

KAVN010008082025



**IN THE COURT OF THE ADDL. DISTRICT & SESSIONS JUDGE,
VIJAYANAGARA DISTRICT, HOSAPETE.**

PRESENT: **SRI D. P. KUMARA SWAMY**

B.Com., LL.M.,
Addl. District & Sessions Judge,
Vijayanagara District, Hosapete.

DATED THIS 7th DAY OF **MARCH, 2026.**

CRIMINAL APPEAL NO.5059/2025

Appellant : Kumar @ Korachara Kumar
S/ Kenchappa,
aged about 30 years,
R/ Yellapura Kracharahatti Village,
Harapanahalli Tq., Vijayanagara District.

(By Sri. K.Chandranth, Advocate)

V/s

Respondent: The State by SHO
Ittigi Police Station,
Harapanahalli Tq.,
Vijayanagara District.

(By learned Public Prosecutor)

JUDGMENT

This is an appeal preferred by the accused No.1 under
Section 374 of Criminal Procedure Code, 1973 (for short

“Cr.P.C.”), assailing the impugned judgment of conviction passed by the Civil Judge and JMFC Court, Hadagalli, (for short, **“the Trial Court”**) in C.C. No.944/2021, DD on 16.06.2025 (for short, **“the impugned judgment”**).

2. At this stage itself it may be noted that in CC No.436/2013, the accused Nos.1 to 4 were jointly tried for the alleged offence punishable under Section 420 read with Section 34 of Indian Penal Code, 1860, (for short, **“IPC”**). In CC No.436/2013, the accused No.1 appeared before the Trial Court till the stage of arguments on merits and subsequently, absconded at the stage of pronouncement of judgment. Vide order sheet dated 22.10.2021, the Trial Court separated the case of the accused No.1 and directed the office to register separate case against the accused No.1; and pronounced judgment of conviction for the alleged offence punishable under Section 420 read with Section 34 of IPC against accused Nos.2 to 4 in CC No.436/2013 on 22.10.2021. It may

be noted that the accused Nos.2 to 4 preferred 3 separate appeals against judgment of conviction passed by the Trial Court for the alleged offence punishable under Section 420 read with Section 34 of IPC against them in CC No.436/2013 on 22.10.2021. The said three appeals were numbered as Crl.A. No.5035/2021, Crl.A. No.5032/2021, and Crl.A. No.5036/2021 on the file of this Court. Vide judgment in Crl.A. No.5035/2021 C/w Crl.A. No.5032/2021 C/w Crl.A. No.5036/2021 in the matter of Shantha @ Shantesha @ Shantha Naik and 2 others V/s The State DD on 20.09.2022, this Court reversed the judgment of conviction passed by the Trial Court on 22.10.2021 against the accused Nos.2 to 4 for the alleged offences punishable under Section 420 read with Section 34 IPC; and, consequently, acquitted the accused Nos.2 to 4 for the alleged offences punishable under Section 420 read with Section 34 IPC.

3. Based on the said order dated 22.10.2021, the office of the Trial Court registered a separate case against the accused No.1 in CC No.944/2021 for the alleged offence punishable under Section 420 read with Section 34 IPC. After securing the presence of the accused No.1 in CC No.944/2021, vide order sheet dated 24.08.2022, the Trial Court directed that the case against accused No.1 in CC No.944/2021 shall be proceeded with by the Trial Court from the stage of arguments on merits. Vide impugned judgment, the Trial Court convicted the accused No.1 for the alleged offence punishable under Section 420 IPC and sentenced the accused No.1 to undergo rigorous imprisonment for a term of 3 years and to pay a fine of Rs.10,000/- for the alleged offence punishable under Section 420 IPC.

4. Aggrieved by the impugned judgment, the accused No.1 has come before this Court with this appeal.

5. Secured the TCR.

6. Heard the arguments of learned Advocate for the accused No.1 and learned Public Prosecutor.

7. Perused the records.

8. The following points do arise for consideration of this Court in this appeal:

1) Whether the prosecution has proved that the accused No.1 has committed the alleged offence punishable under Section 420 of IPC beyond all reasonable doubt ?

2) Whether the impugned judgment in convicting the accused No.1 for the alleged offence punishable under Section 420 of IPC suffers from any legal infirmity ?

3) Whether the impugned judgment in imposing sentence of rigorous imprisonment for a term of 3 years and to pay a fine of Rs.10,000/- for the alleged offence punishable under Section 420 IPC suffers from any infirmity ?

4) Whether the accused No.1 is entitled for parity alongwith accused Nos.2 to 4 for an order of acquittal based on the judgment of this Court in Crl.A. No.5035/2021 C/w Crl.A. No.5032/2021

C/w Crl.A. No.5036/2021 in the matter of Shantha @ Shantesha @ Shantha Naik and 2 others V/s The State DD on 20.09.2022, where under this Court reversed the judgment of conviction passed by the Trial Court on 22.10.2021 against the accused Nos.2 to 4 for the alleged offences punishable under Section 420 read with Section 34 IPC; and, consequently, acquitted the accused Nos.2 to 4 for the alleged offences punishable under Section 420 read with Section 34 IPC ?

5) Whether the impugned judgment calls for interference ?

6) What order ?

9. My findings to the above points are as under:

Point No.1	:	In the affirmative
Point No.2	:	In the negative
Point No.3	:	In the negative
Point No.4	:	In the negative
Point No.5	:	In the negative
Point No.6	:	As per final order for the following:

REASONS

10. Point Nos.1 to 5: The story of the case of the prosecution as found in First Information Statement (for short, “**FIS**”) may, briefly, be noted to the following effect:

10.1. The CW1 Sri.Seeriyal Muthiyu has lodged FIS before Ittigi Police Station on 20.08.2012.

10.2. About 3 months prior to 20.08.2012, CW1 Sri.Seeriyal Muthiyu was proceeding from Bengaluru to Mangaluru in a bus. At a place called Nellyadi, in Putturu Taluk, Dakshina Kannada District, the accused No.1 boarded the said bus and sat by the side of the CW1 Sri.Seeriyal Muthiyu.

10.3. At that time, the accused No.1 got himself introduced to CW1 Sri.Seeriyal Muthiyu and mentioned that his name was Kumar a resident of Nagalapura village in Chitradurga District. The accused No.1 also informed the CW1 Sri.Seeriyal Muthiyu that he frequently used to visit

Mangaluru for job (work). The accused No.1 requested CW1 Sri.Seeriyal Muthiyu for his (CW1 Sri.Seeriyal Muthiyu's) mobile phone number saying that if the accused No.1 needs any help from CW1 Sri.Seeriyal Muthiyu, the accused No.1 would call CW1 Sri.Seeriyal Muthiyu over phone and make requests at the time of necessity.

10.4. Thus, CW1 Sri.Seeriyal Muthiyu has given his mobile phone number 9449510925 to the accused No.1 during the said bus journey from Nellyadi to Mangaluru.

10.5. A week subsequent to the said bus journey from Nellyadi to Mangaluru, the accused No.1 made a phone call from mobile phone No.8431155122 to the mobile phone number of CW1 Sri.Seeriyal Muthiyu (9449510925) and reminded CW1 Sri.Seeriyal Muthiyu that it is the accused No.1 who travelled with CW1 Sri.Seeriyal Muthiyu from Nellyadi to Mangaluru by name Kumar.

10.6. In the said phone conversation the accused No.1 told CW1 Sri.Seeriyal Muthiyu - (i) that about 3 weeks prior to making the said phone call while demolishing the old building and while removing the foundation of the said old building, the accused No.1 got 3 kgs of gold; (ii) that he is a very poor person; (iii) that his grandfather is suffering from cancer; (iv) that he is having 5 daughters of marriageable age; (v) that the accused No.1 is in need of money; and (vi) that as such the accused No.1 intends to sell the gold so got by the accused No.1 at Rs.10,00,000/- per kg.

10.7. In the said phone conversation, the accused No.1 also informed the CW1 Sri.Seeriyal Muthiyu that if the fact that the accused No.1 got so much of gold at the time of demolition of his old building is made public, the said gold would be confiscated by the State Authority. The accused No.1 requested CW1 Sri.Seeriyal Muthiyu not to make the said information public.

10.8. In the said phone conversation, the accused No.1 told CW1 Sri.Seeriyal Muthiyu that if CW1 Sri.Seeriyal Muthiyu purchases the said gold, CW1 Sri.Seeriyal Muthiyu would also be benefited.

10.9. CW1 Sri.Seeriyal Muthiyu had kept quite by saying that he would think about the said offer made by the accused No.1.

10.10. Thereafter, the accused No.1 made several phone calls from said mobile phone No.8431155122 to the mobile phone number of CW1 Sri.Seeriyal Muthiyu (9449510925) and the accused No.1 made repeated requests to the CW1 Sri.Seeriyal Muthiyu to purchase the said gold.

10.11. Since the accused No.1 repeatedly forced CW1 Sri.Seeriyal Muthiyu to purchase the said gold, as CW1 Sri.Seeriyal Muthiyu was not having sufficient money to purchase the said gold, CW1 Sri.Seeriyal Muthiyu informed his relative viz., CW2 Sri.Laurence D-Souja (who is a resident

of Fazir village in Bantwala Taluk, Dakshina Kannada District) about the said fact.

10.12. The CW2 - Sri.Laurence D-Souja told CW1 Sri.Seeriyal Muthiyu that he would think about it.

10.13. After some days, the accused No.1 again telephoned to CW1 Sri.Seeriyal Muthiyu repeatedly and told CW1 Sri.Seeriyal Muthiyu that if CW1 Sri.Seeriyal Muthiyu is having any doubt, CW1 Sri.Seeriyal Muthiyu may purchase gold for Rs.1,00,000/- as sample and thereafter CW1 Sri.Seeriyal Muthiyu may purchase remaining quantity of gold.

10.14. Again, CW1 Sri.Seeriyal Muthiyu informed the said fact to CW2 - Sri.Laurence D-Souja.

10.15. Thereafter, CW1 Sri.Seeriyal Muthiyu and CW2 - Sri.Laurence D-Souja discussed about the said facts with each other; and decided to proceed to purchase sample

gold. Thus, they have gathered a sum of Rs.80,000/- (currency notes of Rs.500/- denomination each).

10.16. On 18.08.2012, the accused No.1 telephoned from his mobile phone No.8431155122 to the mobile phone number of CW1 Sri.Seeriyal Muthiyu (9449510925). At that time, CW1 Sri.Seeriyal Muthiyu told the accused No.1 that CW1 Sri.Seeriyal Muthiyu would bring a sum of Rs.80,000/-. At that point of time, the accused No.1 told CW1 Sri.Seeriyal Muthiyu that CW1 Sri.Seeriyal Muthiyu may come to a place called Ittigi village in Ballari District (presently, in Vijayanagara District) and that the accused No.1 would give sample gold coins.

10.17. As such, during night on 18.08.2012, CW1 Sri.Seeriyal Muthiyu and CW2 - Sri.Laurence D-Souja started there journey from Mangaluru to Ittigi village. They have brought a sum of Rs.80,000/- alongwith them. On 19.08.2012, at about 9.00 a.m., they reached Ittigi village.

10.18. The accused No.1 telephoned to CW1 Sri.Seeriyal Muthiyu and asked CW1 Sri.Seeriyal Muthiyu and CW2 - Sri.Laurence D-Souja to come near a school which is situated on the outskirts of Ittigi village on a road leading towards Hadagalli from Ittigi. CW1 Sri.Seeriyal Muthiyu and CW2 - Sri.Laurence D-Souja have reached near K.N.S.C High School by enquiring the people.

10.19. At about 11.00 a.m., on 19.08.2012, four or five people came near K.N.S.C. High School. Among the said 4 to 5 persons, the accused No.1 (whom CW1 Sri.Seeriyal Muthiyu knew from earlier itself) was also one.

10.20. Two amongst said four to five persons came near CW1 Sri.Seeriyal Muthiyu and CW2 - Sri.Laurence D-Souja. Remaining persons amongst said four to five persons remained at little distance looking here and there.

10.21. Out of the two persons who came near CW1 Sri.Seeriyal Muthiyu and CW2 - Sri.Laurence D-Souja, the

accused No.1 is one. The said two persons asked CW1 Sri.Seeriyal Muthiyu and CW2 - Sri.Laurence D-Souja to give the money. CW1 Sri.Seeriyal Muthiyu and CW2 - Sri.Laurence D-Souja asked the said two persons to show the gold and that thereafter CW1 Sri.Seeriyal Muthiyu and CW2 - Sri.Laurence D-Souja would pay the money. At that time, the accused No.1 showed a bundle tied with cloth and said that the said bundle contains gold and asked CW1 Sri.Seeriyal Muthiyu and CW2 - Sri.Laurence D-Souja to pay the money first and thereafter the accused No.1 would give the said gold.

10.22. By believing the words of the accused No.1, the CW1 Sri.Seeriyal Muthiyu paid a sum of Rs.80,000/- to the accused No.1 and another and received the said bundle from the said two persons.

10.23. Before CW1 Sri.Seeriyal Muthiyu and CW2 - Sri.Laurence D-Souja could open the bundle to examine the gold inside it, the said two persons started running away

towards the hind side of the said high school by saying that Police have come. Likewise, the remaining three persons who came there have also disappear from the said place.

10.24. Having entertained doubt about the conduct of said five persons, the CW1 Sri.Seeriyal Muthiyu telephoned to mobile phone No.8431155122. The said mobile phone No.8431155122 was switched off. Till night on the said date, the CW1 Sri.Seeriyal Muthiyu kept on telephoning to said mobile phone No.8431155122. But, however, mobile phone No.8431155122 was switched off.

10.25. CW1 Sri.Seeriyal Muthiyu and CW2 - Sri.Laurence D-Souja stayed back at Ittigi village on the said date. When they opened the said bundle, they found that the coins inside the said bundle were not genuine gold coins. Hence, on the next day morning, they approached a goldsmith and got the said coins in the said bundle examined who examined the said coins and opined that the said coins were

not gold coins. Thus, the accused No.1 and others have cheated CW1 Sri.Seeriyal Muthiyu and CW2 - Sri.Laurence D-Souja.

10.26. The above are the facts as found in the FIS which is marked as Ex.P1 during trial before the Trial Court.

11. After registering FIR based on the FIS, the Investigating Officer has submitted charge sheet against the accused Nos.1 to 4 for the alleged offence punishable under Section 420 read with Section 34 of IPC.

12. In the present appeal, this Court is concerned with the charge against the accused No.1 alone.

13. As already indicated supra, common charge was framed against accused Nos.1 to 4 for the alleged offence punishable under Section 420 read with Section 34 of IPC and joint trial was held against them by the Trial Court.

14. In order to prove the guilt of the accused Nos.1 to 4 in connection with the charge for the alleged offence punishable under Section 420 read with Section 34 of IPC, the prosecution got examined 8 witnesses as PW1 to PW8, got marked 13 documents as Ex.P1 to Ex.P13, and got marked MO1 to MO5 in CC No.436/2013.

15. On behalf of the accused Nos.1 to 4, no independent evidence is adduced.

16. As already indicated supra, the Trial Court pronounced judgment of conviction for the alleged offence punishable under Section 420 read with Section 34 of IPC against accused Nos.2 to 4 in CC No.436/2013 on 22.10.2021. The said judgment of the Trial Court dated 22.10.2021 was assailed by the accused Nos.2 to 4 in Crl.A. No.5035/2021 C/w Crl.A. No.5032/2021 C/w Crl.A. No.5036/2021 before this Court.

17. Vide its judgment dated 20.09.2022 in Crl.A. No.5035/2021 C/w Crl.A. No.5032/2021 C/w Crl.A. No.5036/2021 in the matter of Shantha @ Shantesha @ Shantha Naik and 2 others V/s The State, this Court reversed the judgment of conviction passed by the Trial Court on 22.10.2021 against the accused Nos.2 to 4 for the alleged offences punishable under Section 420 read with Section 34 IPC; and, consequently, acquitted the accused Nos.2 to 4 for the alleged offences punishable under Section 420 read with Section 34 IPC.

18. In CC No.944/2021, vide the impugned judgment, the Trial Court convicted the accused No.1 for the alleged offence punishable under Section 420 of IPC as indicated supra.

19. That is how, the present appeal preferred by accused No.1 to assail the impugned judgment is registered before this Court.

20. CW1 Sri.Seeriyal Muthiyu and CW2 - Sri.Laurence D-Souja are examined as PW1 and PW2 in CC No.436/2013. As the above noted facts of the case of the prosecution would indicate, the PW1 and PW2 are eye-witnesses to the alleged incident of sale of fake gold coins by the accused No.1 and others in favour of PW1 and PW2.

21. On perusal of the oral evidence of PW1, it is found that the prosecution has elicited the fact to the effect that the accused persons have informed the PW1 and PW2: (i) that the grandfather of the accused persons was suffering from cancer; (ii) that marriages of female members have to be performed; (iii) that the accused persons got gold at the time when they demolished their house; and (iv) that the accused persons would sell the gold at discount rate. The PW1 and PW2 believed the said version of the accused persons and paid a sum of Rs.80,000/- and purchased the sample gold which was sold by the accused persons to PW1 and PW2.

22. But, it is during the course of cross-examination that the PW1 has stated the details regarding the said travel of the PW1 and the accused No.1 from Nellyadi to Mangaluru in a bus and also regarding the phone calls made by the accused No.1 from his mobile phone No.8431155122.

23. It may be noted that the accused No.1 is from Yellapura Koracharahatti village, Harapanahalli Tq., Davanagere District (subsequently, Ballari District; and presently Vijayanagara District). Whereas, the PW1 and PW2 are from Dakshina Kannada District which is geographically located at hundreds of kilometers away from Yellapura Koracharahatti village.

24. There is no suggestion by the learned Defence Counsel during the course of cross-examination that mobile phone No.8431155122 does not belong to accused No.1. It may be further noted that the said mobile phone No.8431155122 is not mentioned by the PW1 for the first time

during the course of cross-examination on 04.03.2021, but, he has mentioned the said mobile phone No.8431155122 in the FIS dated 20.08.2012 on the very next day of the alleged incident.

25. If the accused No.1 did not telephone to the PW1 as claimed by the PW1 in his FIS, (which is briefly reiterated by PW1 in his cross-examination dated 04.03.2021) how can the PW1 come to know about the said mobile phone number would be a pertinent question. The accused No.1 has not clarified the said aspect of the matter either during course of cross-examination of PW1 or during the course of cross-examination of remaining prosecution witnesses or during his examination under Section 313 of Cr.P.C.

26. In my considered view, the evidence of the PW1 to the effect that on 19.08.2012, the accused No.1 came to PW1 and PW2 alongwith other persons and sold fake gold to PW1

and PW2 by receiving Rs.80,000/- cannot be brushed aside as not believable.

27. In the judgment Crl.A. No.5035/2021 C/w Crl.A. No.5032/2021 C/w Crl.A. No.5036/2021 in the matter of Shantha @ Shantesha @ Shantha Naik and 2 others V/s The State DD on 20.09.2022, this Court has held that the Police Investigating Officer has not investigated regarding said two mobile phone Nos.8431155122 and 9449510925 etc. It may be remembered that the said judgment was rendered by this Court against accused Nos.2 to 4, but, not against accused No.1.

28. Whether the accused No.1 could avail the lapses in investigation to get the benefit of acquittal in respect of the charge framed against him would be a pertinent question.

29. In (2017) 13 SCC 98 Krishnegowda and others V/s State of Karnataka, the Hon'ble Supreme Court has ruled thus at Para No.38:

“38. It is settled law that mere latches on the part of Investigating Officer itself cannot be a ground for acquitting the accused. If that is the basis, then every criminal case will depend upon the will and design of the Investigating Officer. The Courts have to independently deal with the case and should arrive at a just conclusion beyond reasonable doubt basing on the evidence on record.”

30. This Court has acquitted the accused Nos.2 to 4 for want of evidence against them in the said judgment dated 20.09.2022.

31. Even the PW2 (who is another eye-witness to the incident dated 19.08.2012) has also deposed identifying the accused No.1.

32. In the judgment dated 22.10.2021 in CC No.436/2013 against the accused Nos.2 to 4; and also in the impugned judgment against the accused No.1, the Trial Court has discussed the evidence on record against the accused No.1 in detail.

33. Even though, the recovery mahazar witnesses have not supported the prosecution regarding recovery of the money and fake gold coins from the accused persons, I see no reason to find fault with the Trial Court in accepting the trustworthiness of eye-witnesses viz., PW1 and PW2 regarding commission of the alleged offence by the accused No.1.

34. In the facts and circumstances of the case on hand, in my considered view, the claim of the accused No.1 for judgment of acquittal in respect of the charge framed against him on the ground of parity as the accused Nos.2 to 4 are acquitted by this Court for the same offence, is not acceptable by any stretch of imagination in the presence of evidence on record.

35. In view of the above discussion, the following conclusions are reached:

35.1. In my considered view, the Trial Court is justified in holding that the prosecution has proved that the

accused No.1 has committed the alleged offence punishable under Section 420 of IPC beyond all reasonable doubt.

35.2. The impugned judgment in convicting the accused No.1 for the alleged offence punishable under Section 420 of IPC does not suffer from any legal infirmity.

35.3. The impugned judgment in imposing sentence of rigorous imprisonment for a term of 3 years and to pay a fine of Rs.10,000/- for the alleged offence punishable under Section 420 IPC does not suffer from any infirmity.

35.4. The accused No.1 is not entitled for parity alongwith accused Nos.2 to 4 for an order of acquittal based on the judgment of this Court in Crl.A. No.5035/2021 C/w Crl.A. No.5032/2021 C/w Crl.A. No.5036/2021 in the matter of Shantha @ Shantesha @ Shantha Naik and 2 others V/s The State DD on 20.09.2022, where under this Court reversed the judgment of conviction passed by the Trial Court on 22.10.2021 against the accused Nos.2 to 4 for the alleged

offences punishable under Section 420 read with Section 34 IPC; and, consequently, acquitted the accused Nos.2 to 4 for the alleged offences punishable under Section 420 read with Section 34 IPC.

35.5. The impugned judgment of conviction of accused No.1 for the alleged offence punishable under Section 420 IPC does not call for any interference by this Court.

35.6. Hence, Point No.1 is held in the affirmative and Point Nos.2 to 5 are held in the negative.

36. Point No.6: The appeal is devoid of merits. Hence, the following:

ORDER

1. The appeal is dismissed.
2. The impugned judgment of conviction and sentence passed by the Civil Judge and JMFC Court, Hadagalli, in C.C. No.944/2021, DD on 16.06.2025 is affirmed.

3. The accused No.1 is directed to surrender before the Trial Court to serve the sentence as indicated supra.

4. The Trial Court is directed to secure the accused No.1 for serving the sentence.

5. Currency notes of Rs.500/- denomination (totally 6 in number), in all, Rs.3,000/- (which are marked at MO3 to MO5 in CC No.944/2021 on the file of Trial Court) shall be paid in favour of PW1 with proper identification.

6. MO1 and MO2 being fake gold coins are worthless. Hence, MO1 and MO2 may be destroyed by the Trial Court after the appeal period is over.

7. The office of this Court is directed to return back the TCR alongwith a copy of this judgment to the Trial Court.

(Dictated to the Stenographer directly on the computer, corrected and pronounced in open court this the **7th day of MARCH, 2026.**)

**(D. P. KUMARA SWAMY),
ADDL. DISTRICT & SESSIONS JUDGE,
VIJAYANAGARA DISTRICT, HOSAPETE.**

(Judgment pronounced in the open Court
vide separate order)

ORDER

1. The appeal is dismissed.
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**(D. P. KUMARA SWAMY),
ADDL. DISTRICT & SESSIONS JUDGE,
VIJAYANAGARA DISTRICT, HOSAPETE.**