to undergo one year Simple Imprisonment and to pay a fine of Rs. 1,000/-, in default, to undergo one month Simple Imprisonment, under Section 471 I.P.C., sentenced him to one year Simple Imprisonment and to pay a fine of Rs. 1,000/-, in default, to undergo Simple Imprisonment for one month and under Section 420 read with 511 I.P.C., he has been convicted and sentenced to six months' Simple Imprisonment and to pay a fine of Rs. 1,000/-, in default to undergo one month Simple Imprisonment. The lower appellate court in the judgment dated 20.2.2004 rendered in Crl. Appeal No. 10/2003 confirmed the conviction and sentence imposed on the Revision Petitioner/accused, by the trial court. Hence, this Criminal Revision Case.

3. The main accusation alleged against the Revision Petitioner/accused is that on 21.8.1996, the accused prepared a false appointment order, Ex.P1, appointing him as B.E. Graduate (Apprenticeship) at Anna Transport Corporation, Johnsonpet, Salem, by forging the signature of the witness, P.W.3, who is the Deputy Manager of the Head Office at Salem and utilised the said appointment order as a genuine one and presented the same on 21.8.1996 at 11.00 a.m. to P.W.1, the Branch Manager of Anna Transport Corporation, Johnsonpet and attempted to cheat the witness, P.W.1, by convincingly inducing him and to allow him to join in the Department as an B.E. Graduate (Apprenticeship), as per the order issued by the witness Sathasivam, P.W.3 and thereby committed the offence punishable under Sections 468, 471 and 420 read with 511 I.P.C.

4. According to the prosecution, the accused is a qualified engineer holding B.E. degree. He had given an application to the Anna Transport Corporation, Salem for appointment as B.E. Graduate (Apprenticeship). He had submitted his application for the above said appointment. Thereafter, the accused made a representation through the Chief Minister's cell, Government of Tamil Nadu, on 25.7.1996, Ex.P4, to the General Manager, Anna Transport Corporation, Salem. The Anna Transport Corporation, on receipt of the representation of the accused, through the Chief

Minister's cell, gave a reply to the accused through Ex.P5, on 3.8.1996. It is stated in Ex.P5 reply, sent to the accused that they are taking action on the representation of the accused, dated 25.7.1996 and they would consider the case of the accused as and when the vacancy arises.

5. It is the further case of the prosecution that the accused on 21.8.1996 went to the office of P.W.1, the Branch Manager, Anna Transport Corporation, Johnsonpet, Salem at 11.00 a.m. and met P.W.1. The accused produced the appointment order Ex.P1 dated 3.8.1996 and in that appointment order, it is stated that on the application of the accused, the accused is directed to join duty on 21.8.1996 at Johnsonpet depot for training. The appointment order Ex.P1 is said to have been signed by P.W.3, the Deputy Manager, on behalf of the Managing Director, Anna Transport Corporation, Salem. P.W.1, on receipt of Ex.P1, appointment order produced by the accused, suspected the genuineness of the said document and thereafter he informed P.W.3 about the same over phone. After informing P.W.3, P.W.1 sent the accused along with one Settu to the Head Office, with the appointment order, Ex.P1, produced before him. P.W.3 verified the document Ex.P1 and came to the conclusion that the said document Ex.P1 is not genuine. According to P.W.3, the signature found in Ex.P1 is not that of P.W.3, and someone might have forged his signature. Thereafter, P.W.3, enquired the accused and it is claimed by P.W.3 that the accused has written a letter Ex.P6 in his presence and signed the same. In that letter Ex.P6, the accused admitted the offence and tendered apology for the same. Thereafter, P.W.3 gave a report Ex.P2, dated 21.8.1996 enclosing Ex.P6 letter said to have been written by the accused to Hasthampatti police station and also produced the accused before the police station. P.W.5, the Sub-Inspector of Police, Hasthampatti police station received the report Ex.P2 and registered the case in Cr. No. 828/1996, for the offences under Sections 420, 465, 468, 470 and 471 I.P.C., on 28.1.1996 at 5.00 p.m. Thereafter, P.W.5 arrested the accused and seized the documents under Form-95, dated 25.7.1996. P.W.5 also sent the seized documents for handwriting expert, through the Magistrate Court concerned.

6. P.W.6, the Sub-Inspector of Police, Hasthampatti police station took up further investigation. He sent the specimen signature of P.W.3 and the signature of

P.W.3, contained in Ex.P1 appointment order, to the handwriting expert and then received the report of the Forensic Sciences Laboratory, Ex.P10, through the Magistrate court concerned. P.W.7 is the Head Clerk of the Judicial Magistrate Court No. 3, Salem, and he speaks about the receipt of requisition of P.W.6 and sending the said request to the handwriting expert and also as to the receiving of the report from the Forensic Sciences Laboratory, Ex.P10. P.W.6, after completion of investigation, filed charge-sheet against the accused.

7. Heard the arguments advanced by Mr. S. Ashok Kumar, learned Senior Counsel appearing for the Revision Petitioner and that of the learned Government Advocate (Crl. Side).

8. Learned Senior Counsel appearing for the Revision Petitioner/accused while assailing the judgment of conviction and sentence passed by the Courts below, vehemently contended that the prosecution has miserably failed to establish the guilt of the accused. Learned Senior Counsel also took me to the relevant materials available on record both oral evidence and the documentary evidence, namely, the Exhibits marked by the prosecution.

9. The main contention put forward by the learned Senior Counsel appearing for the Revision Petitioner is that the entire prosecution case is mainly based on the letter Ex.P6 said to have been written by the accused, sitting in front of P.W.3 and in that Ex.P6 letter, the accused has admitted the offences and tendered apology for the same. According to the learned Senior Counsel appearing for the Revision Petitioner, the definite stand taken by the accused is that he has not written any such letter, much less Ex.P6 letter and the handwriting in Ex.P6 letter as well as the signature are also not that of him. It is the further contention of the learned Senior Counsel that the prosecution, for the reasons best known to them, have chosen to get specimen signature and the handwriting of P.W.3 only and sent the same to the handwriting expert for his opinion. The specimen signature and the handwriting of the accused were not at all taken by the investigating agency. Further, Ex.P10, the opinion of the Forensic Sciences Laboratory is to the effect that the signature and the handwriting found in Ex.P6 are not that of P.W.3. Learned Senior Counsel would contend that the prosecution miserably failed to

establish that the letter Ex.P6 was written and signed by the accused. Therefore, the learned Senior Counsel contended that under the above said circumstances, there is absolutely no materials produced by the prosecution to connect the accused with the offences against him.

10. Per contra, learned Government Advocate (Crl. Side), contended that the prosecution seized and marked the so-called appointment order, Ex.P1, which was produced by the accused, before P.W.1. He also contended that according to P.W.3, the accused was produced before him, through one of his subordinates, by Settu and the accused appeared before him and wrote Ex.P6, sitting in front of him. Therefore, it is the contention of the learned Government Advocate that the evidence of P.W.3 has to be believed, as, either P.W.3 or P.W.1 or any other official witnesses, have any animosity to falsely implicate P.W.3 in this case.

11. I have carefully considered the rival contentions of both sides and also perused the materials available on record. The undisputed fact remains in this case is that the accused is a qualified engineer holding B.E. Degree and he has applied for B.E. Graduate (Apprenticeship) post, to the Anna Transport Corporation, Salem. It is also admitted by the prosecution that the accused has sent representation to the Chief Minister's cell, Chennai. P.W.3 received the representation and he sent a reply, Ex.P5, to the accused stating that the case of the accused would be considered as and when the vacancy arises. It is relevant to be noted that Ex.P1, the appointment order, said to have been produced by the accused, is a type-written one and that too in the letterhead of Anna Transport Corporation. There is absolutely no explanation from the prosecution side as to how the letterhead of a State-owned Transport Corporation, named Anna Transport Corporation, has come to the hands of a third person, namely, the accused. On this aspect, the prosecution wants to rely only on Ex.P6, the letter given by the accused to P.W.3, which was disputed by the accused. The prosecution has no explanation at all as to how a letterhead of State-owned Transport Corporation was used by the accused. It is also relevant to be noted, at this juncture, that the accused, who is a qualified engineer went and met the officials of Anna Transport Corporation, namely, P.W.1, personally and produced the appointment order, Ex.P1 along with the cover. P.W.1 has admitted that the

accused produced the appointment order, Ex.P1, along with the cover. It is also the case of P.W.1 that only on seeing the said cover, he got suspicion and he came to the conclusion that the appointment order produced by the accused is not a genuine one. But, unfortunately, P.W.1 has not produced the said cover during the course of investigation. The cover said to have been received by P.W.1 is a very vital document and the non-production of the same is fatal to the prosecution case. This court left with no other alternative except to draw adverse inference against the prosecution under Section 114(g) of Indian Evidence Act.

12. P.W.1, who claimed to have entertained doubt over Ex.P1, the appointment order, sent the accused along with one Settu to P.W.3. Further, the said settu also was not examined by the prosecution. P.W.3, the Deputy Manager, Anna Transport Corporation, Salem has not stated in the chief-examination, whether Ex.P6 letter was written in his presence. He has simply stated that Ex.P6 letter was produced by the accused. But, in cross-examination, P.W.3 has asserted that the accused has written Ex.P6 only sitting in front of him and signed the same in his presence. According to P.W.3, the accused was produced before him by 3.00 p.m. on 21.8.1996. But, the accused, according to P.W.1, met him at 11.00 a.m. on 21.8.1996. Thereafter, according to P.Ws.1 and 3, the accused was sent to the police station and P.W.5, received the report, only at 5.00 p.m. It is curious to note as to why these official witnesses have taken nearly more than 5 Hrs., to give the report, to the police and produce the accused before them. Therefore, the whole version of P.Ws.1 and 3 is unbelievable and unacceptable. There is absolutely no explanation as to why they have taken so much time in giving the report, Ex.P2, to the police and producing the accused before them. If P.Ws.1 and 3 had entertained doubt as to the genuineness of Ex.P1, appointment order, they could have immediately sent the accused to the police station and thereafter it is only for the police to enquire about the genuineness of Ex.P1. It is also the case of the prosecution, as per Ex.P6 letter said to have been written by the accused, that Ex.P1, the appointment order was typed in the letterhead of Anna Transport Corporation, in a typewriting institute at Salem. But, the Investigating Officer has not examined any person from the typewriting institute, to prove that Ex.P1 was typed at the instruction of the accused. Therefore, there are several infirmities and irregularities in the case of the prosecution, as narrated above. The courts below

simply brushed aside and overlooked the same, which warrant the interference of this court.

13. Further, there is much force in the main argument advanced by the learned Senior Counsel appearing for the Revision Petitioner stating that the prosecution has miserably failed to prove that the handwriting and the signatures found in Ex.P6 letter are that of the accused. Therefore, according to the learned Senior Counsel, there is no material, except Ex.P6, to connect the accused in this case, for the alleged offence of forgery. Only if the prosecution is able to prove the offence of forgery, the question of other offences under Sections 468, 471 and 420 read with 511 would arise. Therefore, for the above said reasons, the entire prosecution case is to be rejected.

14. For all the reasons stated above, the conviction and sentence imposed on the accused by the courts below are unsustainable and accordingly, they are set aside. This Revision Petition is allowed. The fine amount deposited by the Revision Petitioner/accused is ordered to be refunded. The bail bond executed by the Revision Petitioner/accused shall stand cancelled.