

In the High Court of Judicature at Madras

Dated: 29/11/2002

Coram

The Hon'ble Mr. Justice P. SATHASIVAM

Criminal Appeal No.947 of 1999

S. Vasanthi @ Srimathi @ Srinidhi
@ Kamala @ Suganya. .. Appellant /Accused - 2.

-Vs-

State rep. by Inspector of Police
Central Crime Branch, Egmore,
Madras 600 008. ... Respondent/Complainant

Criminal Appeal is filed under Section 374 (2) of the Criminal
Procedure Code against the Order and Judgment made in C.C.No.47 of 1996 dated
20.09.1999 on the file of the learned Principal Sessions Judge, Chennai.

!For appellant : Mrs. S. Vasanthi
(party-in-person)

^For respondent : Mr. V. Jayaprakash Narayanan
Government Advocate (Crl.side)

:JUDGEMENT

The second accused in C.C.No.47 of 1996 on the file of the
Principal Sessions Judge, Chennai is the appellant in the above appeal.

2. The Inspector of Police, Central Crime Branch, Egmore,
Chennai has lodged a charge sheet against [one Jai Sudarshan, who was cited as
A.1 in the charge sheet (herein after referred to as A.1 and the present
appellant as A.2 A.1 and A.2 in C.C.No.47 of 1996, alleging that on 09.04.1996
at Door No.25, Krishna Street, T. Nagar, Chennai, A.1 Jai Sudarshan
introducing himself as J. Raman and A.2 J. Vasanthi introducing herself as
Srimathi induced the witness K.P. Rangarajan to part with a sum of
Rs.25,000/- in cash, by falsely representing that they get divorce order to
the daughter of witness Rangarajan, i.e., Mrs. K.R. Padmalatha within 90
days and also recover the sridhana properties and maintenance allowance and
also get back the baby of the said Padmalatha and also by falsely promising
that some amount should be deposited in the Treasury for filing the suit in
that regard; both A.1 and A.2 neither deposited the said amount of Rs.25,000/-
paid by the witness Rangarajan nor issued any receipt for the same and they
did not get divorce order and have used the said amount for their personal
gain, thereby A.1 and A.2 committed an offence punishable under Sections 419

and 429 read with 34 of the Indian Penal Code (in short "IPC"). Similar charges have been made against both of them in respect of a complaint made by Dr. Swaroopa Rani.

3. The prosecution has examined P.Ws.1 to 8 in support of their case. P.W.1 - Rangarajan has retired from Escorts Company. According to him, his daughter Padmalatha has married to one Rajagopalan, as their marriage life was not happy, P.W.1 decided to initiate divorce proceedings with regard to his daughter Padmalatha. On verification from the Telephone Directory, he contacted the Consumer Protection Cell, which was situated at T.Nagar, Chennai. He went there along with his son-in-law Raghunathan - P.W.2 on 08.04.1996. A.1 was present at that time and introduced himself as Raman and he told them he was the proprietor of the Consumer Protection Cell. A.2 was also present at that time and she introduced herself as an Advocate. A.1 told P.W.1 that he would conduct case and get divorce immediately and thereupon P.W.1 told him the particulars of his case. A.1 informed him that he would complete the case within two weeks and demanded Rs.27,500/- from P.W.1. P.W.1 paid Rs.25,000/- to A.1. He also told P.W.1 that the said amount will be refunded after the case is over. P.W.1 after pledging the jewels in Bank of Madura, paid the said amount of Rs.25,00 0/- to A.1 on 09.04.1996. Then A.1 and A.2 took the P.W.1 to Family Court. They got the signature of the daughter of P.W.1 namely, Padmalatha. After some time, P.W.1 saw the news published in the Hindu paper regarding the accused that both of them had defrauded many persons and P.W.1 went to the Office of A.1 and found locked. Thereafter, P.W.1 preferred a complaint to the Commissioner of Police. P.W.2 - Raghunathan, employed in Hindu Office and son-in-law of P.W.1 has also explained the role played by A.1 and A.2, their statements and assurance made to him regarding settlement of divorce case.

4. The daughter of P.W.1, namely Padmalatha was examined as P.W.3. It is her evidence that she went along with her father - P.W.1 and saw the accused Raman and Srimadhi. They have gone there to file a divorce case on behalf of P.W.3. She also stated that P.W.1 paid a sum of Rs.25,000/- in cash to A.1, while A.1 demanded Rs.27,500/-. Then P.Ws.1 and 3 went to Family Court along with accused A.2 and A.2 got the signature of P.W.3 in a petition to be filed on her behalf.

5. P.W.4 - Dr. Swaroopa Rani is running a private clinic. According to her, her husband is a Marine Engineer and her son is studying in Devi Academy School. She knows the Correspondent of the said School and P.W.4 paid a sum of Rs.5 lakhs to the Correspondent. In spite of the repeated demands, they did not repay the same and have also threatened P.W.4. After seeing the advertisement in Yellow Pages Telephone Directory regarding the Legal Cell, she went to the Office of A.1 and A.2 in Krishna Street, T. Nagar. There A.2 was introduced the A.1 as her Senior Counsel. P.W.4 told them about her case. A.1 and A.2 stated that a sum of Rs.90,000/- is required to file a case and Rs.75,000/- has to be deposited in Treasury, which would be refunded to P.W.4 and a sum of Rs.15,000/- is towards fees and there will not be any receipt for payment of fees. On 06.02.1996, P.W.4 went along with her son Robin and paid a sum of Rs.90,000/- to A.2 at the instance of A.1. She had withdrawn the said sum of Rs.90,000/- as a loan from the Fixed Deposit in

the name of her husband in Andhra Bank. After some time, they came to know about the accused, P.W.4 and her husband went and saw the accused in the month of April, 1996. In spite of meeting the accused on several occasions, P.W.4 did not get any relief. On seeing the news item in Hindu paper that the accused have cheated many persons, P.W.4's husband gave a complaint to the police.

6. P.W.5 - Suryanarayanan, residing in No.9, Kodhandaraman Street, I Lane, Old Washermenpet, Chennai is employed as Engineer in the Corporation. One Ravi and Ravendran were the tenants of P.W.5. P.W.5 wanted to evict them from the said house and on seeing the advertisement, P.W.5 went to the Office of A.1 and A.2. A.1 who introduced himself as Raman, pointed out A.2 and stated that her name is Lalitha and she is an Advocate. They promised that they would evict the tenants within a period of three months and demanded Rs.15,000/- towards Court deposit and Rs.2,500/- towards Advocate fee and a sum of Rs.15,000/- would be refunded to P.W.5. Immediately, P.W.5 came to his house, took Rs.3,000/- in cash and went again to A.1's office and gave the same to A.1. As promised, on the next day, P.W.5 went to the Court and paid the balance of Rs.14,500/- to A.1. At that time, one Clerk by name Srinivasan and P.W.5's son Vijayakumar were present. The accused Srinivasan had only brought A.2 in the High Court premises. At that time, A.2 was wearing Advocate's gown. In spite of his request, A.1 and A.2 refused to issue receipt of the amount paid. On seeing the news item in the Hindu paper to the effect that A.1 and A.2 had cheated many persons, P.W.5 gave a complaint to the police.

7. P.W.6 - Nagarajan, residing in Door No.2, Adambakkam Road, Valasarawakkam, is employed as Chief Engineer in Bangkok in a Shipping Company. He is the husband of P.W.4 - Dr. Swaroopa Rani. He also went and met A.1 and A.2 and paid Rs.90,000/- to A.1 for arresting two persons. The

accused also demanded further sum of Rs.30,000/-. P.W.6 after reading the statement in Hindu to the effect that A.1 and A.2 cheated many persons, he made a complaint to the police.

8. P.W.7 - K. Baskaran residing in Door No.9, Kothandaraman Street, Chennai 21 is employed in Tiruvottiyur Bharath State Bank. P.W.5 is the elder brother of P.W.7. P.W.7 in order to evict his tenants in the house belonging to him in Anna Nagar, went to the Legal Aid Center in Krishna Street, T.Nagar of A.1 and A.2. As in other cases, A.1 and A.2 informed that they are the Advocates and informed P.W.7 that a sum of Rs.15,000/- has to be deposited in Court and Rs.2,500/- has to be paid towards Advocate fee. Then also told that the amount of Rs.15,000/- will be refunded to P.W.7. P.W.7 paid a sum of Rs.3,000/- to A.1 and promised to pay the balance on the next day.

9. P.W.8 - Inspector of Police, Law and Order, Elephant Gate Police Station was the Inspector, Central Crime Branch, Egmore, Chennai. On 29.06.1996, on the basis of Ex.P.1 - complaint given by P.W.1, P.W.8 registered a case in Crime No.409 of 1996 under Section 429 IPC and the complaint given by P.W.1 has been marked as Ex.P.1. Ex.P.4 is the printed

First Information Report sent to the concerned officers. P.W.8 took up the investigation and examined P.Ws.1 to 7 and recorded their statements. After completing the investigation, he filed a charge sheet under Sections 419 and 420 read with 34 IPC on 18.12.1996. When A.1 and A.2 were examined under Section 313 of the Code of Criminal Procedure with reference to the incriminating evidence against them on the prosecution side, they denied their evidence. No defence witnesses were examined on the side of the accused.

10. It is seen that A.1 and A.2 have been charged under Sections 419 and 429 read with 34 IPC (three counts) for impersonating themselves as Advocates and also for dishonestly inducing P.w.1 - Rangarajan to part with a sum of Rs.25,000/- in cash and also inducing P.W.4 Dr. Swaroopa Rani to part with a sum of Rs.1,20,000/- by cheating her and similarly by impersonating themselves and dishonestly inducing P.W.5 - Suryanarayanan to part with sum of Rs.17,000/- in cash and thus according to prosecution, A.1 and A.2 cheated P.Ws.1, 4 and 5 respectively.

11. Since A.1 J. Sudarshan is reported dead on 16.04.1999, the charge against him has got abated and the learned Principal Sessions Judge analysed the evidence in respect of the charge against A.2. On appreciation of oral and documentary evidence, the learned Principal Sessions Judge found A.2 guilty for the offence under Section 419 IPC (3 counts) and sentenced to suffer rigorous imprisonment for one year in each count. A.2 was also found guilty for the offence under Section 420 read with 34 IPC (3 counts) and sentenced to suffer rigorous imprisonment for one year in each count and A.2 is also sentenced to pay a fine of Rs.2,000/- in each count in default of which, A.2 shall suffer rigorous imprisonment for three months for each count. In the same order, the learned Principal Sessions Judge has directed that after the fine amount is collected, a sum of Rs.2,000/- would be paid to P.Ws.1, 4 and 5 each respectively by way of compensation. Questioning the said conviction and sentence, A.2 has preferred the above appeal.

12. The appellant / accused appeared in person. Apart from making oral submission, she also filed written arguments. Learned Government Advocate (Criminal Side) argued on behalf of the State.

13. The only point for consideration in this appeal is, whether the prosecution has proved the charge framed against A.2 beyond all reasonable doubt and the conviction and sentence made by the learned Principal Sessions Judge is sustainable?

14. In so far as the first charge against A.2 - appellant herein is concerned, it is the specific case of the prosecution that A.2 along with A.1 had impersonated themselves as Advocates and dishonestly induced Rangarajan, P.W.1 to part with a sum of Rs.25,000/-. I have already referred to the evidence of P.Ws.1 to 3, who substantiate their case. It is the case of P.Ws.1 to 3 that in order to file a divorce case on behalf of P.W.3, based on the advertisement, they approached A.1 and A.2 and in the Office, A.1 introduced himself as Raman, as the proprietor of the Consumer Protection Cell and A.2 introduced herself as Srimadhi and that she is an Advocate. As requested by them, after conversation, A.1 and A.2 demanded Rs.25,000/- and

P.W.1 paid a sum of Rs.25,000/- in cash to A.1 on 09.04.1996, after pledging the jewels in Bank of Madura. It is clear that at the relevant time P.W.1 had funds. It is further seen that after payment of the said amount to A.1, A.1 and A.2 took P.W.1 to the Family Court and got the signature of P.W.3 and filed a case in the Family court. Thereafter, according to P.W.1, he came to know from the news item in Hindu paper regarding the activities of A.1 and A.2. P.Ws.2 and 3 corroborated the evidence of P.W.1, in all material aspects. It is clear that P.W.1 was dishonestly induced to part with a sum of Rs.25,000/- in cash to A.1. It was also represented that the said sum will be deposited in Treasury. The evidence of P.Ws.1 to 3 also would go to show that A.1 and A.2 had impersonated themselves as Advocates and had dishonestly induced P.W.1 to part with a sum of Rs.25,000/- on the ground that the same is required for the purpose of deposit in the Court for filing divorce proceedings on behalf of P.W.3. P.W.1 is a retired person and he approached A.1 and A.2 for matrimonial problem of his daughter P.W.3. It is clear that A.1 and A.2 cheated P.W.1 and A.2 was introduced by A.1 as an Advocate. Thus the prosecution has proved the first charge.

15. Coming to the second charge as against A.2 is that, A.1 and A.2 had impersonated themselves as Advocates to P.W.4 - Dr. Swaroopa Rani and her husband P.W.6 and dishonestly induced P.W.4 and 6 to part with a sum of Rs.1,20,000/- and thereby cheated P.W.4. P.W.6 - Nagarajan is the husband of P.W.4, Dr. Swaroopa Rani. P.W.4 deposed before the Court below that she is running a private clinic. P.W.4 had paid a sum of Rs.5 lakhs to the Correspondent of Devi Academy School, where her son Robin was studying. Since according to P.W.4, in spite of her repeated demands the said amount was not repaid by the said Correspondent. After knowing the advertisement in the Yellow Pages of the Telephone Directory, approached A.1 and A.2. A.1 and A.2 introduced themselves as Advocates and promised to recover the amount, for which they demanded Rs.90,000/- to file a case and out of which Rs.75,000/- has to be deposited in Treasury, which would be refunded to P.W.4. P.W.4 went along with her son on 06.02.1996 and she paid a sum of Rs.90,000/- in cash to A.2 - appellant herein at the instance of A.1 - Raman. P.W.4 has also stated that after payment of Rs.90,000/- to A.2, on 06.02.1996, they all went to the Court. A.1 and A.2 further demanded Rs.30,000/- for arresting two persons and the said amount was also paid by P.Ws.4 and 6. The evidence of P.Ws.4 and 6, the factum of paying Rs.30,000/- to A.2 at the instance of A.1. Only thereafter, they came to know the news about A.1 and A.2 cheating several persons and made a complaint to the police. It is clear from the evidence of P.Ws.4 and 6 that both A.1 and A.2 impersonated themselves as Advocates and they dishonestly induced P.W.4 to part with a sum of Rs.90,000/- and thereafter P.W.4 and her husband P.W.6 to part with a further sum of Rs.30,000/- for initiating legal proceedings for recovery of alleged amount of Rs.5 lakhs from one Jayalakshmi. The learned Principal Sessions Judge has accepted the case of P.Ws.4 and 6 and found that A.2 by impersonating herself as an Advocate, dishonestly induced P.Ws.4 and 6 to part with the said amount. I am in agreement with the said conclusion.

16. Now, I shall consider the third charge. As per the prosecution, the third charge against A.1 and A.2 is that they had impersonated themselves as Advocates and dishonestly induced P.W.5 -

Suryanarayanan to part with a sum of Rs.17,500/- and thereby they have cheated P. W.5. In support of the above charge, P.Ws.5 and 7 were examined. P. W.5 Suryanarayanan is employed as Engineer in Chennai Corporation. He wanted to evict two of his tenants from the house owned by him in Anna Nagar. On seeing the advertisement in the Telephone Directory, namely Legal Aid Center being run by A.1 and A.2, P.W.5 went along with his younger brother P.W.7, to the said clinic situate at No.25, Krishna Street, T. Nagar, Chennai on 17.03.1996. Both P.Ws.5 and 7 explained before the Court below the conversation made between them and A.1 and A.2. They also deposed that after explaining their grievance, A.1 and A.2 told that there will not be any difficulty in evicting the tenants within a period of three months after filing a case and demanded Rs.15,000/- towards Court deposit and Rs.2,500/- towards Advocate fee and they also promised that the amount of Rs.15,000/- will be refunded to P.W.5. On the assurance given by A.1 and A.2, P.W.5 and P.W.7 came back to their house and again went to the Office of A.1 and A.2 and P.W.5 paid a sum of Rs.3,000/- to A.1 and told that they would repay the balance on the next day. On the next day, at the request of one Srinivasan, accused in another case, P.W.5 went to City Civil Court, wherein he noticed a jeep was parked and at that time he also noticed that A.2 was wearing Advocate gown. On seeing them, P.W.5 paid the balance amount of Rs.14,500/- to A.2 and A.2 promised P.W.5 that they would file a case immediately and informed P.w.5 within two or three days. It is the case of P.W.5 that only on 22.06.1996, he saw the news item in Hindu paper with photographs of A.1 and A.2 and they have cheated many persons. P.W.5 gave a complaint to the police. The evidence of P.W.5 and P.W.7 clearly show that the payment of Rs.3,000/- at the first instance and Rs.14,500/- in City Civil Court compound, at that time when A.2 was wearing advocate's gown. The evidence of P.Ws.5 and 7 as observed by the learned Principle Sessions Judge is convincing and clearly show that A.1 and A.2 had impersonated themselves as Advocates and they have identified A.1 and A.2 in the Court as if they were practicing Advocates. Their evidence clearly show that A.1 and A.2 impersonated themselves as Advocates and dishonestly induced P.W.5 to part with a sum of Rs.17,500/-. The other witness - P.W.8, who is the Investigating Officer has explained the examination of P.Ws.5 and 7 and his investigation. It is clear from the materials placed on the side of the prosecution that it has established the third charge against A.2 for impersonating herself as an Advocate and dishonestly induced P.W.5 to part with the said amount and the learned Sessions Judge is perfectly right in arriving a conclusion that the third charge is also proved against A.2 beyond reasonable doubt.

17. It is seen that A.2 was also questioned with reference to the punishment.

18. It is also relevant to refer the decision of the Supreme Court in the case of Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwanandha Maharaj vs. State of Andhra Pradesh and others reported in 1999 (5) S.C.C. 740. The following observation of their Lordships is relevant.

"8. If somebody offers his prayers to God for healing the sick, there cannot normally be any element of fraud. But if he represents to another that he has divine powers and either directly or indirectly makes that other persons

believe that he has such divine powers, it is inducement referred to in Section 415 IPC. Anybody who responds to such inducement pursuant to it and gives the inducer money or any other article and does not get the desired result is a victim of the fraudulent representation. The Court can in such a situation presume that the offence of cheating falling within the ambit of Section 420 IPC has been committed. It is for the accused, in such a situation, to rebut the presumption. "

19. Considering the proved charges and taking note of the part played by A.2 along with A.1 by impersonating herself as an Advocate and cheated several persons by collecting money on the pretext of depositing sizable amount in Court, I am of the view she deserves deterrent punishment and the learned Principal Sessions Judge is right in imposing a sentence to suffer rigorous imprisonment for a period of one year. There is no valid ground for interference with the conviction and sentence imposed on the appellant and the appeal deserved to be dismissed. The direction of the learned Principal Sessions Judge that out of the fine amount, a sum of Rs.2,000/- would be paid to P.W.1, P.W.4 and P.W.5 each respectively by way of compensation is also acceptable.

Net result, the appeal fails and the same is dismissed.

Index:Yes

Internet:Yes

kh

29.11.2002

To

1. The Prl. Sessions Judge,
Chennai (with records if any)

2. The Inspector of Police
Central Crime Branch, Egmore,
Chennai.

3. The Public Prosecutor
High Court, Madras.□