

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

THE HON'BLE MR.JUSTICE K.SOMASHEKAR

CRIMINAL REVISION PETITION NO.562 OF 2011 DATED:13-12-2019

Korachara Nagaraj @ Yeradethinahalli Naga s/ o Nagappa Vs. State by Huvinahadagali Police Represented by S.P.P. High Court of Karnataka Bengaluru.

ORDER

This petition is filed by accused no.1 challenging the judgment rendered by the appellate court in CrI.A.No. 103/2009 dated 10.01.2011 dismissing the appeal and confirming of the judgment of conviction and order of sentence rendered by the trial court in C.C.No.445/2008 dated 20.07.2009 for the offence punishable under Section 420 of IPC. The accused No. 1 has been sentenced to undergo rigorous imprisonment for a period of three years and sentenced to pay fine of Rs.3,000/-for the offence under Section 420 IPC. Accused no.2 Parameshi is acquitted for the offences under Section 420 of IPC, the same has been revealed in the operative portion of the judgment of conviction and order of sentence rendered by the trial court. In default to pay fine amount by accused no.1, he was to further suffer simple imprisonment for a period of six months.

2. The factual matrix of this petition is as under:

The complainant viz., Shivaraj is a permanent abode of Devanahalli village, Jevargi taluk, Gulbarga district had filed a complaint before the respondent police alleging that he received a mobile call from the accused viz., Korachara Nagaraj @ Yeradethinahalli Naga about having gold in his possession. He asked the complainant to purchase the gold from him.The complainant intimated this fact to his close friend viz., Mallinath of the same village. Subsequently the complainant who came to to Hadagali Hadagali purchased two pieces of gold from accused for consideration of Rs.500/-and after purchase, this complainant and his friend Mallinath went to Jevargi to ascertain the originality of the two pieces of gold said to have been sold by the accused.

3. It is further stated that the accused intended to sell the remaining gold which he had in his possession. Again he insisted the complainant to purchase the remaining quantity of gold that was in his possession and also made him to believe the originality of the gold which was given by him to the complainant earlier. The complainant and his friend again came to Hadagali for purchase of the remaining gold which was in the custody of the accused. Accordingly on 24.05.2007, the complainant had purchased the gold from the accused weighing 950 grams of the gold pieces and in turn the complainant paid a consideration amount of Rs.1,20,000/-to the accused. Again the complainant had gone to the jewellery shop in Jevargi to ascertain the originality of the gold items said to have been purchased from the accused. Subsequently the complainant came to know the accused had sold him fake gold. Therefore he went to the respondent-police and filed a complaint. In pursuance of the complaint filed by the complainant, the case in Cr.No.31/2007 came to be registered against the accused for the offences under Section 420 of IPC.

4. Subsequently the investigating officer took up the case for investigation and thoroughly investigated the case by recording the statement of the witnesses and so also drew the spot mahazar and seizure mahazar and laid the charge sheet in C.C.No.30/2008 relating to the petitioner herein viz., Korachara Nagaraj a Yeradethinahalli Naga. Subsequent to laying of charge sheet against the accused, the trial court has framed the charge against him for the offence under Section 420 IPC where the accused did not plead guilty, but claimed to be tried. Accordingly, plea of the accused was recorded separately. Subsequently the prosecution in order to substantiate the case against the accused, in all, examined PW- 1 to PW-10 and also got marked Ex.P.1 to Ex.P.8.Ex.D.1, the contradictory statement of Siddanna Desai was also got marked. The fake gold was marked as M.O.1.

5. Subsequent to closure of the evidence, the statement of the accused was examined, wherein the accused had denied the incriminating evidence of the prosecution, but he did not come forward to adduce any defence evidence as contemplated under Section 233 of Cr.P.C.

6. Subsequently heard the arguments advanced by the prosecution and so also the defence counsel and perused the evidence of PW- 2, 3, 5, 7, 9 and 10 and also the documents at Ex.P.1 to P.8 marked by the trial court in C.C.No.30/2008 and also the case in C.C.No.445/2008 relating to the accused no.2 Parameshi rendering the conviction judgment against the 1st accused in C.C.No.30/2008, but ended in acquittal in respect of accused no.2 in C.C.No.445/2008 by rendering a common judgment in its order dated 20.07.2019.

7. Accused no.1 has preferred an appeal before the first appellate court in CrI.No.103/2009 by questioning the judgment of conviction and order of sentence rendered against him in C.C.No.30/2008, but a common judgment rendered by the trial court including C.C.No.445/2008, but mistakenly in CrI.A.No. 103/2009, the accused in C.C.No.445/08 viz., Parameshi is acquitted as noticed. The same has to be clarified though the HCGP for the State and also the learned counsel for the petitioner herein who represented the accused NO. 1 in C.C.No.30/2008.

8. The learned counsel for the petitioner herein as taken me through the evidence of PW- 2 who is the author of complaint in Ex.P.2 and he has specifically stated in his evidence that while the petitioner was digging up the foundation he found the black treasure. Therefore he gave information to the complainant about the black treasury and asked to purchase the gold from him by coming to Hadagali bus stand, Bellary District. Accordingly the complainant along with his friend Mallinatha, came to Hadagali bus stand to purchase the gold. The complainant to verify the two pieces of gold items went to jewellery shop at Jevergi. Thereafter he came to know that it was fake gold items. Therefore PW- 2 went to the respondent-police on 15.06.2007 and filed a complaint as per Ex.P.2, but in his complaint he has not specifically stated whether it is original or fake gold sold by the accused. When PW- 2 was subjected for cross-examination, he did not stand by the averments made in the complaint at Ex.P.2 and based upon his complaint, FIR was recorded as per Ex.P.7. Subsequent to recording of FIR, the case has been taken up for investigation by PW-10, Sunil Y.Naik and charge sheet was laid against the accused.

9. PW- 1 said to be photographer did not produce the photograph and the same has not been secured by the investigating officer during the investigation.PW- 4 said to be the appraiser, but he has turned hostile and he did not withstand the versions of his statement.PW 6 said to be the panch witnesses of exhibits as conducted by PW-10.These witnesses have not withstood the versions of their statements. The same has not been properly appreciated by the trial court in C.C.No.30/2008.Whereas the trial court during the course of appreciation of the evidence has specifically stated in the impugned judgment as though it is from the mouth of the complainant who has filed the complaint as per Ex.P.2 and also PW- 3 being the co witness viz., Mallinath as in their presence seizure panchanama has been drawn by the PW-10 in the presence of Manjunath and ASI. PW-10 being the investigating officer has stated in his evidence, but the trial court did not appreciate the evidence in respect of PW-2,3,5,7,9 and 10 and their evidence which runs contrary to the evidence of PW.1,4,6 and 8, these witnesses did not withstand the case of the prosecution and that itself indicates that the theory as put forth by the prosecution are found to be cloud of doubts. But the trial court has specifically stated that a conviction judgment held against the accused no.1 in C.C.No.30/2008 that the prosecution, if established the case against the accused to certain extent with regard to the fact of cheating, consequently the accused is appraised for conviction under Section 420 IPC, but the prosecution did not put forth the cogent and corroborative evidence in order to commit the offence under Section 420 IPC. But Section 420 IPC is akin to Section 415 of IPC. The ingredients which relates to the offence under Section 415 of IPC in respect of cheating, as punished under Section 420 of IPC, has not been established by the prosecution by putting forth the cogent, corroborative and acceptable evidence that the accused no.1 is said to have committed an offence under Section 420 IPC, but the trial court held acquittal in respect of Accused no.2, when the benefit of doubt has been extended to the co-accused, the same shall be extended to accused no.1 also. Therefore this criminal revision petition requires to be interfered, if not there shall be miscarriage of justice in respect of accused no.1.

10. It is further contended that in so far the voluntary statement of accused no.1 as per Ex.P.8 the same has been confessed before the investigating officer during the course of investigation in a statement given before him under custody, it is to be assessed in a proper perspective manner. In the instant case, the accused NO. 1 said to have confessed about handing over of the fake gold weighing 1 kg. for Rs.1,20,000/-, mere because he has given a voluntary statement as per Ex.P.8 and PW.10 said to be the investigation officer who laid the charge sheet, it cannot be said that this accused has committed the alleged offence as there is contradiction. This factor has not been properly appreciated either by the trial court or by the first appellate court. The confession which is made out and put forth by the accused no.1 and recorded by PW-10 cannot be given any credentiality to prove the case of the accused. These are all the contentions as taken by the learned counsel for the petitioner seeking for intervention of the impugned judgment rendered by the court below.

11. The trial court as well as the first appellate court should have appreciated the evidence in a proper perspective manner, but the same has not been done keeping in view Section 386 of Cr.P.C. Regarding the quality of gold which is said to be purchased by the complainant from the possession of the accused no.1, in

the presence of accused no.2, but the prosecution did not produce the appraisal certificate, being the competent person to appraise the quality of gold confirmed as genuine gold. That itself indicates the theory as put forth by the prosecution as doubtful. Therefore in this petition it requires to be interfered with by re-appreciating the evidence of the prosecution and also the documents. This contention is taken by the learned counsel for the petitioner and seeks for interference of the impugned judgment rendered by the trial court in C.C.No.30/2008 which is confirmed by the first appellate court and seeks for acquittal of the accused for the offence under Section 420 IPC.

12. The learned High Court Government Pleader who has taken me through the averments made in the complaint at Ex.P.2 and also the evidence of PW- 2 and 3, the eye witnesses and also the friend of the complainant. In his presence only M.O.1 gold item was purchased by paying a sum of Rs.1,20,000/-. The same has to be proved by the prosecution. The evidence of PW.2,3,5,7,9 and 10 are found to be corroborated and also consistent. These witnesses have been subjected to examination on the part of the prosecution and also subjected to thorough cross examination, but nothing worthwhile has been elicited on the part of the defence to disbelieve the version of the theory as put forth by the prosecution for the offence under Section 420 IPC. Merely because the co-accused no.2 viz., Parameshi said to be acquitted for the said offence in C.C.No.445/2008 and the same cannot be extended to accused no.1 in this case as well. The evidence put forth by the prosecution which is thoroughly appreciated by the trial court and rightly come to the conclusion that the prosecution has proved the guilt of accused no.1 even to the extent that he had given voluntary statement and based on the voluntary statement, the investigating officer conducted mahazar as per Ex.P.4. Therefore the trial court has considered the evidence of these witnesses and rightly come to the conclusion that accused has committed the offence under Section 420 IPC. Subsequent to the conviction held against accused no.1, he has preferred an appeal in CrI.A. 103/2009, the judgment rendered by the first appellate court is relating to the case in C.C.No.30/2008 in which accused no.1 is convicted for the offence under Section 420 IPC has been confirmed.PW- 2 Shivaraj who is the author of the complaint of Ex.P.2 and he has been subjected to cross examination thoroughly nothing has been elicited to disbelieve the theory of prosecution.The trial court has appreciated the entire evidence on record and has rightly come to the conclusion, by holding conviction. Therefore in this criminal revision petition do not call for interference of the judgment rendered by the trial court as well as the appellate court. These are all the contentions as taken by the learned HCGP for the State and seeks for dismissal of this criminal petition as devoid of merits and confirming the judgment of conviction held by the trial court against the accused in C.C.No.30/2008, which confirmed by the appellate court.

13. It is in this context, it is relevant to refer to the evidence of PW- 1 said to be photographer who is secured by the investigating officer during the course of investigation, but the prosecution has not produced any photographs for having subjected and also not made any endeavour to produce the same.

14. PW- 2 Shivaraj said to be author of the complaint at Ex.P.2, but his evidence is not in conformity with the allegations made in his complaint. It is relevant to refer to evidence of PW- 1, 4, 6, 8, these witnesses have given the statement before the investigating officer, but they have not with stood the versions of their statement, including Ex.P.4, the mahazar said to have been conducted by PW-10 in the presence of PW- 6. PW- 8 who is the panch witnesses during the course of investigation in his presence he has conducted the mahazar as per Ex.P.3. However, at a cursory glance of the evidence of P.W.1,4,6 and 8 runs contrary to the evidence of PW- 2 in respect of Ex.P.2 and so also the evidence of PW- 3 said to be eye witnesses and PW- 5 said to be appraiser relating to the gold items MO.1.PW.4 and 5 said to be appraiser have been secured by the investigating officer, but PW- 5 has not with stood the statement said to be recorded by the investigating officer during investigation.PW- 4 also has not supported the case of the prosecution.

15. Even though this petition is filed under Section 397 of Cr.P.C., but it requires to be dealt as an appeal under Section 386 of Cr.P.C. Consequently re appreciation of the evidence put forth by the prosecution, including all the documents produced by the complainant. Therefore it is said that the entire evidence which is put forth by the prosecution as PW 1 to 10, it requires to re-appreciate the evidence in a proper perspective by the trial court as well as appellate court, but the same has not been done. When once the benefit of doubt is given to accused no.2, the same benefit shall be extended to accused no.1.In terms of the aforesaid finding, I am of the opinion that the contention of the learned counsel of the learned counsel for the accused needs to be accepted to call for interference, the impugned judgment rendered by the trial court since there are infirmities found in the judgments rendered by the court below. Accordingly I proceed to pass the following:

16. Criminal revision petition filed by the petitioner/accused no.1 under Section 397 r/ w 401 of Cr.P.C. is hereby allowed. Therefore the judgment rendered by the trial court in C.C.no.30/2008 dated 20.07.2009 and SO also the appeal in Crl.A.No. 103/2009 dated 10.5.2011 is hereby set aside. Consequently accused no.1 is hereby acquitted of the offence under Section 420 of IPC. Consequent upon acquittal of the accused of the offence under Section 420 IPC in C.C.No.30/2008, the fine amount that has been deposited, the same shall be refunded to the accused on proper identification.