

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

FRIDAY, THE 6TH DAY OF NOVEMBER 2015/15TH KARTHIKA, 1937

CRL.A.No. 1797 of 2004 (C)

AGAINST THE ORDER/JUDGMENT IN CrI.L.P. 644/2004 of HIGH COURT OF KERALA
DATED 27-10-2004

&

AGAINST THE JUDGMENT IN CC 693/2000 of J.M.F.C.,
MATTANNUR DATED 19-07-2003.

APPELLANT(S)/COMPLAINANT:

NINKILERI LAKSHMIKUTTY AMMA,
W/O. BALAKRISHNAN NAMBIAR (LATE), 'LAKSHMI SADANAM'
KUTHUPARAMBA AMSOM, NARAVOOR DESOM, P.O.KUTHUPARAMBA,
THALASSERY TALUK, KANNUR DISTRICT.

BY ADV. SRI.M.V.AMARESAN

RESPONDENT(S)/RESPONDENTS/R1 TO 3 ACCUSED IN CC.693/20:

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1. PERUVACHERI PARVATHI,
W/O. PRABHAKARAN NAIR, KUTHUPARAMBA AMSOM,
NARAVOOR DESOM, P.O.KUTHUPARAMBA, THALASSERY TALUK,
KANNUR DISTRICT.
 2. PRABHAKARAN NAIR, FATHER'S NAME NOT KNOWN,
KUTHUPARAMBA AMSOM, NARAVOOR DESOM,
P.O.KUTHUPARAMBA, THALASSERY TALUK, KANNUR DISTRICT.
 3. PAYARI SURESH, S/O. GOVINDAN,
KUTHUPARAMBA AMSOM, NARAVOOR DESOM, P.O.KUTHUPARAMBA,
THALASSERY TALUK, KANNUR DISTRICT.
 4. STATE OF KERALA, REPRESENTED BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

R1 & R2 BY ADV. SRI.K.V.SOHAN

R4 BY PUBLIC PROSECUTOR SMT. SEENA RAMAKRISHNAN

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 06-11-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. RAMAKRISHNAN, J.

Crl. Appeal No.1797 of 2004

Dated this the 6th day of November, 2015

JUDGMENT

Complainant in C.C.No.693/2000 on the file of the Judicial First Class Magistrate Court, Mattannur, is the appellant herein. The case was originated on the basis of a private complaint filed by the complainant alleging that the accused had committed the offence punishable under Section 420 of the Indian Penal Code.

2. The case of the complainant in the complaint was that, accused Nos. 1 and 2 with the connivance of the 3rd accused obtained original documents relating to her property on the promise that it was obtained for the purpose of taking a loan and thereafter they created a sale deed in favour of the 3rd accused without her consent, thereby they have committed the offence punishable under Section 420 read with Section 34 of the Indian Penal Code.

3. After taking sworn statement, the complaint was taken on file and summons was issued to the accused.

Thereafter the complainant and witnesses were examined as PWs 1 to 4 and Exts.P1 to P7(a) were marked on her side. Thereafter charge was framed under Section 420 read with Section 34 of the Indian Penal Code. The same was read over and explained to them and they pleaded not guilty. Thereafter the witnesses were recalled and cross examined. After closure of the complainant's evidence accused were questioned under Section 313 of the Code of Criminal Procedure and they denied all the incriminating circumstances brought against them in the complainant's evidence. They have further stated that they have not committed any offence and they are innocent of the same and they have been falsely implicated in the case. In order to prove their case, DW1 one of the witness to the assignment deed was executed and Exts.D1 to D8 were marked on their side. After considering the evidence on record, court below disbelieved the case of the complainant and also came to the conclusion that there is no criminal

offence made out, if at all there is any dispute regarding the execution of the document, which may only amount to civil dispute and acquitted the accused under Section 248(1) of the Code of Criminal Procedure. Aggrieved by the same, the present appeal has been preferred by the appellant/complainant before the court below along with Leave Petition as Crl.L.P.No.644/2004 and the application was allowed, leave was granted and the appeal was admitted.

4. When the appeal came up for hearing today, the counsel for the appellant submitted that the appellant is no more and the legal representatives are not interested in prosecuting the appeal. There is no provision for abatement of appeal on the death of the appellant, but if the appellant is not prosecuting the case, the principles under Section 256 of the Code of Criminal Procedure can be invoked and the accused can be acquitted. In this case, after trial the accused was found to be not guilty by the court below and

he was acquitted giving him the benefit of doubt. I have gone through the judgment of the court below and also perused the records. It cannot be said that the finding arrived at by the court below cannot be said to be one of the views possible on the basis of evidence and it cannot be said to be perverse as well. Further the court below also came to the conclusion that, even if the entire case of the complainant is believable, it may only amount to a civil liability and the question has to whether she had properly executed the documents or it was obtained by misrepresentation etc., are matters to be considered by the civil court and the evidence adduced is not sufficient to come to the conclusion that there was any element of cheating has been established on the part of the accused in this case as there were lot of contradictions brought out in the evidence of PW1 regarding the execution of document.

So under the circumstances, I do not find any reason to interfere with the order of acquittal passed by the

court below and the appeal is dismissed as no legal representative has come on record and the order of acquittal passed by the court below is also perfectly justifiable.

In the result, the appeal is dismissed as mentioned above and the order of acquittal passed by the court below is hereby confirmed.

Office is directed to communicate the judgment to the court below at the earliest.

Sd/-

K. Ramakrishnan, Judge

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P.A. to Judge

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