

State Represented By vs /39 on 21 August, 2012

Crl.A.Nos.389, 390, 391, 393, 394 and 39

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Judgment
24.10.2018

Date of pronouncing Judgment
20.12.2019

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.A.Nos.389, 390, 391, 393, 394 and 395 of 2013
and
M.P.Nos.1 of 2014 (3 Nos.)

State represented by
The Deputy Superintendent of Police
Erode Town, Erode District
(Erode Town P.S.
Crime No.1776/1998)

.. Appellant in Crl.A.Nos.389, 390
391 of 2013

State represented by
The Deputy Superintendent of Police
Erode Sub Division,
Erode District.
(Crime No.1376/1998
of Erode Town P.S.)

.. Appellant in Crl.A.Nos.393, 394
395 of 2013

Versus

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Crl.A.Nos.389, 390, 391, 393, 394 and

V.Rangaraman (A2)

.. Respondent in Crl.A.Nos.
389 and 393 of 2013

Ponnusamy (A3)

.. Respondent in Crl.A.Nos.
390 and 394 of 2013

E.K.Palanisamy (A1) .. Respondent in CrI.A.Nos.
391 and 395 of 2013

Criminal Appeal Nos. 389, 390 and 391 of 2013 filed under
Section 378 of Cr.P.C. against the Common Judgment of acquittal
passed by the learned Principal Sessions Judge, Erode District
Erode in C.A.Nos.89, 90 and 95 of 2012 dated 21.08.2012.

Criminal Appeal Nos.393, 394 and 395 of 2013 filed under
Section 378 of Cr.P.C. against the Common Judgment of acquittal
passed by the learned Principal District and Sessions Judge, Erode
District at Erode in C.A.Nos.100, 101 and 111 of 2012 dated
21.08.2012.

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CrI.A.Nos.389, 390, 391, 393, 394 and

For Appellant in : Mr.R.Ravichandran
all CrI. Appeals Government Advocate (CrI.

For Respondent in : Mr.A.Ramesh, Senior Counsel
CrI.A.Nos.389, 390 for
393 & 394 of 2013 Mr.V.Selvam

For Respondent in : Mr.A.Ramesh, Senior Counsel
CrI.A.Nos. 391 and for
395 of 2013 Mr.V.Vijayakumar

Common Judgment

The brief facts leading to the filing of CrI.A.Nos.389,
and 391 of 2013 is as follows:-

1.1 The appellant police in CrI.A.Nos.389, 390 and 391 registered a case against the respondents in the above Criminal Appeals for the offences under Sections 420, 419, 467, 468 and 471 r/w. Section 109 IPC in Crime No.1776/1998 and after investigating the case, laid the charge sheet before the learned Judicial Magistrate No.II, Erode, and the learned Judicial Magistrate, after completing the formalities, taken the charge sheet on file in C.C.No.592 of 2007 and framed the charges against all the accused for the above offences.

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CrI.A.Nos.389, 390, 391, 393, 394 and 395. The charge sheet on file in C.C.No.592 of 2007 and framed the charges against all the accused for the above offences.

1.2 In order to prove the case of prosecution, during trial, before the trial Court, on the side of prosecution, as many as 9 witnesses, viz., PW.1 to PW.9 were examined and 26 documents were marked as Exs.P1 to P26. After completing the examination of prosecution witnesses, when incriminating circumstances culled out from the evidence of prosecution witnesses were put before the accused, they denied as false.

1.3 After completing the trial and hearing the arguments advanced on either side and perusing the oral and documentary evidences, the trial Judge found the respondents/accused guilty for the above offences and convicted the first accused under Sections 467, 468 and 420 IPC and sentenced to undergo rigorous

imprisonment for two years for each section and to pay a fine

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Rs.1,000/- in default to undergo rigorous imprisonment for two months under each section, and convicted the second and third accused under Sections 467 and 468 r/w.109 IPC and sentenced to undergo rigorous imprisonment for two years each under each of sections and to pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for two months each under each section.

1.4 Challenging the said judgment of conviction and sentence rendered by the learned Judicial Magistrate No.II, Erode, the accused preferred three separate appeals in Criminal Appeal Nos. 89, 90 and 95 of 2012 before the learned Principal Sessions Judge, Erode. The learned Principal Sessions Judge upon hearing the arguments advanced on either side and perusing the oral and documentary evidences, by a common judgment dated 21.08.2012, came to the conclusion that the prosecution has not at all established any of the offences against the accused and acquitted all the accused from the charges levelled against

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them, thereby set aside the judgment of the learned Judicial Magistrate No.II, Erode, dated 20.04.2012 made in C.C.No.592 of

2007.

1.5 Challenging the said judgment of acquittal passed by the learned Principal Sessions Judge, Erode, in Crl.A.Nos.89, 90 and 95 of 2012 dated 21.08.2012, the State has preferred Crl.A.Nos.389, 390 and 391 of 2013 before this Court.

2. The case of prosecution in Crl.A.Nos.389, 390 and 391 of 2013 is as follows:-

2.1 The Nanja land measuring about 85 cents, comprised in Old T.S.No.1369 at Kuppipalam Kuttaarai, New T.S.No.90, Ward No.2, Block No.28, Erode was originally owned by one Chokkalinga Mudaliar, the maternal grand father of PW.1 and he having purchased the same under the Registered Sale Deed dated 29.10.1945 under Ex.P2. The said Chokkalinga Mudaliar died in

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Crl.A.Nos.389, 390, 391, 393, 394 and 395 of 2013 filed in the year 1950 and he was survived by his son V.C.Periyasamy Mudaliar and two daughters Muthulakshmi and Santhayammal.

2.2 Periyasamy Mudaliar, his son Periyasamy Mudaliar executed a Settlement Deed dated 24.07.1950 under Ex.P3 in favour of Vinayathammal, second wife of Chokkalinga Mudaliar in respect of the income from the said land towards maintenance

till the death of Vinayathammal and it has been stated categorically in the said Settlement Deed that Vinayathammal had no right to sell, mortgage or to create any encumbrance on the said property and after her life time, the said property was to be reverted back to Periyasamy Mudaliar and his legal heirs.

2.3. After the death of Periyasamy Mudaliar in the year 1996 and his wife, Periyasamy Mudaliar's sister Muthulakshmi, Santhayammal and legal heirs of Santhayammal viz., defacto complainant, his brothers, sisters, his father and 7/39

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Crl.A.Nos.389, 390, 391, 393, 394 and legal heirs of Muthulakshmi (her 4 sons) became the owners of the said land and they were in possession and enjoyment of the said land measuring 85 cents. Patta and all other revenue records stood in their names and they were paying land tax to the revenue authorities for the land owned by them.

2.4 A1 is a land grabber indulged in malpractices of forging documents relating to valuable lands and A1 colluded with A2 and A3, forged a Will dated 22.12.1986, registered as Document No.251 of 1986 in the name of Vinayathammal, second wife of defacto complainant's grandfather Chokkalinga Mudaliar and also Power of Attorney dated 28.01.1987, registered as

Document No.14 of 1987, forging the thumb impression of the said Vinayathammal. Further, A2 and A3 have illegally abetted A1 by transferring patta and making subdivision of Survey Number in the name of A1 and made illegal entries in the revenue records in favour of A1 even before the death of Vinayathammal on the 8/39

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basis of the Will dated 22.12.1986.

2.5 Based on the complaint of PW.1, Erode Town Police registered a case in Crime No.1776 of 1998 under Sections 420, 419, 467, 468 and 471 r/w. Section 109 IPC and took up the investigation of the case. The Deputy Superintendent of Police Erode Town, after completing the investigation, filed a charge sheet before the learned Judicial Magistrate No.II, Erode against the accused, for the offences under Sections 420, 419, 467, 468 and 471 r/w. Section 109 IPC and the same was taken on file by the learned Magistrate in C.C.No.592 of 2007 and the learned Magistrate, after completing trial and upon arguments, by judgment dated 20.04.2012 convicted and sentenced the accused as above. Against which, the appellants moved the learned Principal Sessions Judge Crl.A.Nos.89, 90 and 95 of 2012, and the learned Principal Sessions Judge, on 21.08.2012, allowed the said appeals and 9/39

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acquitted the accused. Aggrieved over the same, the State is before this Court.

3. The learned counsel for the appellant/State in Crl.A.Nos.389, 390 and 391 of 2013 would submit that the lower appellate Court has failed to appreciate or access the value of evidence from proper perspective and it is based on surmises. The lower appellate court also failed to note that in a case wherein civil nature arises, the ocular evidence of the prosecution witnesses and the documents submitted by them would be scrutinized with diligent care. The lower appellate Court also failed to note that the property in dispute, undisputedly belongs to the family of PW.1 as ancestral property. The lower appellate Court also failed to note that the alleged Will dated 22.12.1986 executed by the said Vinayathammal in favour of A1 was disproved by the expert opinion Ex.P26 that the thumb impression found in the Will is not her thumb impression.

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and the lower appellate Court ought not to have discarded the expert opinion. The lower appellate Court also failed to note that as per Ex.P3, Settlement Deed dated 22.12.1986, Vinayathammal had no right to encumber the property and in

fact, she was given only life estate over the property and further the Settlement Deed is not disputed by A1. The lower appellate Court, without looking into the documentary evidence, had passed the order of acquittal on imaginary grounds. The judgment of acquittal passed by the lower appellate Court is bad in law and hence, liable to be set aside.

4. The brief facts leading to the filing of Crl.A.Nos. 393, 394 and 395 of 2013 is as follows:-

4.1 The appellant police in Crl.A.Nos.393, 394 and 395 of 2013 registered a case against the respondents in the above Criminal Appeals for the offences under Sections 182, 420, 466, 467, 468 and 420 r/w.109 IPC in Crime No.1376/1998 and after 11/39

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Crl.A.Nos.389, 390, 391, 393, 394 and 395 of 2013. The investigating officer, while investigating the case, laid the charge sheet before the learned Judicial Magistrate No.II, Erode, and the learned Judicial Magistrate, after completing the formalities, taken the charge sheet on file in C.C.No.591 of 2007 and framed the charges against all the accused for the above offences.

4.2 In order to prove the case of prosecution, during the trial, before the trial Court, on the side of prosecution, as many as 6 witnesses, viz., PW.1 to PW.6 were examined and 9 documents were marked as Exs.P1 to P9. After completing the

prosecution witnesses, when incriminating circumstances culled out from the evidence of prosecution witnesses were put before the accused, they denied as false.

4.3 After completing the trial and hearing the arguments advanced on either side and perusing the oral and documentary evidences, the trial Judge found the respondent/accused guilty
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for the above offences and convicted the first accused under Section 420 IPC and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.2,000/- in default to undergo rigorous imprisonment for two months and convicted the second and third accused under Sections 466, 467, 468 and 420 r/w.109 IPC and sentenced to undergo rigorous imprisonment for one year each for each section and to pay a fine of Rs.1,000/- each in default to undergo rigorous imprisonment for two months each for each section.

4.4 Challenging the said judgment of conviction and sentence rendered by the learned Judicial Magistrate No.II, Erode, dated 18.05.2012, the accused preferred three separate appeals in Criminal Appeal Nos.100, 101 and 111 of 2012 before the learned Principal Sessions Judge, Erode. The l

Principal Sessions Judge, upon hearing the arguments advanced on either side and perusing the oral and documentary evidences
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Crl.A.Nos.389, 390, 391, 393, 394 and 395 of 2013 by a common judgment dated 21.08.2012, came to the conclusion that the prosecution has not at all established any of the offences against the accused and acquitted all the accused from the charges levelled against them, thereby set aside the judgment of the learned Judicial Magistrate No.II, Erode, dated 18.05.2012 made in C.C.No.591 of 2007.

4.5 Challenging the said judgment of acquittal passed by the learned Principal Sessions Judge, Erode, in Crl.A.Nos.100, 101 and 111 of 2012, the State has preferred Crl.A.Nos.393, 394 and 395 of 2013 before this Court.

5. The case of prosecution in Crl.A.Nos.393, 394 and 395 of 2013 is as follows:-

5.1 The defacto complainant submitted that the land comprised in original Old S.F.No.100/A1, 100/A2, S.F.No.85/2, 85/3, 85/4, resurvey Ward A, Block No.1.5,
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Crl.A.Nos.389, 390, 391, 393, 394 and 395 of 2013 T.S.No.2,3,4, Erode Town measuring about 35,000 square feet

originally owned by two brothers, viz., Arumuga Mudaliar and Marimuthu Mudaliar, they having purchased the same under the registered sale deed dated 04.05.1942, registered as document No.1201 of 1942. Subsequently, a partition deed dated 31.12.1956, registered as document No.948 of 1957 was executed between them, partitioning the said land between them.

5.2 The said Marimuthu Mudaliar and his sons executed registered partition deed dated 19.07.1969 partitioning the share of land belonging to Marimuthu Mudaliar, among themselves. In the same way, the land belonging to Arumuga Mudaliar was partitioned among Arumuga Mudaliar and his sons as per the Panchayat dated 25.02.1970. After the death of Marimuthu Mudaliar and Arumuga Mudaliar, their respective legal heirs, including the defacto complainant, became the absolute owners of the said land and they were in absolute possession and

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Crl.A.Nos.389, 390, 391, 393, 394 and in the enjoyment of the said land and they paid urban land tax for the said land. Patta, Chitta, Adangal and all other revenue records relating to the said land stood in their names.

5.3 The appellant/A1 is a notorious land grabber and indulged in malpractices of forging documents relating to

valuable lands. With the illegal intention of grabbing the above said land owned by the defacto complainant and his family members, A1 produced forged electricity receipts and forged property tax receipts before the Tahsildar/A2 for transfer of patta. The Surveyor/A3 filed false report before the Tahsildar and with active connivance of A2 and A3, A1 got the patta transferred in his name for the said land illegally. The defacto complainant filed appeal before the District Revenue Officer, Erode challenging transfer of patta in the name of A1. District Revenue Officer, Erode passed detailed order dated 10.03.1998, cancelling patta transfer made in the name of A1 on 16/39

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on the ground that the Tahsildar had effected transfer of patta in favour of A1 without any title documents and only on the basis of forged tax receipts and forged electricity receipts. The order has become final as A1 has not challenged the same before any authority or before any Court.

5.4 The complainant lodged a complaint before the Superintendent of Police, Erode District and the same was forwarded to the Inspector of Police, Erode Town Police Station, Erode District.

5.5 Based on the complaint, the Inspector of police

registered a case in Erode Town Police Station No.1376/1998, for offences under Sections 182, 420, 466, 467, 468 and 420 r/w.109 IPC against the accused persons (A1 to A3) and the appellant police took up investigation.

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5.6 After completion of the detailed investigation, report was filed against the accused persons for the offences under Sections 182, 420, 466, 467, 468 and 420 r/w.109 IPC and the same was submitted to the Hon'ble Judicial Magistrate Court Erode District and the same was taken on file in C.C.No.591 of 2007.

5.7 After full-fledged trial and upon hearing arguments, the trial Court, on 18.05.2012, convicted and sentenced the accused as above. Against which, the appellant moved the learned Principal District and Sessions Judge, Erode Crl.A.Nos.100, 101 and 111 of 2012, and the learned Principal District Sessions Judge, by a common judgment dated 21.08.2012 allowed the said appeals and acquitted the accused. Aggrieved over the same, the State is before this Court in Crl.A.Nos.393, 394 and 395 of 2013.

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6. The learned counsel for the appellant/State in Crl.A.Nos.393, 394 and 395 of 2013 would submit that the lower appellate Court has failed to appreciate or access the value of evidence from proper perspective and it is based on surmises. The lower appellate Court ought not to have interfered with the order of the trial Court since A1 had not clearly established a claim of either title or possession of the property involved in this case. The lower appellate court also failed to note that in a case wherein civil nature arises, the ocular evidence of the prosecution witnesses and the documents submitted by them would be scrutinized with diligent care. The lower appellate Court also failed to consider that in a criminal case pertaining to the right over a property, the burden lies on A1 to stake his claim and to documents submitted by A1 in this regard. The lower appellate Court also failed to note that the property in dispute undisputedly belongs to the family of PW.1 as ancestral property. The lower appellate Court also failed to note that without any

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piece of evidence, A1 transferred the patta and other connected revenue records in his name by misrepresentation and for that, A2 and A3 obliged. The lower Appellate Court failed to note that A2 and A3 before transferring the patta had not applied their

minds and passed an order without verifying the documents that too, without any notice to the parties concerned. The Appellate Court also failed to note that the patta transferred the name of A1 was cancelled on 10.03.1998 (Ex.P2) based on the letter of PW.1 dated 08.01.1998. The judgment of acquittal passed by the lower appellate Court is vague and hence, liable to be set aside.

7. The learned counsel appearing for the respondents in all the cases would submit that on completion of the first investigation, the appellant had closed the said case as "Mistake of Fact" through RCS report dated 29.09.2005 along with learned Public Prosecutor's opinion. On 20.01.2006, the case was

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Crl.A.Nos.389, 390, 391, 393, 394 and reopened for further investigation, vide order of the learned Judicial Magistrate No.II, Erode, at the request of DSP, Erode. The learned counsel for the respondents would also submit that during second investigation, the Police have not investigated further, but on the evidence collected during the first investigation and on the same report, they laid charge sheet, which warrants interference.

8. The learned counsel appearing for the respondents would submit that first respondent/A1 obtained patta based on

the basis of possession, not based on any forged document and also they had not obtained any document forged. In the Power of Attorney, signature of first respondent/A1 has not been found, the thumb impression found in the document of the year 1950, not matched with the thumb impression found in the Will or Power of Attorney and they have not sent the thumb impression for comparison and also the prosecution has not proved that the

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defacto complainant is the legal heir of the deceased. The prosecution has not established that the thumb impression taken from the register from these registered thumb impressions allegedly taken by the expert and Patta has been changed based on the alleged false documents Exs.P22 and P23. The first respondent did not sell the property based on Exs.P22 and P23, but sold it under possessory rights. Therefore, the charge under Section 420 IPC is not proved by the prosecution. Mere making representation to effect patta on the basis of settled possession will not constitute cheating. If at all, PW.1 inherited the property, his remedy is a Court of Law to redeem the property. The defacto complainant misused the police machinery and lodged a complaint without any basis. Ex.D1 – G.O.Ms.No.942 dated 15.06.1991 reveals that the Zonal Deputy Tahsildar alone can effect the patta. At any event, merely on the basis of possessory rights, the act of the Tahsildar and Surveyor cannot be construed creating false documents for

offences under Sections 467, 468 and 420 IPC against R2 and R3

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A2 and A3. The Zonal Deputy Tahsildar had conducted the original proceedings and recommended for sub Therefore, the second and third respondents have done their official duty, which would not construed as an offence of crea of false documents. The respondents had been acquitted for all the charges framed against them and Crl.R.Ps. filed by the defacto complainant are dismissed. Aggrieved over the same, the defacto complainant has preferred Criminal Revision Cases in Crl.R.C.Nos.1238 to 1240 of 2000 and the same were dismissed a withdrawn on 07.11.2012. However, these appeals have be filed by the appellant herein. Though the trial Court failed t consider the facts and ingredients of the offence and convicted them, the appellate Court, as a fact finding Court, re-appreci the entire evidence and set aside the judgment of the trial Co and acquitted the respondents. Therefore, there is no merit in the appeals and the appeals are liable to be dismissed.

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9. Heard the learned Government Pleader appearing the State/Appellant and the learned counsel for the respondent and also perused the documents available on record.

10. The respondents' counsel relied on the following citations:-

i) Judgment of Hon'ble Supreme Court in CrI.A.No.2010 (Mohinder Singh ..vs.. State of Punjab)

ii) Judgment of Hon'ble Supreme Court in CrI.A.No.12011 (Jayaswamy ..vs.. State of Karnataka)

iii) Judgment of Hon'ble Supreme Court in CrI.A.No.32008 (Bannareddy ..vs.. State of Karnataka)

iv) Judgment of Hon'ble Supreme Court reported in (2 SCC 278 (Issac @ Kishore ..vs.. Ronald Cheriyan)

v) Judgment of Hon'ble Supreme Court in CrI.A.No.52011 (Muralidhar @ Gidda ..vs.. State of Karnataka)

vi) Judgment of Hon'ble Supreme Court reported in (4 SCC 415 (Chandrappa ..vs.. State of Karnataka)

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vii) Judgment of Delhi High Court reported in Manu/DE/0905/2005 : 121 (2005) DLT 522 (Shashi lata Khanna ..vs.. State of Delhi)

viii) Judgment of Punjab and Haryana High Court in CRR No.3231 of 2013 (O & M) (Dharan Singh ..vs.. State of Punjab)

ix) Judgment of Hon'ble Supreme Court in CrI.A.Nos. and 360 of 2010 (Sheila Sebastian ..vs.. R.Jawaharaj)

x) Judgment of Hon'ble Supreme Court reported in 1

Supp (3) SCC 436 (V.Sujatha ..vs.. State of Kerala)

xi) Judgment of Hon'ble Supreme Court reported in 1

Supp (2) SCC 111 (Nand kumar Singh ..vs.. State of Bihar)

xii) Judgment of Hon'ble Supreme Court reported in (

1 SCC 460 (Chatt ram ..vs.. State of Haryana)

xiii) Judgment of Hon'ble Supreme Court reported in (1

1 SCC 613 (Arjan Singh ..vs.. Hazara Singh)

xiv) Judgment of Hon'ble Supreme Court reported in AIR

1983 SC 352 (Hasan Ali ..vs.. State of Madhya Pradesh)

xv) Judgment of Oudh Chief Court reported in 1946 S

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OnLine Oudh CC 105 : AIR 1947 Oudh 35 (Kishan lal Gupta ..vs..

Emperor)

xvi) Judgment of Hon'ble Supreme Court reported in (19

1 SCC 654 (S.Guin ..vs.. Grindlays Bank Ltd.,)

xvii) Judgment of Hon'ble Supreme Court reported in (2

12 SCC 699 (Ajay Kumar Ghoshal ..vs.. State of Bihar)

xviii) Judgment of Allahabad High Court reported in 19

SCC OnLine All 337 : AIR 1956 All 655 (Jaganathan ..vs.. State

xix) Judgment in Crl.R.C.No.1072 of 1945 dated 08.02.1

(S.Pichai Pilla, In Re)

xx) Judgment of the Court of Judicial Commissioner,

Vindhya Pradesh reported in 1951 SCC OnLine VP 35 (Mangal

Prasad Bhushan Ram ..vs.. Government)

xxi) Judgment of Hon'ble Supreme Court reported in 201
SCC OnLine SC 477 (Dilawar ..vs.. State of Haryana)

xxii) Judgment of this Court reported in 1998 SCC OnLi
Mad 204 : 2000 Cri.LJ 1292 (Assistant Collector, Central Excis
..vs. L.Gheverchand Jain)

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xxiii) Judgment of Hon'ble Supreme Court reported in 1
Supp SCC 180 (Hasan Ahmad Mai Isha ..vs.. State of Gujarat)

xxiv) Judgment of Hon'ble Supreme Court reported in (1
10 SCC 79 (Dhanna ..vs.. State of Punjab).

11. The case of prosecution in short is that based o
complaint by PW.1 – defacto complainant alleging that the first
respondent/A1 in active connivance with the then Tahsildar (A2
and Sub-Inspector of Survey (A3), had knowingly changed patta
and other revenue records for his forefather's immovable
property, which is a criminal offence, and on appeal, The Dist
Collector/District Revenue Officer had cancelled the changes
mutated by the accused. Therefore, action was sought against
the accused/respondents.

12. The main contention of the appellant is that the
property is originally belonged to Chockalinga Mudaliar, mater

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grand father of PW.1. The said Chockalinga Mudaliar died in the year 1950 and he was survived by his son V.C.Periyasamy Mudaliar and two daughters Muthulakshmi and Santhayammal and his son Periyasamy Mudaliar executed a settlement deed dated 24.07.1950 (Ex.P3) in favour of Vinayathammal, second wife of Chockalinga Mudaliar in respect of the income of the said land towards maintenance till the death of Vinayathammal. After the death of Periyasamy Mudaliar and his wife, Periyasamy Mudaliar's sisters Muthulakshmi and Santhayammal became owners of the said land. After the death of Muthulakshmi and Santhayammal, their legal heirs, viz., defacto complainant, his brothers, sisters and father (legal heirs of Santhayammal) and four sons of Muthulakshmi became the owners of the said land and they were in possession and enjoyment of the said land measuring 85 cents. The patta and all other revenue records stood in their names and they were paying all the taxes. The first respondent - a land grabber, indulged in malpractices and forged the Will dated

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dated 22.12.1986, registered in the name of Vinayathammal, the second wife of the defacto complainant's grand father Chockalinga Mudaliar, forging the thumb impression of

Vinayathammal.

13. Though the trial Judge found that the first respondent forged and created the document and changed patta in his name and sold the property, but the appellate Court has found that legal heir certificate of Chockalinga Mudaliar or Vinayathammal has not been produced before the Court to prove that the defac complainant is the legal heir of the deceased Chockalinga Mudaliar and Vinayathammal and further, the original thumb impression Register has not been sent for comparison and the first respondent obtained the title through enjoyment and possession and the Power of Attorney is not used for changing patta or changing of title. Therefore, in the absence of same, the prosecution has failed to establish the case beyond 29/39

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doubt.

14. On reading of the records, Vinayathammal had limited estate only and Vinayathammal had no right to alienate the property. The first respondent has brought one 60 years old land and registered a Power of Attorney in his name. Though RDO has set aside the order of the Tahsildar and RDO has also cancelled the patta given in favour of the first respondent, the same has been restored by the order of the Land Commissioner, Chennai.

The defacto complainant did not challenge the said order of the Land Commissioner. Even the order of RD0 - Ex.P16 clearly shows that the Power of Attorney and Will have not been used for changing the patta. Therefore, the Appellate Court finds that Section 471 of IPC cannot be made out.

15. Though the Power of Attorney and the Will were marked as Exs.P22 and P23, the evidence of PW.3 shows that he

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Crl.A.Nos.389, 390, 391, 393, 394 and 395. PW.3 had not identified the respondents in Court during his evidence. He admits that he had signed on the instruction of his employee and does not know other facts. He had stated that the respondent had signed in the Power of Attorney, whereas Ex.P23 Power of Attorney does not contain the respondent's signature.

16. The evidence of fingerprint Expert - PW.8 reveals that the thumb impression on the false documents and the settlement deed of the year 1950 have not been used for comparison. The thumb impression in the Sub-Registrar Office Register had been taken for comparison. The thumb impression marked as Ex.D1 is a common thumb impression for two documents, viz., the Will dated 22.12.1986 registered as Document No.251 of 1986 and the details of another document has not been explained by the prosecution, which

creates serious doubt on the samples. The thumb impression taken as Ex.D2 is taken from the Column of Document No.196 dated 28.01.1987, whereas the Power of Attorney is registered 31/39

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Document No.14/1987. Therefore, from totally different documents, the thumb impression was taken for comparison. Those registers have not been produced before the Court as Exhibits. Therefore, the evidence of PW.8 has not proved the forgery committed by the respondents.

17. Though the trial Court had believed the evidence of PW.1 that he is the legal heir of Chockalinga Mudaliar, original owner of the property, but there is no material on record to support the contention of the prosecution that Muthulakshmi and Santhayammal are daughters of Chockalinga Mudaliar. There is no legal heir ship certificate produced to suggest that who are the legal heirs of Chockalinga Mudaliar. Ex.P4 – Geneology table does not have any authenticity. In the absence of legal heir ship certificate produced by the defacto complainant proving that he is the legal heir of the original owner Chockalinga Mudaliar, has no locus standi to file the complaint at all. The finding 32/39

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trial Court is merely on surmises and conjectures. The documents were not placed before the Court for scrutiny. The trial Court also has conveniently omitted the recitals in the sale deed Ex which clarifies the fact that during the purchase of the property by Chockalinga Mudaliar, the lessees were in possession of the property and were cultivating the same. The common thumb impression for two documents and unnamed impression have been taken for comparison and the document numbers referred are not related to either of the false document. Therefore, PW.1 himself had admitted that the order of RDO has been cancelled and the patta given in favour of the respondent was affirmed by the order of the Land Commissioner, Chennai. The defacto complainant has not challenged the said order. As already stated, the order RDO itself shows that the said Power of Attorney and the Will have not been used for changing the patta. No witness has been examined to prove the contents of the settlement deed of the year 1950. During the investigation, the person who registered

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the Will and the Power of Attorney has not been identified ie. the author of the forged document has not been identified. Therefore, the offences under Sections 467, 468 and 471 cannot be construed against the respondents.

18. The prosecution has not established that the thumb

impression register from these registered thumb impressions allegedly taken by the expert. The respondent also did not acquire the property based on Exs.P22 and P23, but sold under the possessory right. Therefore, the charge under Section 420 is not proved by the prosecution. Mere making representation to effect patta on the basis of settled possession will not constitute cheating. If at all PW.1 inherited the property, his remedy is before the Court of Law to redeem the property. Ingredients of cheating under Section 420 IPC against the first respondent is not made out. The Zonal Deputy Tahsildar had conducted the original proceedings and recommended for sub-division. There

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and A3 have done their official duty, would not be construed as creation of false documents. Though the learned trial Judge convicted the respondent, the appellate Court, as a final fact-finding Court, reappraised the entire evidence and found that the prosecution has not proved its case beyond reasonable doubt and the benefit of doubt was extended to the respondents and the appellate Court set aside the judgment of the trial Court. On a re-reading of the entire evidence and also the judgment of both the Courts below, once the appellate Court reappraised the entire evidence and found that the respondents are not guilty and acquitted them, it is settled proposition of law that in the absence of any circumstance and perversity in appreciation of evidence by the

appellate Court, normally High Courts will not interfere with judgment of acquittal. This Court, while reading the materials and also the judgments of both the courts below, finds that the appellate Court has given its own finding for reversing the

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Crl.A.Nos.389, 390, 391, 393, 394 and judgment. As already stated unless the compelled circumstance or perversity finds in the judgment of the appellate Court, the High Court will not interfere with the judgment of the appellate Court. The appellate Court also pointed out that the legal heirship certificate has not been produced to prove that defacto complainant is the legal heir of the original owner Chockalinga Mudaliar and who are all the legal heirs of the said Chockalinga Mudaliar and further the patta has not been changed based on the alleged forged documents exchanged but changed based on the possessory rights and also they have not identified the person, who is said to have impersonated the document. Therefore, when two views are possible, the benefit of doubt is always extended to and in favour of the accused. Therefore, in this case also, the appellate Court pointed out certain doubts once it creates doubts in the minds of the Court, the benefit of doubt has to be extended to the respondents/accused.

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19. Admittedly, during the first investigation, charge sheet was closed as "mistake of fact" and subsequently, they filed second investigation report and the learned Magistrate failed to consider all the legal as well as factual aspects and convicted the respondents based on surmises and conjectures, whereas the appellate Court reappreciated the entire evidence and found that the prosecution has not established its case beyond reasonable doubt.

20. Under the above circumstances, there is no sound ground and reason to interfere with the judgment of the appellate Court. Therefore, all the above appeals are dismissed.

21. In the result, all the Criminal Appeals stand dismissed and the acquittal order passed by the learned Principal Session Judge, Erode District at Erode in Criminal Appeals in C.A.Nos. 90 and 95 of 2012 and C.A.Nos.100, 101 and 111 of 2012 dated 37/39

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21.08.2012 are hereby confirmed. Consequently, connected Miscellaneous Petitions are closed.

Speaking / Non-speaking

Index : Yes/No
mra

To

1. The Sessions Judge,
Karaikal.
2. The Inspector of Police
Vigilance and Anti-Corruption
Karaikal.
3. The Public Prosecutor,
High Court, Chennai.

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P.VELMURUGAN, J.

mra Common Judgment in Crl.A.Nos.389, 390, 391, 393, 394 and 395 of 2013 and 20.12.2019
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