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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 05TH DAY OF SEPTEMBER 2011

BEFORE

THE HON'BLE MR.JUSTICE V.JAGANNATHAN

CRIMINAL REVISION PETITION NO.708/2010

BETWEEN:

1. J.K.Srinivasa Murthy,
   S/o H.Krishnappa,
   Aged about 60 years,
   R/at No.149, 3rd main road,
   3rd phase, 3rd stage, Banashankari,
   Bangalore-85.

2. Zafrulla s/o Abdul Rubkhan,
   Aged about 46 years,
   R at No.34, 6th cross,
   P.G.Halli, Bangalore-560 003.

...PETITIONERS

(By Sri.C.V.Nagesh, Sr.Counsel)

AND:

1. State of Karnataka,
   By High Grounds Police,
   Bangalore.

2. Sri.K.R.Murali Krishna,
   S/o late K.Ramakrishnaiah,
   Aged 51 years,
   No.282, Chamarajpet,
   Chickballapura. ... RESPONDENTS

(By Sri.G.M.Srinivasa Reddy, HCGP for R1,
Sri.K.R.Murali Krishna, party-in-person for R2)

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This Crl.R.P filed u/S.397 r/w 401 of Cr.P.C praying to set aside the judgment and conviction and order of sentence dated 06.07.2007 passed in C.C.No.15020/1998 by 6th Addl.CMM, Bangalore, and judgment dated 06.05.2010 passed in Crl.A.No.831/07 by the Sessions Judge/FTC-X, Bangalore & etc.,

This Crl.R.P. coming on for further hearing this day, the Court made the following:-

ORDER

This revision petition is preferred by A1 & A3 in the trial court who have been convicted for the offences punishable under Sections 467, 468, 471 & 420 of IPC and sentenced to pay fine of Rs.1,000/-, in default to undergo S.I. for 2 months in respect of the offences punishable under Sections 467 & 468 of IPC and 1 year S.I. and to pay fine of Rs.500/- in respect of the offences punishable under Sections 471 & 420 of IPC with default sentence. A2 in the original FIR however was discharged subsequent to she having been approached in revision petition before the lower appellate court where she was discharged and against that, revision

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petition preferred by the State before this Court also being dismissed. Thus, only A1 and A3 faced the trial.

2. The prosecution case in short is that, A2 & A3 were the partners of Pushpa Combines and the complainant in the private complaint namely Murali Krishna had produced a film called 'Bala Nowke' and A2 & A3 had taken the distribution rights of the said film in the areas of Mysore, Mandya, Coorg, Hassan, Chitradurga, Bellary and Hyderabad-Karnataka. It was agreed between the complainant Muralikrishna on the one hand and A2 & A3 on the other hand that A2 & A3 will pay royalty amount of Rs.5,25,000/- to the complainant for a period of 5 years from the date of the film release and this agreement was reduced to writing on 08.04.1987. It was also the case of the complainant that out of the collection amount from the film theatre after exhibiting the film, an amount of Rs.3,45,000/- should be paid to the complainant by A2 & A3 in weekly installments. Accused paid Rs.1 lakh to the complainant and balance of Rs.2,45,000/- was not paid by them and this made the complainant to approach the

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Karnataka Film Chamber of Commerce ('KFCC' for short) with his complaint and though the meeting was held at KFCC, it is alleged by the complainant that accused had produced the receipt dated 01.10.1987 (Ex.P6) and as per the said receipt rather acknowledgment, the complainant had received Rs.1,10,000/- from Pushpa Combines and agreed that except the share of Hyderabad-Karnataka area, he had no other claims from Pushpa Combines.

3. It is this acknowledgment Ex.P6 that led to the private complaint being lodged by the complainant which ultimately ended up in filing of the charge sheet against A1 to A3. A1 being the husband of A2 was only a power of attorney holder on behalf of his wife A2. At the trial, accused pleaded not guilty and the discharge of A2 led to the prosecution leading evidence to prove the charge against A1 and A3. The entire charge against A1 & A3 revolves around the acknowledgment dated 01.10.1987 (Ex.P6). It is the case of the prosecution that the said document was forged by the

accused and it was used as a genuine document to cheat the complainant.

4. The prosecution in order to prove its case, examined as many as 10 witnesses and produced 24 documents. Accused statements were recorded and they led no defence evidence except marking the documents Exs.D1 & D2. Learned trial Judge after evidence appreciation, held that the prosecution had brought home the guilt of the accused beyond all reasonable doubt and accordingly, A1 & A3 were convicted and sentenced as mentioned earlier. The lower appellate court put its stamp of approval on the trial court's judgment. Challenging their conviction and sentence, A1 & A3 have preferred this revision petition.

5. I have heard Sri.C.V.Nagesh, learned Senior Counsel for the petitioners, Sri.G.M.Srinivasa Reddy, learned HCGP for respondent-State and assisted by the complainant Sri.Murali Krishna himself who had filed an application for impleading and the said application is also allowed.

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6. Learned Senior Counsel Sri.C.V.Nagesh for the petitioners at the outset argued that both the courts below have committed serious error in convicting the petitioners though there was no evidence to indicate either A1 or A3 having produced Ex.P6 before the Film Chamber of Commerce. Inviting attention to the evidence of the prosecution witnesses and in particular that of PW-1, it is argued that it has come in the evidence of this witness that it was A2 who had produced the receipt Ex.P6 and therefore, the question of A1 or A3 using as genuine document Ex.P6 does not arise. Secondly, it is argued that though the courts below have recorded a finding that Ex.P6 is a forged document, yet, there was no finding to the effect that the said forgery committed by either A1 or A3. On the other hand, the lower appellate court has given a clean chit to both the petitioners by observing that neither A1 nor A3 had indulged in forging the signature of the complainant in Ex.P6. Such being the evidence on record and the observations of the courts below,

question of the petitioners being found guilty of the offences with which they were charged does not arise.

7. It is also argued by Sri.C.V.Nagesh that if the documents have been produced by A2 as per the evidence of PW-1 and when A2 was discharged from the case, the courts below could not have held that A1 to A3 are guilty of the offence of forgery and using the document knowing it to be a forged one. In this connection, it is submitted that no evidence is there to show that A1 & A3 had neither indulged nor had intention to use Ex.P6 knowing it to be the forged document. Reference was also made to the evidence of other witnesses PWs 3, 4, 5 & 6 to contend that these witnesses do not even whisper about Ex.P6.

8. Another limb of the argument of Sri.C.V.Nagesh is that Ex.P15 is not the original but only the Xerox copy and even the expert's opinion was also the Xerox copy and therefore, without the original being produced, the courts below could not have acted upon these two documents to convict the petitioners herein. In this

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connection, the Apex Court observations in the case of *L.I.C. of India & another vs. Ram Pal Singh Bisen (2010(2) Supreme 444)* is referred to by learned Senior Counsel.

9. In the light of the aforesaid submissions, it is contended by learned Senior Counsel that conviction of the petitioners cannot be sustained either on facts or in law and therefore, the petitioners be acquitted of the charges levelled against them.

10. On the other hand, submission of Sri.G.M.Srinivasa Reddy, learned HCGP is that, both the courts below have considered the evidence from proper angle and have accepted the testimony of the prosecution witnesses, in as much as, it has come in the evidence of PW-3 that it was A1 & A3 who had produced Ex.P6 and therefore, the question of the trial court misleading the evidence or recording perverse findings does not arise. Learned HCGP also took this Court through the evidence and material witnesses as well as to the observations of the courts below in this

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connection and sought for dismissal of this revision petition.

11. Sri.Murali Krishna, the complainant also supported the arguments of the learned HCGP and supplemented it by arguing that even if A1 & A3 had not forged the document Ex.P6, yet there is evidence on record to show that these two accused had used the said document by producing it before the Film Chamber of Commerce and as such, the ingredients of Section 471 of IPC gets attracted. As such, conviction of the petitioners in respect of Section 471 of IPC is just and proper. Further submission made is that even after Ex.P6 which is dated 01.10.1987, the accused persons had made certain payments and it is clear from Exs.P15 & P16 and this act on the part of the accused itself is sufficient indication of the accused having had the knowledge of Ex.P6 being the forged document. Therefore, the conviction and sentence passed by the trial court and confirmed by the lower appellate court call for no interference.

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12. Having thus heard both sides, the only point for consideration is whether the petitioners have made out a case for this Court to interfere with the findings recorded by the courts below.

13. The charge against A1 & A3 revolves around the acknowledgment dated 01.10.1987. The said acknowledgment is marked as Ex.P6 during the course of evidence let in by the prosecution. The first point to be considered is, whether the document Ex.P6 is a forged one or not. The evidence of PW-2 who is the complainant himself coupled with that of PW-10 the expert gives an impression that signature of the complainant is not found in Ex.P6. In other words, Ex.P6 is a forged document is the conclusion that has to be arrived at from careful reading of the evidence of PW-10 in particular. Both the courts below have therefore rightly held that Ex.P6 is a forged document.

14. The next question is, whether the prosecution has been able to prove that it was A1 & A3 who had forged Ex.P6. The careful examination of the evidence

of the prosecution witnesses does not indicate that it was the act of either A1 or A3. Learned Judge of the lower appellate court while appreciating the evidence on record has observed at para-28 of its judgement that the evidence of PW-10 reveals that signature in Ex.P6 is not in the hand writing of A1 & A2 and further PW-10 has deposed that it is not possible to explain or give opinion as to the authorship of the questioned signature. Learned Sessions Judge has further observed in subsequent lines thus:-

> "Though A1 & A3 have actually not forged the signature of PW-2 complainant on Ex.P6 the receipt, I am of the opinion that A1 & A3 might have created, concocted and forged the signature of PW-2 complainant on Ex.P6 the receipt from some other unknown persons".

15. The said observations of the learned Sessions Judge cannot be sustained in law, because having held that A1 & A3 did not forge the signature of PW-2 on Ex.P6, the court could not have drawn further inference merely on conjectures and surmises. In a criminal case,

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it is the duty of the prosecution to prove its case beyond all reasonable doubt and learned Judge of the lower appellate Court committed serious error in observing that A1 & A3 might have created the signature of PW-2. As such, observations was not warranted in the face of the categorical findings recorded by the courts below that A1 & A3 did not forge the signature of PW-2, more so when the expert PW-10 has also confirmed that signature in Ex.P6 is not that of A1 & A3. Thus, the question of A1 & A3 having forging the document Ex.P6 does not arise.

16. Next aspect to be considered is, whether the accused had produced or used the forged document Ex.P6. It is the argument of learned HCGP as well as the complainant that it was A1 & A3 who had used the forged document Ex.P6. The evidence on record is otherwise. PW-1 in the course of his evidence has clearly stated that it was A2 who had produced the document Ex.P6. As rightly pointed out by learned Senior Counsel Sri.C.V.Nagesh for the petitioners, that a suggestion put to this witness during the cross-

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examination further goes to show that the specific evidence of PW-1 is that it was A2 who had produced the document Ex.P6. A2 has stood discharged from the case. Therefore, there is no evidence to show that either A1 or A3 has produced Ex.P6. PWs 3, 4, 5 & 6 do not speak about Ex.P6 at all in their evidence. Therefore, when there is ~~no~~ evidence to show that it was A2 who had produced Ex.P6, even if the courts below have entertained certain doubts as to which of them had produced, the courts below ought to have given the benefit of doubt to the accused instead of drawing inference to the effect that it was A1 & A3 who had produced Ex.P6.

17. Another serious defect in the prosecution case as rightly pointed out by learned Senior Counsel for the petitioners concerns the reliance placed by the courts below on Ex.P6 & Ex.P15 both of which are Xerox copies and not the original. Mere marking of the said documents will not lead to the conclusion that the contents are also proved. In the case of *L.I.C. of India & another vs. Ram Pal Singh Bisen (2010(2) Supreme 444)*,

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the Apex Court has held at para-26 that mere admission of document in the evidence does not amount to its proof. In other words, the mere marking of exhibit on a document does not dispense with its proof, which is required to be done in accordance with law. The Apex Court also went on to further observe at para-31 that under the Law of Evidence also, it is necessary that contents of documents are required to be proved either by primary or secondary evidence and at the most admission of a document may amount to admission of the contents but not its truth. Documents having not been produced or marked as required under the Evidence Act cannot be relied upon by the Court. The contents of the documents cannot be proved by merely filing it in a Court.

18. The aforesaid observations if applied to the case on hand would take away the documents Exs.P6 & P15 out of consideration. Learned Judge of the trial court as well as the lower appellate court could not have considered the evidence of these two documents, more so only they were Xerox copies not even the originals.

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Thus, on a careful consideration of the materials on record, I am of the view that both the courts below have committed serious error in not properly appreciating the evidence on record and the findings recorded not only perverse in nature but are based on the conjectures and surmises for which there is no scope in criminal law. The prosecution will have to prove its case beyond all reasonable doubt. In the instant case, the evidence on record does not even remotely connect A1 and A3 with any of the offences with which they stood charged.

19. For the aforesaid reasons, revision petition is allowed and judgments of the courts below are set aside. Petitioners are acquitted of all the offences, which with they stood charged. Their bail bonds shall stand cancelled. Fine amount if any deposited by them shall be refunded.

Sd/-
JUDGE

Srl.

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