

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.12.2004

CORAM:

THE HONOURABLE Mr. JUSTICE V. KANAGARAJ

Crl.R.C.No.1111 of 2004

M/s.Signals & Systems
(I) Pvt. Ltd., rep.
by its Director
T.S.Mani

.. Petitioner

Vs.

Mrs. M.Rajini

.. Respondent

Criminal Revision Case filed under Sections 397 & 401 of
the Criminal Procedure Code, praying for the relief stated
therein.

For Petitioner : Mr.K.Venkatapathy, Senior Counsel
for M/s.J.Anandavalli

For respondent : Mr.V.Gopinath, Senior Counsel for
Mr.M.Udayakumar

O R D E R

This Criminal Revision Case is directed against the
order dated 27.4.2004 made in C.C.No.1393 of 2001 by the
Court of XI Metropolitan Magistrate, Saidapet, Chennai.

2. Heard the learned senior counsel for both and
perused the materials placed on record.

3. The brief facts of the case are that the
respondent was working as whole time director in the
petitioner company and she was the authorized signatory of

the company and utilizing the said position, she has misappropriated a sum of Rs.9,15,000/= by way of 9 cheques between 11.01.1999 and 11.3.1999, thereby cheating the complainant's company. Therefore, the petitioner, who is the defacto complainant, filed a complaint under Section 200 Cr.P.C. before the court below against the respondent for offences under Section 406 IPC. The learned Magistrate forwarded the complaint to the Additional Deputy Commissioner, Central Crime Branch, Egmore, Chennai under Section 156(3) Cr.P.C. to register a case and to investigate the same. However, a case was registered in Crime No.573 of 2000 and a final report was also filed by the Inspector of Police, CCB for offences under Sections 403, 408 and 477A IPC. But, on trial, the lower court has acquitted the respondent/accused, aggrieved against which, the present revision has been filed.

4. During arguments, the learned senior counsel appearing on behalf of the petitioner/complainant, besides submitting the facts, would further submit that already there was a quash proceedings filed before this court by the accused and she has filed Crl.O.P.No.8591 of 2001 in which she has admitted herself to be authorised signatory. Several documents which could have been produced by the prosecution, now finding fault with the prosecution, there is a loss of Rs.9,15,000/=, they have not marked and the company has been put to loss. Police has investigated the case but they have not properly conducted the prosecution case. They have not examined the Bank Manager, they have not summoned the cheques though the money has been withdrawn by the accused. Hence, he would seek to order re-trial of the matter.

5. The learned senior counsel would rely upon a judgment rendered in ALLARAKHA K.MANSURI vs. STATE OF GUJARAT (2002 SCC 519) wherein in paragraph 7 it is held as follows:-

"The paramount consideration of the court should be to avoid miscarriage of justice. A miscarriage of justice which may arise from the acquittal of guilty is no less than from the conviction of an innocent. In a case where the trial court has taken a view based upon conjectures

and hypotheis and not on the legal evidence, a duty is cast upon the High Court to reapprciate the evidence in acquittal appeal for the purposes of ascertaining as to whether the accused has committed any offence or not. Probable view taken by the trial court which may not be disturbed in the appeal in such a view which is based upon legal and admissible evidence. Only because the accused has been acquitted by the trial court, cannot be made a basis to urge that the High Court under all circumstances should not disturb such a finding".

6. In reply, the learned senior counsel would submit that PW1 became a director only in Sep. 1999. It is an admitted case that he was not aware of the transaction which is the subject matter of the case. He was not the director at that time and he does not know anything about the documents. Admittedly, the petitioner was not a director though he has given the complaint. He was not personally aware of those facts. Learned Magistrate holds that P.W.1 does not know anything about those details and rejected his evidence. P.W.2 was actually incharge of the company when the offence took place. He did not choose to file the complaint.

7. Discussing the evidence adduced by the other witnesses, learned senior counsel would submit that the cheques which are alleged to have been drawn by the accused are not produced before the Court. No steps were taken to summon them. No bank accounts produced and the computerised accounts of the Company alone has been filed. If it is produced by the Bank, the cheques should have been produced. These aspects have been considered by the trial court and the acquittal order has been passed since the prosecution has failed to prove the case. Though the documents were available, for the purpose of filling up the lacuna, the prosecution did not choose to file the documents.

8. In clarification the learned counsel for the petitioner would submit that the investigation is defective. Though, P.Ws.4, in his cross examination deposes that it is a

false case registered against the respondent, it has no bearing merely because one witness says something. This is not a false case. Bank Manager has not been examined. There has been miscarriage of justice. There is defective investigation. Bank statements are still available in the Typed set.

9. In reply, Mr.Gopinath, senior counsel would submit that there is defective investigation. Now they cannot say that the Bank statements are available. Now they cannot ask for fresh trial for failure of lacuna since it is only a revision.

10. The learned senior counsel appearing for the respondent would rely upon the decision reported in THANKAPPAN NADAR vs. GOPALA KRISHNAN (2003 SUPREME COURT CASES (Cr1.)1205) wherein it is held:

" In a revision application filed by the de facto complainant against the acquittal order, the Court's jurisdiction under section 397 read with Section 401 Cr.P.C is limited. The law as enunciated by the Supreme Court does not empower the Court exercising the revisional jurisdiction to reappreciate the evidence".

11. The learned senior counsel appearing for the respondent would also rely upon the decision reported in BINDESHWARI PRASAD SINGH vs. STATE OF BIHAR (2002 SUPREME COURT CASES (Cr1.)1448) wherein it is held:

" The High Court was not justified in interfering with the order of acquittal in exercise of its revisional jurisdiction at the instance of the informant. It may be that the High Court on appreciation of the evidence on record may reach a conclusion different from that of the trial court. But that by itself is no justification for exercise of revisional jurisdiction under section 401 Cr.P.C against a judgment of acquittal. The judgment of the trial

court cannot be said to be perverse. No defect of procedure has been pointed out. There was also no improper acceptance or rejection of evidence nor was there any defect of procedure or illegality in the conduct of the trial vitiating the trial itself. At best the High Court thought that the prosecution witnesses were reliable while the trial court took the opposite view. In the absence of any legal infirmity either in the procedure or in the conduct of the trial, there was no justification for the High Court to interfere in exercise of its revisional jurisdiction. It has repeatedly been held that the High Court should not reappreciate the evidence to reach a finding different from the trial court. In the absence of manifest illegality resulting in grave miscarriage of justice, exercise of revisional jurisdiction in such cases is not warranted".

12. The learned senior counsel appearing for the respondent would also rely upon the decision rendered and reported in JAGANNATH CHOUDHARAY AND OTHERS vs. RAMAYAN SINGH AND ANOTHER (2002 SCC Cr1.1181) wherein it is held:

"Revision application filed by a private complainant against judgment and order of acquittal of accused passed by trial court, interference by High Court with the judgment and order called for only in exceptional cases of gross miscarriage of justice, manifest illegality or perversity and not merely because another view was possible, High Court on perusal of the trial court's judgment finding the reasons given therein for recording acquittal to be not proper and justifiable and hence setting aside that judgment and sending the matter back

to the trial court for "writing a fresh judgment by giving proper judicial mind to the evidence on record". Going through the judgment of the trial court, held High Court exceeded its revisional jurisdiction in setting aside that judgment. Further the direction to re-write the judgment is a significant departure from the normal form of court order and was not justified."

13. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned senior counsel for both, what this Court is able to assess is that a criminal complaint had been lodged before the 11th Metropolitan Magistrate, Saidapet, Chennai against the respondent for an alleged commission of offence punishable under section 406 IPC. The learned Magistrate having referred the complaint to the Additional Deputy Commissioner, Central Crime Branch, Egmore, Chennai for an offence under section 156(3) Cr.P.C., the case was registered by the Inspector of Police, Central Crime Branch in Crime No.573 of 2000 and investigated into and ultimately the charge sheet has been filed against the respondent for the offence punishable under sections 403, 408 and 477A IPC.

14. The case of the complainant therein in short is that the respondent when she was working as a whole time Director in the company as an authorised signatory of the company and making use of the said position she misappropriated a sum of Rs.9,15,000/- by issuing 9 cheques during the relevant period between 11.1.1999 and 11.3.1999 and thereby cheated the complainant company and in the trial held in the manner mentioned, the court of 11th Metropolitan Magistrate, Saidapet, Chennai having conducted a thorough trial into the facts and circumstances of the case as projected by the prosecution and having examined five witnesses as oral evidence and marking 15 documents for documentary evidence, on the part of the prosecution with no oral or documentary evidence placed on the part of the defendant and the said Magistrate framing his own point for consideration and tracing the facts and circumstances of the case of the prosecution and discussing the merit of the case

in evidence placed on record has ultimately arrived at the conclusion to acquit the accused since the prosecution has failed to prove the guilt of the accused. The acquittal judgment rendered by the lower court as per its judgment dated 27.4.2004 is challenged by the revision petitioner on certain ground has brought forth in the grounds of revision.

15. A careful perusal of the judgment of the lower court would show that the Magistrate has meticulously gone into the case of the prosecution as alleged from the point of view of the complaint and that of the charges framed and having framed its point for consideration, could dissect the evidence and would ultimately find that the evidence of P.W.1 itself is a flaw since the witness has not uttered anything about the details required for a decision and in fact rejected his evidence. Moreover, it was further found by the lower court that the complainant himself was not a Director and he was not aware of the transactions regarding the subject matter, but the complaint has been lodged through such a person and since they were not able to supply the materials required for sustaining conviction based on an untenable case registered on the part of the prosecution, the trial court would ultimately arrive at a conclusion to acquit the accused/ respondent herein from the charges and set her at liberty. This Court is not able to see any serious flaw or legal infirmity or inconsistency or patent error or perversity in approach by the learned Magistrate below. Therefore, the interference of this Court sought to be made in the above revision case does not merit acceptance and the only decision that could be arrived at by this Court is to dismiss the above Criminal Revision Case and the same is ordered accordingly.

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In result, this Criminal Revision Case does not merit acceptance and is liable to be dismissed and is dismissed accordingly.

bg

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. THE XITH METROPOLITAN
MAGISTRATE, SAIDAPET, CHENNAI

2. - DO - THROUGH THE CHIEF METROPOLITAN
MAGISTRATE, EGMORE,
CHENNAI

+ 2 Ccs to Mr. M. Udayakumar, Advocate SR 58002

+ 1 CC to Ms. J. Anandavalli, Advocate SR 57986

order in
Crl.RC.No.1111 of 2004
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smk (co)

bp

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