

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

Criminal Revision Case No.1280 OF 2008

Between:

V.Sunil Reddy and another

... Petitioners

And

The State of A.P,
rep. by Public Prosecutor

..Respondent/Complainant

DATE OF JUDGMENT PRONOUNCED :24.04.2024

Submitted for approval.

THE HON'BLE SRI JUSTICE K.SURENDER

- 1 Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No
- 2 Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No
- 3 Whether Their Ladyship/Lordship Wish to see their fair copy of the Judgment? Yes/No

K.SURENDER, J

*** THE HON'BLE SRI JUSTICE K. SURENDER**

+ CRL.R.C. No.1280 of 2008

% Dated 24.04.2024

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! Counsel for the Petitioners: Smt.Devineni Radha Rani

^ Counsel for the Respondent: Public Prosecutor

>HEAD NOTE:

? Cases referred

THE HON'BLE SRI JUSTICE K.SURENDER**CRIMINAL REVISION CASE No.1280 of 2008****JUDGMENT:**

1. This Criminal Revision Case is filed by A2 to A4. A3 died during the pendency of criminal revision. A1 died prior to framing charges. The name of A6 was deleted from the charge sheet since the police did not find any evidence. A5, A7 and A8 were tried and acquitted as co-conspirators. The present revision is argued on behalf of A2 and A4.

2. Briefly, the case of the complainant, which is the Andhra Pradesh State Cooperative Bank Limited is that A2/1st petitioner herein was the Managing Director in M/s.Kurnool Petro Products Limited, A1 is the Executive Director, A3 is the Chairman and A4 is the Guarantor. A2 as the Managing Director gave Ex.P1 which is the application for sanctioning of working capital loan for their company. It was agreed that they would furnish 100% collateral security of immovable property. A Board resolution Ex.P2 was passed by the Bank in the month of March, 1996 sanctioning working capital of Rs.76.00

lakhs. The sanction letter Ex.P3 was addressed to the accused. Having accepted the conditions laid down under Ex.P3, A1 and A4 gave collateral security of their agricultural lands in Dinnedavarapadu village, Kurnool. Ex.P20 is the registered sale deed in the name of A1, which was deposited in the Bank. The said document reflects that A1 is the owner of the said property.

3. Ex.P22 is the registered sale deed standing in the name of A4. Both A1 and A4 deposited the said sale deeds as security for the loan obtained on behalf of M/s.Kurnool Petro Products by A2 as Managing Director and other Directors.

4. Having obtained loan, the entire amount was credited to the account. However, accused failed to clear the outstanding and the cheques which were issued by the firm were returned due to insufficient funds. The Bank approached the Registrar of Cooperative Societies with their grievance of the accused not repaying the loan amount, which outstanding including interest was Rs.1,02,76,540/- up to 30th September, 1998. Ex.P25 was issued under Section 71 clause (1) of A.P. Co-

operative Societies Act, 1964 by the deputy Registrar of Cooperative Societies directing the accused herein to pay the arrears, failing which, the Bank was at liberty to realize the amount by proceeding against the properties which were mortgaged. The Bank made enquiries and found that Exs.P20 and P22 sale deeds deposited by A1 and A4 respectively were fake and fabricated documents and no such property existed. Enquiries were made with the revenue department. P.W.8/VRO, P.W.9/MRO, P.W.10/Sub-registrar were examined to prove that Exs.P20 and P22 were fake.

5. On the basis of the complaint Ex.P25 dated 10.08.2000, the CCS Police registered case and investigated into by P.Ws.12, 13 and 14/Investigating Officers. Charge sheet was filed for the offence under Sections 468 r/w 34 IPC, 471 r/w 34 IPC and 420 of IPC. Charges were framed against A2 to A8, since A1 died even prior to framing charges.

6. Learned trial Magistrate having examined P.Ws.1 to 14 on behalf of the prosecution and marking Exs.P1 to P43 found that the A2, A3 and A4 who are guilty of the offence under

Section 471 and 420 r/w 34 IPC and acquitted under Section 468 r/w 34 IPC. However, A5, A7 and A8 were found not guilty of any of the offences alleged, vide judgment in C.C.No.14 of 2005 dated 04.03.2008 passed by the XII Additional Chief Metropolitan Magistrate, Hyderabad.

7. The conviction was questioned in appeal before the Sessions Court. Learned Sessions Judge concurred with the finding of the learned Magistrate and dismissed the appeal filed by A2 to A4 vide judgment Criminal Appeal No.66 of 2008 dated 19.08.2008.

8. Sri Vinod Kumar Deshpande, learned Senior Counsel appearing for the accused would submit that both the Courts below committed an error in convicting the accused for the offences under Sections 471 and 420 r/w 34 IPC when it was specifically found that the accused/revision petitioners were not guilty of the offence under Section 468 IPC. Once the petitioners were acquitted for the offence of forgery under Section 468 IPC, the question of convicting them under Section 471 IPC does not arise. Further, none of the witnesses

had personal knowledge about any of the transactions. The documents which are application forms and other documents executed with the Bank were not sent to the handwriting expert to ascertain whether the petitioners have signed and executed the said documents. It is not the case of the prosecution that A2 had either forged any document or submitted any document as security but it was A1 and A4, who deposited title deeds. However, both the Courts below erred in concluding that it was A1 to A4 who had committed an offence of forgery and cheating. In the absence of any evidence against the revision petitioners (A2 & A4), the conviction has to be set aside. He further argued that the prosecution failed to file Form-32-A from the Registrar of Companies to establish that A2 was part of M/s.Kurnool Petro Products Limited. Further, the said M/s.Kurnool Petro Products Limited was not prosecuted. Since the company itself was not prosecuted, the question of prosecuting other Directors or persons associated with the company does not arise.

9. On the other hand, learned Public Prosecutor appearing on behalf of the State would submit that the evidence of P.W.1 coupled with the documents which were executed to cheat the bank are enough to prove the case against the accused for the offence of furnishing fabricated documents and securing loan. The fact remains that the loan was not repaid and the properties covered under Exs.P20 and P21 do not exist.

10. Ex.P1 application for loan was made by A2 as a Managing Director of M/s.Kurnool Petro Products Limited. A1 and A4 has deposited title deeds. Ex.P19 is the Memorandum of Deposit of title deed by A1 while submitting Ex.P20 title deed. Similarly, Ex.P21 is the Memorandum of deposit of title deed by A4 while depositing Ex.P22 title deed. Both Exs.P20 and P22 were found to be fabricated sale deeds. The evidence to that effect was stated by P.W.8/VRO, P.W.9/MRO and P.W.10/Sub-Registrar.

11. P.W.6 is the Standing Counsel of the complainant Bank. He issued legal opinion Ex.P37. In his evidence, he stated that the opinion was given only on the basis of photocopies

provided to him and he has not made any search in the office with regard to any of the documents and further, it is not his job to do so. The argument of the counsel for the accused that legal opinion was given by the Bank counsel and thereafter, loan was disbursed, cannot form basis to find Exs.P20 and P22 as genuine. The fact remains that Exs.P20 and P22 are fabricated documents and proved by prosecution.

12. A2 as the Managing Director had made application Ex.P1 and also signatory to Ex.P12 which is a letter of continuity addressed to the Managing Director authorizing A4 to operate the account. A2 and A4 are also signatories to deed of guarantees executed on behalf of M/s.Kurnool Petro Products Limited as Directors.

13. A4 had executed the deed of guarantee under Ex.P14 and as already stated, he had deposited the deed Ex.P22 towards security for the loan.

14. As seen from the evidence on record, the following circumstances were proved by the prosecution:

i) Ex.P1 application for loan being made by A2 as Managing Director, undertaking to furnish 100% security by depositing title deeds of immovable property at Dinnedavarapadu village.

ii) Loan being sanctioned by the Bank.

iii) A1 and A4 depositing title deeds of property of Dinnedavarapadu village standing in their names with the Bank.

iv) Letter of continuity and letter of guarantee executed by A1, A2 and A4 under Exs.P12 and P13.

v) Deed of guarantee executed by A4.

vi) Non payment of loan amount.

vii) Bank officials approaching the Deputy Registrar of Cooperative Societies and seeking direction for recovery of the arrears from the accused.

viii) In the process of proceeding against the accused, the documents Exs.P20 and P22 were verified regarding the properties at Dinnedavarapadu village and finding that the documents deposited with the Bank are fake and forged.

15. The above circumstances make out a complete chain which circumstances without any doubt point towards participation of the accused in defrauding the Bank on the basis of fabricated documents.

16. Learned Senior Counsel for the accused argued that once the Court had acquitted the accused for the offence under Section 468 r/w 34 IPC, committed an error in convicting the accused for the offence under Section 471 IPC r/w 34 IPC.

17. The said argument has no basis. The provisions under Sections 468 and 471 of IPC operate in different areas, though the common factor is cheating. Section 468 IPC is directed against a person who actually commits forgery for the purpose of cheating. However, Section 471 IPC is directed against the person other than the forger. A forger fabricating documents and using the said documents for the purpose of cheating may be convicted both under Sections 468 and 471 IPC on the basis of facts in a case. However, to convict under Section 471 IPC, it is not necessary that the accused should have forged the document. In the present case, it was found that both Exs.P20 and P22 were fabricated documents which were used to cheat the Bank by depositing them as genuine for furnishing security to the loan that was taken. There is no

infirmity in the findings of the Courts below that the accused are liable for the offence under Section 471 r/w 34 IPC.

18. In Ex.P1 application made by A2 as the Managing Director, it is specifically mentioned that company would offer 100 % collateral security by way of immovable property at Dinnedavarapadu village, Kurnool. It is apparent that by the time of making application, A2 and others had entered into a conspiracy and had the intention to cheat the bank from the inception. The documents which are Exs.P20 and P22 are properties of Dinnedavarapadu village, Kurnool. It is apparent that the accused had concerted and conspired to cheat the Bank.

19. Learned Senior Counsel submitted that the company M/s.Kurnool Petro Products Limited was not made as an accused for which reason prosecution cannot be maintained against the petitioners herein. The said argument has no basis. The petitioners are not made vicariously liable for the reason of the company being identified as accused. The case of the prosecution is that the accused have floated the company

and in the name of the company, loan was sought. The acts committed as discussed above were done in their individual capacities, deliberately to cheat the Bank. Not making the company as an accused will not in any manner come in the way of prosecuting the accused, in the present facts of the case.

20. The other argument advanced by the learned Senior Counsel for the accused is that the documents were not proved. Merely marking the documents would not suffice.

21. P.W.1 worked as Assistant General Manager in the complainant Bank from 1997 to 2001. During his tenure with the Bank, the accused were identified and order was sought under Ex.P25 for recovery of the amounts by proceeding against the properties deposited as security by A1 and A4. Having taken the orders under Section 25, when steps were taken to recover the amount, it was found that the documents were forged and fabricated. Accordingly, P.W.1 filed the complaint on behalf of the Bank under Ex.P34 which was registered and charge sheet filed. In the said circumstances, it

cannot be said that P.W.1 does not have knowledge about the transactions.

22. During the course of trial, the accused did not specifically deny any of the documents that were filed either in the cross-examination or during Section 313 Cr.P.C examination. The accused have not denied either depositing the title deeds or making the application for loan or regarding the signatures appearing on the Bank documents. To the questions put in Section 313 Cr.P.C regarding documents being executed by the accused, except stating that the evidence of witnesses was false, signatures on documents and approaching the Bank for loan was not specifically denied. The prosecution has examined witnesses who were acquainted with the documents and transactions in question. Having dealt with the documents and proceeding against the accused both before the Deputy Registrar and also filing complaint before the police by furnishing all the documents, it cannot be said that P.W.1 did not have knowledge about the documents. Merely because the officers before whom the documents were

executed were not examined, it is of no consequence in the present facts of the case.

23. In the result, Criminal Revision Case fails and the conviction of the accused imposed by the trial Court and confirmed by the Sessions Court. However, since the case is of the year 2000, this Court deems it appropriate to reduce the sentence of imprisonment of five years under Section 471, 420 r/w 34 IPC to 2(two) years. Both the sentences shall run concurrently. The remand period, if any, shall be given set off under Section 428 of Cr.P.C. Since the revision petitioners are on bail, the trial Court is directed to cause appearance of the accused and send them to prison to serve out the remaining period of sentence.

24. Accordingly, Criminal Revision Case is partly allowed.

K.SURENDER, J

Date : 24.04.2024

Note: LR copy to be marked

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THE HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL REVISION CASE No.1280 of 2008

Dt. 24.04.2024

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