

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12<sup>TH</sup> DAY OF APRIL , 2023

BEFORE

THE HON'BLE MR. JUSTICE RAJENDRA BADAMIKAR

CRL.RP.NO.764/2014

**BETWEEN**

KOUSALYA

...PETITIONER

(BY SRI. KEMPARAJU, ADVOCATE)

**AND**

GOVERNMENT OF KARNATAKA  
REPRESENTED BY  
SRIRANGAPATNA POLICE STATION,  
REP BY ITS PUBLIC PROSECUTOR  
HIGH COURT COMPLEX,  
BANGALORE-560 001.

...RESPONDENT

(BY SRI. H.S SHANKAR, HCGP)

THIS CRL.RP IS FILED U/S.397 R/W 401 CR.P.C PRAYING  
TO SET ASIDE THE JUDGMENT DATED: 01.08.2014 PASSED BY  
THE III ADDL. DIST. AND S.J., MANDYA SIT AT  
SRIRANGAPATNA IN CRL.A.NO.5012/13 AND ALSO THE

JUDGMENT OF CONVICTION AND SENTENCE DATED: 21.10.13 PASSED BY THE ADDL.C.J. AND JMFC, SRIRANGAPATNA IN C.C.NO.142/11 AND ACQUIT THE PETITIONER.

THIS CRL.RP HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 24.03.2023, COMING ON FOR 'PRONOUNCEMENT JUDGMENT' THIS DAY, THE COURT MADE THE FOLLOWING:

**ORDER**

This revision petition is filed by the revision petitioner-accused challenging the judgment of conviction and order of sentence passed by Additional Civil Judge and JMFC, Srirangapatna in CC No.142/2011 dated 21.10.2013, whereby the learned Magistrate has convicted the accused-revision petitioner herein for the offence under Section 420 of IPC by imposing sentence of imprisonment for a period of two years with fine of Rs.10,000/- with default clause, which was confirmed by III Additional District and Sessions Judge, Mandya sitting at Srirangapatna in Crl.A.No.5012/2013 vide judgment and order dated 01.08.2014.

2. For the sake of convenience parties herein are referred with the original ranks occupied by them before the trial Court.

3. The brief factual matrix leading to the case are that on 29.05.2010 the complainant has lodged a complaint against accused by setting the law in motion. According to the allegations of the prosecution, the accused is acquainted with complainant and she introduced that she was working at Stree Shakthi Sanga in Mandya. It is also alleged that the accused has induced the complainant and others that on behalf of Stree Shakthi Sanga she is going to distribute gas cylinders at the cost of Rs.2,500/- for single cylinder and Rs.5,000/- for two cylinders and she received Rs.5,000/- each from CWs.2 to 5, Rs.3,000/- from CW7, Rs.3,500/- from CWs.8 to 12 and Rs.4,000/- from complainant and hence, it is alleged that accused by inducing the complainant and others collected Rs.44,000/- from them with a dishonest intention under the guise of providing gas cylinders, but failed to provide the same and thereby, it is alleged that she has cheated the complainant and others.

4. On the basis of complaint, the Investigating Officer has registered the crime by issuing FIR. After receipt of the summons, the accused has appeared before Magistrate and was

enlarged on bail. She denied the accusation. The prosecution has examined in all 18 witnesses and also placed reliance on 6 documents. After conclusion of the evidence of the prosecution, the statement of accused was recorded under Section 313 of Cr.P.C. to enable her to explain the incriminating evidence appearing against her in the case of the prosecution. The case of accused is of total denial. She did not choose to lead any oral or documentary evidence in support of her defense. However, during the cross-examination of PWs.2, 8 and 11, Ex.D1 to D5 were got marked which are the portions of the 161 statement said to have given before the Investigating Officer by these witnesses.

5. After hearing the arguments and after appreciating the oral and documentary evidence, the learned Magistrate has convicted the accused for the offence under Section 420 of IPC and after hearing on sentence, imposed rigorous imprisonment for a period of two years with fine of Rs.10,000/-.

6. Being aggrieved by this judgment, the accused-revision petitioner has filed an appeal before III Additional District and Sessions Judge, Mandya sitting at Srirangapatna in

Crl.A.No.5012/2013. The learned Sessions Judge after re-appreciating the oral and documentary evidence has dismissed the appeal. Being aggrieved by these concurrent findings, the revision petitioner-accused is before this Court.

7. Heard the arguments advanced by the learned counsel for revision petitioner-accused and learned HCGP for respondent-State.

8. The learned counsel for revision petitioner would contend that the judgment and order of sentence are not sustainable and both the Courts below have failed to appreciate the oral and documentary evidence in proper perspective. He would also contend that as per the case of the prosecution, the accused has induced witnesses of distributing of gas cylinders from Stree Shakthi Sanga, but none of these witnesses have enquired with Stree Shakthi Sanga regarding such a scheme and no acknowledgment was obtained for having paid such amount. He would also contend that pancha witnesses have turned hostile and there are so many contradictions which are not properly explained by the prosecution. He would also contend that both the Courts below did not appreciate any of

these aspects properly and hence, it is asserted that the judgment suffers from material illegality and infirmity. Hence, he would seek for allowing the revision petition by setting aside the impugned judgment. Alternatively, he would contend that since the accused is a lady, some leniency may be shown by remitting the sentence and prayed to enlarge her under the provisions of the Probation of Offender Act, 1958 (for short 'the PO Act').

9. Per contra, the learned HCGP would contend that all the material witnesses have supported the case of the prosecution and there is no reason for all the material witnesses to give false evidence against the accused and no evidence is lead to show that the witnesses have got any animosity against the accused. He would also contend that Section 313 Cr.P.C., statement is also silent and no explanation is offered. He invites the attention of Court regarding the conduct of the accused in dodging the matter under the guise of the settlement for a long period and argued that it establishes the involvement of the accused in the offence. He would contend that both the Courts below have properly

appreciated the oral and documentary evidence and the judgment does not suffer from any infirmity so as to call for any interference. Hence, he would seek for rejection of the revision petition.

10. Having heard arguments and perusing the records now the following point would arise for my consideration:

*"Whether the judgment of conviction and order of sentence passed by the learned Magistrate and affirmed by the learned Sessions Judge are erroneous, arbitrary and suffers from any illegality so as to call for any interference by this Court?"*

11. According to the prosecution, the accused has dishonestly induced CWs.1 to 12 to pay cash under the guise of providing gas cylinders to them at a concessional rate through Stree Shakthi Sanga and received Rs.44,000/-. It is alleged that she failed to provide any gas cylinders and hence, she has cheated them. PW1 is the complainant who has set the law in motion and PW2-Chikkathayamma, PW3-Jayamma, PW4-Prabhavathi, PW5-Mahadevu, PW6-Vinoda, PW7-Lalitha, PW8-Madama, PW9-Padma, PW10-Mahadevamma, PW11-Nataraju are the victims of the crime and all these witnesses supported the case of the prosecution. PW12-siddappa is a spot mahazar

witness who has supported the case of the prosecution, while other spot mahazar witness PW15-Basavaraju has turned hostile. The other witnesses are police officers. Ex.P1 is the complaint and Exs.P2 and P3 are the spot mahazars and Ex.P4 is the FIR.

12. All witnesses PWs.1 to 11 have specifically deposed that the accused has received sum of the amount from them as asserted under the guise of providing gas cylinders. They have also deposed regarding parting with the respective amount and non delivery of cylinders. Though these witnesses were cross-examined, nothing was elicited to impeach their evidence except in the cross examination of PWs.2, 8, 11 wherein Exs.D1 to D5 were marked. But other evidence is consistent and corroborating each other. Further, there is no evidence as to why these witnesses are interested to give false evidence against the accused. No explanation is offered in this regard and her 313 Cr.P.C., statement is also silent in this regard. No animosity is shown between accused and PWs.1 to 11. Much argument has been advanced regarding the payment of the amount in presence of Kalimulla in his house etc., but that does



not have much relevance as the evidence is consistent regarding payment being made to accused by all these witnesses. Further, there is no explanation as to why there was an attempt of settlement if at all accused was not involved in this case. The submissions were made before this Court in this regard and matter is prolonged all along under the guise of settlement.

13. The arguments of the learned counsel regarding non enquiry with the Stree Shakthi Sanga cannot be a ground to discard the evidence of the prosecution witnesses as this is a case of inducement and cheating. Though the learned counsel has invited the attention of the Court towards some of the contradictions, they do not go the root of the case so as to discard the entire case of the prosecution. All the witnesses consistently deposed regarding paying the amount to the accused for delivery of gas cylinders and this aspect is not seriously challenged. That the receipt was not obtained for having paid the amount cannot be a ground since under the excitement of getting the gas cylinder, the witnesses have paid the amount and since they are being rustic villagers, the

question of insisting the acknowledgment or receipt does not arise at all. Further, there is no animosity forthcoming between accused and the witnesses PWs.1 to 11 and there is no reason for them to give false evidence against the accused. In the 313 statement, accused has not given any explanation in this regard.

14. Looking to these facts and circumstances it is evident that accused under the guise of providing cylinders to PWs.1 to 11 has induced them to part with the amount and without providing any gas cylinders cheated them. Hence, the ingredients of Section 420 of IPC are attracted to the case in hand and both the Courts below have properly appreciated the oral and documentary evidence. The judgment of conviction cannot be said to be erroneous or arbitrary so as to call for any interference.

15. The revision petitioner alternatively contended that the accused may be extended the benefit of Sections 3 and 4 of the PO Act. However, it is to be noted that accused-revision petitioner had cheated the villagers who were aspirant of getting gas cylinders at concessional rate and received

consideration from them without providing gas cylinders. The prosecution has proved the allegations made against the accused beyond all reasonable doubt pertaining to the offence under Section 420 of IPC. If in such matters the benefit of the PO act is extended, then it will give a moral boost to culprits to indulge in such offences. As such, in such matters it is unfair to extend the benefit of the provisions of the PO Act by giving a green signal to culprit to proceed with similar acts. Hence, considering the conduct of the accused, question of extending the benefit of the provisions of the PO Act does not arise at all.

16. The trial Court has imposed sentence of rigorous imprisonment for a period of two years with fine of Rs.10,000/- against the accused. The offence under Section 420 of IPC is punishable with imprisonment which may extend to seven years with fine. The amount involved in this case is around Rs.44,000/ as per the case of the prosecution. Looking to these facts and circumstances, the imprisonment awarded by the trial Court to the extent of two years appears to be too harsh. However, looking to the facts and circumstances and amount involved in this case, in the considered opinion of the Court, the

sentence of imprisonment can be reduced from two years to six months by enhancing the fine from Rs.10,000/- to Rs.25,000/- which will serve the purpose. Accordingly, revision petition needs to be allowed to the extent of modification of sentence and fine. Accordingly, the point under consideration is partly answered in the affirmative and as such I proceed to pass the following:

**ORDER**

1. The revision petition is ***allowed in part.***
2. The judgment of conviction passed by the learned Additional Civil Judge & JMFC, Srirangapatna in C.C. No.142/2011 and confirmed by the II Additional District & Sessions Judge, Mandya (Sitting at Srirangapatna) in CrI.A.No.5012/2013 stands confirmed.
3. However, the order of sentence stands modified and accused-revision petitioner is sentenced to undergo rigorous imprisonment for a period of six months with fine of Rs.25,000/- in default of payment of fine, she shall undergo simple imprisonment for one month.

4. Further, under section 457(3), CWs.1 to 12 are directed to be paid Rs.1,500/- each from the said fine amount by way of compensation under Section 357 of Cr.P.C.

**Sd/-  
JUDGE**

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