

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 29/11/2002

Coram

The Hon'ble Mr. Justice P. SATHASIVAM

Criminal Appeal No. 946 of 1999

S. Vasanthi @ Srimathi
@ Srinidhi @ Kamala @ Suganya. .. Appellant/Accused No.2

-Vs-

State
represented by Inspector of Police,
Central Crime Branch, Egmore,
Chennai-8. .. Respondent/Complainant.

Criminal Appeal under Section 374 (2) of Code of Criminal Procedure Code
against the Order and Judgment dated 20-9-1999 made in C.C.No. 48 of 96 on
the file of the Principal Sessions Judge, Chennai.

!Appellant appeared in person.

^For respondent: Mr. V. Jayaprakash Narayanan,
Govt.,Advocate (Crl. Side).

:JUDGMENT

Second accused in Calendar Case No. 48 of 1996 on the file of the Principal Sessions Judge, Chennai, against the conviction under Sections 419 and 420 read with 34 I.P.C. and sentence of Rigorous Imprisonment for one year for each offence to run concurrently, has filed the above appeal before this Court.

2. The Inspector of Police, Central Crime Branch, Egmore, Chennai has laid the charge sheet against A-1 and A-2 under Sections 419, 420 read with 34 I.P.C. alleging that in the year 1991, one Ramamoorthy from Neyveli had given a sum of Rs.1,41,000/- to the proprietor of Rajan Builders, that he was not given possession of the house allotted to him, that the house allotted to him was locked, that he approached Accused 1 and 2 along with one Kuppusamy, that they (A-1 and A-2) demanded a sum of Rs.12,500/- each from the said Ramamoorthy and Kuppusamy for depositing in Court, and that they each paid Rs.12,500/-, totalling a sum of Rs.25,000/-. Subsequently, they came to know that A-1 and A-2 cheated many persons with many alias names and that A-1 and A-2 with fraudulent and dishonest intention induced them to part with Rs.12,500/- each, thereby the accused had caused wrongful loss with common

intention of cheating the complainant Ramamoorthy and Kuppusamy, committed the aforesaid offences. Before the learned Sessions Judge, the prosecution has examined P.Ws.1 to 4 and produced 2 Exhibits. On the side of the defence, D.Ws.1 to 7 were examined and Exs. D-1 to D-6 were marked. The learned Principal Sessions Judge, after complying the formalities and after analyzing the materials placed, found A-2 (appellant herein) guilty under Sections 419 and 420 read with 34 I.P.C. and sentenced to suffer Rigorous Imprisonment for one year for each offence and also to pay a fine of Rs.2000/- in default of which A-2 shall suffer Rigorous Imprisonment for three months for the offence under Section 420 r/w 34 IPC. The sentence of imprisonment imposed on A-2 was ordered to run concurrently. The learned Judge has also directed that after the fine amount is collected, a sum of Rs.1,000/- each will be paid to P.Ws.1 and 2 by way of compensation. In the same order, the learned Judge directed P.W.1 is to be paid a sum of Rs.12,500/- and P.W.2 is to be paid Rs.12,500/-

as it represents the money paid by them to A-1 and A-2, after the appeal time is over. Questioning the said conviction and sentence, A-2 has preferred the present appeal.

3. Heard the appellant in person and Mr. V. Jayaprakash Narayanan, learned Government Advocate (Criminal Side) for the State.

4. The only point for consideration in this appeal is whether the prosecution has established the charges framed against the appellant beyond doubt and the learned Principal Sessions Judge is right in convicting the accused?

5. Though the charges were framed against A-1 and A-2, as A-1 who is none else than the husband of A-2 is reported dead on 16-4-1999, the charges against A-1 has got abated; accordingly the learned Sessions Judge considered the charges framed against A-2 alone. Among the witnesses examined on the side of the prosecution, P.W.1-Ramamoorthy and P.W.2-Kuppusamy, who parted with their money with A-1 and A-2, are relevant. P.W.1 was employed in Neyveli Lignite Corporation and P.W.2 was employed in Atomic Research Centre, Kalpakkam. They deposed before the Court that in 1991, they had purchased a building site in K.K.Nagar and they made arrangements through a contractor to construct house in that site. The contractor did not do the important work as desired by them. Accordingly, they initiated proceedings before the Consumer Forum. It is further seen from the evidence of P.Ws.1 and 2 that the Consumer Forum has directed the contractor to build houses within a month. Though the contractor did not complete the same, P.Ws.1 and 2 and other plot owners completed the construction in May, 1996. Thereafter, one Ramachandran by describing himself as Manager of one V.P. Jain came and threatened that the house belongs to them. In order to initiate legal proceedings with reference to the dispute relating to their house, on 4-6-96 P.Ws.1 and 2 came to the High Court along with P.W.1's son to see their advocate and initiated proceedings with regard to the problem regarding their plots. At that time a person came and told them that there is an advocate by name Raman to file a case on behalf of them in door No.25, Krishna Street, T.Nagar, Chennai. Thereupon, on the same day, P.W.1, his son, and P.W.2 went to the said address and enquired. A-1 by name Raman came there and showed A-2 and identified her

as Senior Advocate. He also informed them that there are 5 or 6 Advocates with them and he would conduct the case very early. Thereafter, A-1 told P.Ws.1 and 2 that in order to get an order from the Court, a sum of Rs.25,000/- was to be deposited by them. On the next day P.W.2 paid Rs.12,500/- towards his share to A-1, who in turn paid the said amount to A-2. On that date P.W.1 paid only Rs.1000/- to A-1 and on the next day that is on 7-6-96, P.W.1 went and paid the balance amount of Rs.11,500/- in cash to A-1. At that time, A-2 was present. The evidence of P. Ws.1 and 2 would show that A-1 had demanded Rs.12,500/- each from P.Ws.1 and 2 and accordingly they paid the said amount to A-1 and A-2. When P.Ws.1 and 2 went the Court Hall No.21 in the High Court on 11-6-96, as requested by A-1 and A-2 to get xerox copies of documents, A-1 and A-2 did not come there as promised. When P.Ws.1 and 2 were going near the Court Hall No.22, the advocates were talking there to the effect that A-1 had defrauded many persons and A-1 was being examined in 22nd Court. When A-1 came outside the said Court, P.Ws.1 and 2 questioned him and asked for return of the money. Thereafter, in the after noon they gave a petition to the Hon'ble Judge attending 22nd Court and the Hon'ble Judge directed A-1 to refund the amount. Ex. P-1 is the complaint given by P.Ws.1 and 2 to the Hon'ble Judge on 17-6-96. Pursuant to the direction of the Hon'ble Judge, A-1 deposited Rs.25,000/- in the High Court.

6. P.W.4 is the Investigating Officer. Pursuant to the direction of the High Court before whom a complaint under Ex.P-1 preferred by P.Ws.1 and 2, P.W.4 registered the same in Crime No. 376/96 under Sections 419 and 420 read with 34 IPC against A-1 and A-2. Ex. P-2 is the printed First Information Report. After completing the investigation, he filed charge sheet against A-1 and A-2.

7. I have already referred to the evidence of prosecution witnesses namely P.Ws.1 and 2 which would show that there was a compelling necessity for them to seek legal assistance. They clearly explained the fraudulent representation by A-1 and A-2 and part with Rs.12,500/- each totalling a sum of Rs.25,000/-. Though on the side of the defence as many as 7 witnesses were examined as D.Ws.1 to 7, a perusal of those evidence would clearly show that they support the case of the prosecution and the fraudulent act played by A-1 and A-2. It is clear from the materials placed by the prosecution that A-1 and A-2 had collected a sum of Rs.12,500/- each from P.ws.1 and 2 totalling Rs.25,000/- on the ground that the same is required for the purpose of depositing in the Court for filing cases on behalf of P.Ws.1 and 2. I have already referred to the fact that P.Ws.1 and 2 are retired Government servants and they had invested their life savings for buying a flat in Sabari Apartments. It is also clear that with reference to the problem regarding their purchase of flats, they approached A-1 and A-2 for legal assistance and they (A-1 and A-2) have cheated P.Ws.1 and 2. It is clear that A-2 was introduced by A-1 as a senior advocate. It is also clear that A-2 was present when P.ws.1 and 2 paid Rs.12,500/- each. Though A-1 died on 16-4-99, there is ample evidence with regard to the part played by A-2 and she also associated with A-1 in impersonation and cheated P.ws.1 and 2 by receiving a sum of Rs.12,500/- each on false and untenable grounds. Though the appellant appearing in person has stated that only on direction by the High Court without a proper material in evidence, the Sessions Judge has convicted her, after going through the entire materials, more particularly the evidence of

P.Ws.1 and 2 and P.W.4 Investigating Officer, complaint-Ex.P-1, I am satisfied that the prosecution has established both the charges under Sections 419 and 420 read with 34 IPC and the learned Sessions Judge has also imposed appropriate punishment for the same. In this regard, it is relevant to refer a judgment of the Supreme Court in SRI BHAGWAN SAMARDHA SREEPADA VALLABHA VENKATA VISHWANDADHA MAHARAJ v. STATE OF A.P. [(1999) 5 Supreme Court Cases 740]. The following conclusion in para 8 of the judgment 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 person 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."

In our case, though it is stated that A-2 is a qualified advocate, no material has been placed either before the trial Court or before this Court. Further, A-1 introduced A-2 to P.Ws.1 and 2 as senior advocate knowing that she is not an advocate. It is established by the prosecution that at the time of payment of the amount of Rs.12,500/- by P.Ws.1 and 2 on the ground that the money is to be deposited in Court, A-2 was present. Admittedly, both A-1 and A-2 and another accused Srinivasan did not do any work as promised by them to P.Ws.1 and 2. It is also clear that they (A-1 and A-2) introduced P.W.1 for parting with the sizeable amount by making fraudulent representation and in such a situation, as observed by the Hon'ble Supreme Court, it is presumed that the offence of cheating falling within the ambit of Section 420 I.P.C. has been committed. I have already referred to the fact that though defence witnesses were examined and some documents were placed, they have not rebutted the presumption. The appellant herein/2nd accused along with her husband/A-1 cheated P.Ws.1 and 2 dishonestly and fraudulently on the pretext that they will provide legal assistance. This shows how dare she was. This kind of fraud especially in the legal profession is very dangerous and if it is allowed to continue, there is possibility of adopting the same style/method by some other persons in order to collect huge amount from innocent common people/litigants. Considering the fraudulent act played by A-2 along with her husband A-1, I am of the view that a deterrent punishment has to be imposed for an eye opener for others. Accordingly, I am in agreement with the conclusion arrived by the learned Principal Sessions Judge and the sentence of imprisonment imposed on A-2 is reasonable and acceptable. I do not find any valid ground for interference.

8. Net result, the Appeal fails and the same is dismissed.

R.B.

Index:- Yes

Itinerary:- Yes

To:-

- 1) The Principal Sessions Judge, Chennai.
- 2) Copy to the Public Prosecutor, High Court, Madras.
- 3) The Inspector of Police, Central Crime Branch, Egmore, Chennai.□