

Devaraj Vs. State Rep. By

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Court : Chennai

Decided On : Dec-09-2014

Judge : The Honourable Ms.Justice R.Mala

Appellant : Devaraj

Respondent : State Rep. By

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

09. 12.2014 CORAM THE HONOURABLE MS.JUSTICE R.MALA
Crl.R.C.(MD)No.165 of 2011 Devaraj : Petitioner/Sole Accused Vs. State Rep. by
The Inspector of Police, Mathichiyam Town Police Station, Madurai, Madurai
District. (Crime No.786 of 1999) : Respondent/Complainant Prayer : Criminal
Revision Case is filed under Sections 397 and 401 of the Code of Criminal
Procedure, praying to call for the records and set aside the conviction and
sentence imposed by the learned Principal Sessions Judge, Madurai in C.A.No.77
of 2010, dated 14.02.2011, in confirming the conviction and sentence imposed by
the learned Judicial Magistrate No.II, Madurai in C.C.No.238 of 2002, dated
25.08.2010. For Petitioner :: Mr.M.Veilkani Raju For Respondent :: Mrs.S.Prabha,
Government Advocate (Crl. Side) :

ORDER

This Revision is directed against the judgment passed by the learned Principal Sessions Judge, Madurai, in C.A.No.77 of 2010, dated 14.02.2011, confirming the conviction and sentence imposed on the Revision petitioner by the learned Judicial Magistrate No.II, Madurai in C.C.No.238 of 2002, dated 25.08.2010.

2. The case of the prosecution, in a nutshell, is as follows: (i) The accused belonged to Vallaram Village, Ottapidaram Taluk, Tuticorin District. He came to Madurai to eke out his livelihood and he was residing at Door No.1/167, Alwarpuram Vaigai Vadakarai along with his sister Lakshmi. He developed intimacy with one Parakath wife of Seeni. Due to their relationship the said Seeni left the company of his wife and his whereabouts are not known. In the family card for the year 1998-2003, issued in the name of Ayesha Beevi mother of Seeni, the name of Seeni is also found. Since the accused intended to emigrate to a foreign country, he was in need of a ration card. He obtained the ration card of Ayesha Beevi with the aid of his another concubine Sabitha Banu. He impersonated himself as Seeni S/o. Mohammed Mustafa, residing at 6-A, Alwarpuram and sworn before Advocate and Notary Public Mohammed Rafi and obtained a bogus affidavit and applied for passport in Tiruchi Passport Office in May 1999. The passport application was sent for police verification. P.W.1 a police official found that the accused applied for passport in the name of Seeni. Based on the direction issued by the Commissioner of Police, Madurai, P.W.8 registered a case in Crime No.786 of 1999 for the offence punishable u/s 419, 468, 471 I.P.C. and Section 12(1)(b) of Passport Act and examined the witnesses and recorded their statements. P.W.9. Then P.W.9, Assistant Commissioner of Police, took up the case for further investigation and after completing the investigation, he laid the final report against the accused for the offences punishable under Sections 419, 468, 471 I.P.C. and Section 12(1)(b) of Passport Act. (ii) Before the Trial Court, on behalf of the prosecution, P.Ws.1 to 9 were examined and Exs.P.1 to P.7 were marked. On completion of the examination of the witnesses on the side of the prosecution, the accused was questioned under Section 313 Cr.P.C., as to the incriminating circumstances found in the evidence of the prosecution witnesses and he denied the same as false. On behalf of the defence, no witness was examined and no document was marked. (iii) On consideration of evidence available on record, the learned Judicial Magistrate No.II, Madurai found the

accused guilty under Sections 419, 468 and 471 I.P.C. and Section 12(1)(b) of Passport Act and sentenced him to undergo one year R.I. for the offence under Section 419 I.P.C., two years R.I. for the offence under Section 468 I.P.C. and two years R.I. for the offence under Section 471 I.P.C. and also sentenced him to undergo three months R.I. for the offence under Section 12(1)(b) of Passport Act and the sentences are ordered to run concurrently. Aggrieved by the Judgment of the Trial Court, an appeal has been preferred by the accused in C.A.No.77 of 2010, before the learned Principal Sessions Judge, Madurai and the same was dismissed, confirming the judgment of the Trial Court.

3. Questioning the conviction and sentence, the petitioner is before this Court with the present revision.

4. The learned counsel for the petitioner would submit that no evidence has been produced to prove the ingredients of Sections 419, 468 and 471 I.P.C. and Section 12(1)(b) of Passport Act. Neither the accused nor the Seeni has been examined during the investigation. Except Ex.P.5, F.I.R. other documents are xerox copies, so the documents are not admissible as evidence. To substantiate the same, he relied on the judgment of the Hon'ble Apex Court in H.Siddiqui v. A.Ramalingam reported in 2011 (4) SCC240 5. The learned counsel for the petitioner also would submit that the evidence of P.W.1 and P.W.8 would contradict with each other. The accused is having passport from 1997 to 2007 and subsequently he renewed the passport also. Whereas the case of the prosecution is that he has applied for passport in the name of Seeni. Neither the said Seeni nor the accused was examined to prove the same. No handwriting expert was examined to prove that the signature found in the original passport application belonging to this revision petitioner. Hence, he prayed for setting aside the conviction and sentence imposed on the petitioner.

6. Resisting the same, the learned Government Advocate (Criminal side) would submit that the petitioner has applied for passport in the name of Seeni, whereas his name is Devaraj and he also obtained passport from 1997 to 2007 and it has been renewed. So the Courts below considered the matter in proper perspective and came to the correct conclusion. Hence, she prayed for dismissal of the

Criminal Revision Case.

7. I have considered the rival submissions and perused the typed set of papers.

8. The case of the prosecution is that the appellant herein impersonated himself as one Seeni and produced the application for passport in the name of Seeni. To prove the residential address and nativity, he filed the documents viz., ration card, transfer certificate and notary signed birth certificate. But, it was came to know that it is a focus address. Hence, P.W.8 has given a complaint. The case has been registered in Crime No.786 of 1999. Except the F.I.R. registered against the revision petitioner, the other documents are only xerox copies.

9. Now, before going into the question whether the application has been submitted by this petitioner, this Court has to consider whether those documents are admissible in evidence?. Now, it is appropriate to consider the decision of the Hon'ble Apex Court in H.Siddiqui v. A.Ramalingam reported in 2011 (4) SCC240 In the said decision it was held that as per Section 65 of the Indian Evidence Act, 1872, the parties are permitted to adduce secondary evidence subject to a large number of limitations.

10. It is appropriate to incorporate paragraph 12 of the said decision, which reads thus:

"2. The provisions of Section 65 of the 1872 Act provide for permitting the parties to adduce secondary evidence. However, such a course is subject to a large number of limitations. In a case where the original documents are not produced at any time, nor has any factual foundation been laid for giving secondary evidence, it is not permission for the court to allow a party to adduce secondary evidence. Thus, secondary evidence relating to the contents of a document is inadmissible, until the non-production of the original is accounted for, so as to bring it within one or other of the cases provided for in the section. The secondary evidence must be authenticated by foundational evidence that the alleged copy is in fact a true copy of the original. Mere admission of a document in evidence does not amount to its proof. Therefore, the documentary evidence is required to be proved in accordance with law. The court has an obligation to decide the question of

admissibility of a document in secondary evidence before making endorsement thereon."

That decision has also been relied on in another decision in *U.Sree v. U.Srivas* reported in 2013 (2) SCC114 wherein that judgment has been confirmed.

11. It is also useful to refer to Section 65 of the Indian Evidence Act, 1872, which reads thus:

"5. Cases in which secondary evidence relating to documents may be given. - Secondary evidence may be given of the existence, condition or contents of a document in the following cases: - (a) when the original is shown or appears to be in the possession or power - of a person against whom the document is sought to be proved, or of any person out of reach of, or not subject to, the process of the Court, or of any person legally bound to produce it, and when, after the notice mentioned in section 66, such person does not produce it; (b) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest; (c) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time; (d) when the original is of such a nature as not to be easily movable; (e) when the original is a public document within the meaning of section 74; (f) When the original is a document of which a certified copy is permitted by this Act, or by any other law in force in India to be given in evidence; (g) when the originals consist of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection. In cases (a), (c) and (d), any secondary evidence of the contents of the document is admissible. In case (b), the written admission is admissible. In case (e) or (f), a certified copy of the document, but no other kind of secondary evidence, is admissible. In case (g), evidence may be given as to the general result of the documents by any persons who has examined them, and who is skilled in the examination of such documents."

12. A perusal of the evidence in this case would show that only xerox copies of the documents were marked. However, the prosecution has not given any reason as

to why they have not filed the original documents before the Court and what happened to the original. So, the prosecution has failed to satisfy the condition imposed in Section 65 of the Indian Evidence Act before letting secondary evidence. In such circumstances, Exs.P.1 to P.4 are not admissible in evidence. So, those documents are liable to be rejected. Ex.P.5 is the F.I.R. Ex.P.6 is sanction letter granted by the Home Secretary. Ex.P.7 is memorandum. They are not sufficient to prove the case against the revision petitioner. Furthermore, it is pertinent to note that there is no evidence to show that the signature found in Ex.P.1 belongs to this petitioner.

13. As stated by the learned counsel for the revision petitioner, the revision petitioner herein had obtained passport in his name Devaraj in the year 1997 and it has been continuously renewed. In such circumstances, I am of the view that when the documents Exs.P.1 to 4 are not admissible in evidence, there is evidence to show the petitioner herein has applied for passport in the bogus name of Seeni. Non examination of Seeni is also fatal to the case of the prosecution. Above all, the prosecution has not proved the case beyond all reasonable doubts. So the ingredients of Sections 419, 468, 471 I.P.C. and Section 12(1)(b) of Passport Act have not been proved by the prosecution beyond reasonable doubt. Hence, the benefit of doubt has to be given in favour of the revision petitioner and the revision is liable to be allowed.

14. In the result, (i) the Criminal Revision Case is allowed setting aside the conviction and sentence imposed by the Judicial Magistrate No.II, Madurai in C.C.No.238 of 2002 on 25.08.2010 and confirmed by the Principal Sessions Judge, Madurai in C.A.No.77 of 2010 on 14.02.2011. (ii) the revision petitioner is acquitted of all the charges framed against him. (iii) The bail bonds executed by him stand cancelled. 09.12.2014 Index:Yes/No Internet:Yes/No sj To 1.The Principal Sessions Judge, Madurai. 2.The Judicial Magistrate No.II, Madurai. 3.The Inspector of Police, Mathichiyam Town Police Station, Madurai, Madurai District. 4.The Public Prosecutor, Madurai Bench of Madras High Court, Madurai. R.MALA, J.

sj Order made in CrI.R.C.(MD)No.165 of 2011 Dated:- 09.12.2014

