

HON'BLE SMT JUSTICE ANIS
CRIMINAL REVISION CASE No.299 OF 2008

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ORDER:

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This Criminal Revision Case under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C') is filed by the revision petitioner/complainant herein challenging the judgment dated 19.07.2007, passed by the II Additional Munsif Magistrate, Repalle, whereunder and whereby the accused is acquitted for the offences punishable under Sections 420 and 406 IPC, vide the judgment dated 19.07.2007 in C.C.No.149 of 2005 by the II Additional Munsif Magistrate, Repalle.

The case of the revision petitioner herein, who is the *de facto* complainant in C.C.No.149 of 2005, is that on 10.06.1999 he paid an amount of Rs.65,000/- to the accused who agreed to sell an extent of Ac.0.75 cents of wet land and the accused executed a contract of sale in the presence of witnesses. The total sale consideration is Rs.1,05,000/- and the date of contract is 10.06.1999. On 20.04.2000 the petitioner-*de facto* complainant paid Rs.38,000/- towards balance sale consideration in the presence of mediators. Thereafter, the accused/respondent delaying the registration of the said land in favour of the petitioner/*de facto* complainant but they have executed a gift deed in favour of third respondent who is the son of A.1. Hence, the petitioner/*de facto* complainant got filed a complaint and the same was forwarded to the Station House Officer, Repalle Police Station for investigation and report. Police registered a case in Cr.No.6 of 2005 and during the course of investigation, police recorded the statements of all the witnesses and after completing the investigation, filed the charge sheet under Sections 420, 406 r/w 34 IPC.

The revision petitioner herein is the complainant and

respondents herein are the accused in C.C.No.149 of 2005 before the trial Court. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the C.C. before the trial Court.

The learned II Additional Munsif Magistrate Repalle, took cognizance of the case and framed a charge for the offences punishable under Sections 420 and 406 r/w 34 IPC against the accused. During trial, to prove the case of the prosecution, PWs.1 to 4 were examined and Exs.P1 and P2 were marked.

After closure of the prosecution evidence, accused were examined under Section 313 Cr.P.C putting all incriminating material available against them. Accused denied the material evidence and reported no oral or documentary evidence on their behalf.

The trial Court, after hearing the arguments and after perusing the record held that the prosecution failed to prove the guilt of the accused for the offences punishable under Sections 420, 406 r/w 34 IPC beyond all reasonable doubt and acquitted the accused from the charges.

Aggrieved by the judgment of the trial Court, the *de facto* complainant preferred the present revision.

Learned counsel appearing for the revision petitioner/ complainant argued that the petitioner paid initially Rs.65,000/- on 10.06.1999 to the accused who agreed to sell an extent of Ac.0.75 cents of wet land and after receiving the said amount, accused executed an agreement ie., contract of sale in the presence of witnesses and the total sale consideration was fixed at Rs.1,05,000/- . Subsequently, on 20.04.2000 the petitioner paid the balance amount of Rs.38,000/- in the presence of the witnesses. Inspite of requests made by the *de facto* complainant, the accused failed to execute the registered sale deed in his favour and on the other hand

they have executed a gift deed in favour of A.3. Thus, the accused/respondents eschewed the petitioner. The learned counsel for the petitioner also argued that in the trial Court, he filed a petition for marking the document and the same was not considered by the trial Court. Further, the District Judge ordered enquiry for the document. It is also argued that at the time of investigation, the petitioner handed over the original document to the police and the same was filed. According to the petitioner, now the document is traced out and it is a fit case for remand and prayed the Court to set aside the judgment passed in C.C.No.149 of 2005 on the file of II Additional Munsif Magistrate, Repalle. Dated 19.07.2007.

The learned Public Prosecutor argued that the trial Court after considering the oral and documentary evidence produced by the *de facto* complainant rightly held that the prosecution failed to prove the guilt of the accused beyond all reasonable doubt. It is also argued that the petitioner failed to file the original agreement of sale alleged to have been executed on 10.06.1999. Therefore, the findings of the trial Court need no interference and prayed to dismiss the revision.

Now, the point for determination is --

Whether the petitioner is entitled to set aside the judgment in C.C.No.149 of 2005 dated 19.07.2007 as prayed for?

POINT:

A perusal of the oral evidence of PWs 1 to 4 shows that PW.1 is the *de facto* complainant and victim in this case. According to him on 10.06.1999 he entered into an agreement of sale with the accused 1 and 2 for purchase of Ac.0.75 cents of wet land for a total sale consideration of Rs.1,05,000/-. Out of the said total sale consideration, he paid Rs.65,000/- as part sale consideration in the presence of witness-PW.2. The respondents/accused executed the agreement in the presence of the witnesses and thereafter the *de*

facto complainant paid the balance sale consideration on 20.04.2000. PW.1 also stated that respondents 1 and 2 that is A.1 and A.2 executed the gift deed in favour of their son A.3. PW.2 in his evidence stated that he was present and agreement of sale was executed by A.1 and A.2 after receiving Rs.65,000/- from PW.1 that said amount was paid in the house of A.1 and A.2. PWs 2 and 3 also supported the evidence of PW.1. PW.4 the Investigating Officer deposed that after receiving the complaint the same was registered as Cr.No.6 of 2005 and he took up investigation and recorded the statements of witnesses and after completing the investigation, he filed the charge sheet into the Court.

A perusal of the oral evidence adduced by PWs 1 to 4, *de facto* complainant is claiming that on 10.06.1999 he entered into an agreement of sale with A.1 and A.2 wherein he agreed to purchase Ac.0.75 cents of land for a total consideration of Rs.1,05,000/-. On the same day, he paid Rs.65,000/- in the presence of PWs 2 and 3. Subsequently, he paid another sum of Rs.38,000/- on 28.04.2000 in the presence of PWs 2 and 3 and one Veera Raghavaiah and Nelabaludu. It is a case of the *de facto* complainant that accused Nos.1 and 2 cheated him and failed to execute the registered sale instead they executed gift deed in favour of A.3 their son. Burden of proof lies on the prosecution to prove that on 10.06.1999 the accused Nos. 1 and 2 executed the agreement of sale in favour of *de facto* complainant who agreed to purchase Ac.0.75 cents of land from A.1 and A.2. The reasons best known to the *de facto* complainant the said agreement was not filed into the Court. The trial Court rightly held that the *de facto* complainant not proved the evidence through any documentary evidence but adduced the oral evidence and the evidence of PW.1 is not sufficient under Section 91 of the Indian Evidence Act to prove the contract of sale.

Now, in the revision petition, the learned counsel for the

petitioner argued that they filed a petition for marking the document but it was not considered. A perusal of the copy of the petition filed by the petitioner for marking the document shows that it was filed on 19.07.2007 ie., on the date of judgment. The said petition was not neither numbered nor brought to the notice of the trial Court. A perusal of the copy of the petition shows that petitioner sought direction of the Court to the section to find out the document. Apart from oral testimony of PWs 1 to 4 the prosecution has not produced the documentary evidence ie., agreement of sale dated 10.06.1999 on the date of judgment. In the absence of such documentary evidence, the petitioner/*de facto* complainant is not entitled for any relief.

After considering the oral and documentary evidence, the trial Court rightly acquitted the accused from the charges for the offences punishable under Sections 420 and 406 IPC and finding of the trial Court in C.C.No.149 of 2005 needs no interference.

Accordingly, the Criminal Revision Case is dismissed.

Miscellaneous petitions pending, if any, in this Criminal Revision Case shall stand closed.

ANIS, J

Date:16.03.2015
PNV