

THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

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Crl.A.No.1226 of 2014

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JUDGMENT

Heard the learned Public Prosecutor and Sri V.Venkata Kumar, learned counsel for the respondents.

2. This Criminal Appeal is filed by the State challenging the judgment dt.11-08-2009 in C.C.No.9 of 2005 of the XII Additional Chief Metropolitan Magistrate, Hyderabad.
3. Brief facts of the case are that the Inspector of Police, WCO Team-III, Central Crime Station, Hyderabad filed C.C.No.9 of 2005 against the respondents/accused alleging that they have committed offences under Sections 406, 420 and 506 IPC.
4. According to the prosecution, A-1 and A-2 were partners in the firm M/s.Sri and Sri Constructions; in 1996 they entered into a development agreement with P.W.5 for development of his land; and again entered into agreement for the same land of P.W.5 in partnership with P.W.1 and L.W.2, brother of P.W.1, under the banner of Sri Jay Constructions in 1999 keeping PW.1 and L.W.2 in dark about the earlier agreement. It is also alleged that instead of making payments to P.W.1 and L.W.2 as agreed by them, A-1 and A-2 threatened them with dire consequences and warned that they would kill them.
5. After framing of the charges, they were put to the accused. The accused denied the same and claimed to be tried.
6. Prosecution examined P.Ws.1 to 10 and marked Exs.P-1 to

P-7. The accused marked Exs.D-1 to D-13.

7. During trial, P.W.1 stated that they had entered into partnership with the accused in 1997 by name Sri Jay Constructions for development of the property belonging to P.W.5 at Gandhi Nagar, Secunderabad and entered into a development agreement Ex.P-3 with P.W.5; that they showed him a MCH sanctioned plan and convinced them that they verified all legal documents; that in the said partnership, A-1 and A-2 did not invest and only P.W.1 and his brother invested; A-1 and A-2 told P.W.1 that they have another partnership by name Sri and Sri Constructions with other partners and their money is stuck in another venture and they would contribute at a later stage; that he and his brother spent Rs.9,45,000/- and raised stilt + three roof slab with brick work; and when A-1 and A-2 continue to avoid investment in the firm, they questioned P.W.5 who stated that the sanction plan of MCH shown to P.W.1 by A-1 and A-2 was forged; so P.W.1 and his brother decided to quit the firm doubting the integrity of A-1 and A-2. He further stated that he issued a letter to A-1 and A-2 dt.18-06-1999 to retire from the firm and settle their accounts; that in May 2000, A-1 and A-2 settled their account and issued two cheques, one for Rs.1,25,000/- and another for Rs.1,40,000/- and a deed of retirement Ex.P-2 was also executed by them promising to pay the amount @ 24% per annum in three months.
8. According to P.W.1, subsequently they came to know that A-1 and A-2 along with other partners in M/s. Sri and Sri Constructions had entered into a development agreement for the same plot belonging to P.W.5 without canceling the previous development agreement with P.W.1. He stated that they

questioned A-1 and A-2 about the sanctioned plan and also earlier agreement which was not cancelled. But A-1 and A-2 did not give any response and then they filed the complaint.

9. The Court below held that the retirement deed Ex.P-2 did not disclose anything about the investment of amounts by P.W.1 and his brother or that A-1 and A-2 agreed to pay P.W.1 and his brother Rs.9,45,000/-. It held that P.W.1 has not filed any civil suits for enforcing Ex.P-3 development agreement and there is no material evidence to show that P.W.1 has spent Rs.9,45,000/- in the construction work; and P.W.1 himself admitted that he did not file any account pertaining to the amount of Rs.9,45,000/- spent by him and he had not filed any statement of accounts from the banks. It further held that A-1 has lodged a complaint against P.W.5 and the case ended in an acquittal; that partners of M/s.Jay Constructions stopped the work and this amounted to violation of development agreement Ex.P-3; and therefore, P.W.1 and his brother were at fault since the project was not completed within the stipulated time of eight months. It further held that P.W.1 did not file any documentary evidence about entering into any fresh development agreement in 1999 by A-1 and A-2 and except the oral statement of P.W.1, there is no other material on record in support of said plea. It also noted that P.W.1 had retired from the partnership on 26-06-2000 but he lodged a complaint to the police on 25-11-2001 with a delay of more than 1 ½ years and did not give any reasons for the delay in lodging the complaint; and P.Ws.2 and 3 did not corroborate the evidence of P.W.1 regarding the entering into second development agreement. The evidence of P.W.4 was found to be not trustworthy by the Court below on the ground that there

was no material to show that he acted as a mediator to the dispute between A-1 and A-2 on the one hand and P.Ws.1 and his brother on the other hand and if there was really such mediation, P.W.1 would have issued a notice to A-1 and A-2. It further held that evidence of P.W.5 also did not corroborate the evidence of P.W.1 and the complaint lodged by A-1 against P.W.5 had ended in acquittal. It therefore held that A-1 and A-2 are not guilty of the offences lodged against them.

10. Challenging the same, this Criminal Appeal is filed.

11. The learned Public Prosecutor contended that the evidence of P.W.1 ought to have been relied upon by the Court below since he admitted the execution of second development agreement in 1999 and in any event. It is clear from the facts narrated by P.W.1 that he was cheated by A-1 and A-2. Since agreement between A-1 and A-2 was in 1999 subsequent to the agreement between A-1 and A-2 and P.W.5 in 1996 with the firm M/s. Sri and Sri Constructions for development of the same property.

12. The scope of interference in appeal under Section 378 Cr.P.C. is laid down succinctly in **Chandrappa and others Vs. State of Karnataka**, as under :

“(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, ‘substantial and compelling reasons’, ‘good and sufficient grounds’, ‘very strong

circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

13. The above principle was reiterated in **State of Rajasthan v. Mohan Lal** and recently in **Satvir Singh v. State of Delhi**.

14. In the present case, the whole version of the case of the prosecution is that in respect of the same property, belonging to P.W.5, two development agreements were executed, one in 1997 with M/s. Jay Constructions in which P.W.1 was a partner and that on 29-05-1999, A-1, A-2 and P.W.5 entered with another development agreement to develop the same plot with M/s. Sri and Sri Constructions.

15. In my considered opinion, if the same land owner enters into two development agreements in respect of the same land, then it is possible to say that the said land owner committed the offence of cheating. In the present case, admittedly P.W.5, the land owner was prosecuted by A-1 for doing so but the said prosecution ended in an acquittal.

16. Moreover, the agreement with M/s. Sri and Sri Constructions said to have been executed in 1999 was not filed by the prosecution.
17. P.W.2's evidence was that after a development agreement was entered into in 1996 with P.W.5, disputes arose and A-1 had filed a civil suit for settlement of accounts against M/s.Sri and Sri Constructions, that this ended in a compromise and a MOU dt.29-05-1999 was executed. P.W.2 had not stated anything about the continuity of the 1996 development agreement with P.W.5 subsequent thereto. If there is any second development agreement executed in 1999, in respect of the same property with M/s.Sri and Sri Constructions, P.W.1 ought to have taken steps to direct production of the same, but he did not do so. Thus, the substratum of the prosecution case based on the second development agreement allegedly executed in 1999, falls because no such agreement was proved to have been executed. The prosecution has also not explained the delay of 1 ½ year in lodging the complaint. It appears that peeved by the action of A-1 and A-2 in not making payments as per the settlement in May 2000, prosecution was launched by P.W.1 in stead of pursuing civil remedies for recovery of amounts due to him.
18. I therefore do not find any merit in the Criminal Appeal and the same is accordingly dismissed.
19. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S. RAMACHANDRA RAO

Date : 21-01-2015

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