

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.11.2016

CORAM:

THE HON'BLE MR.JUSTICE C.T. SELVAM

Crl.R.C.No.1023 of 2016

and

Crl.M.P.Nos.8416 and 8417 of 2016

S.Rajendran

S/o.Sengunni Menon

.. Petitioner

vs.

S.Chitra

W/o.Saravanaraj

.. Respondent

Criminal Revision filed under Section 397 and 401 Cr.P.C. call for the records in CC.No.427/2010 on the file of the Judicial Magistrate Court No.II, Nagapattinam and CA.No.38/2011 on the file of the Court of the Sessions Judge (Fast Track, Mahila Court) Nagapattinam examine the Correctness; legality or propriety of the findings, sentence passed against the petitioner.

For Petitioner : Mr.K.M.Subrahmaniam

For Respondent : Mr.G.Dhamodaran

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O R D E R

This revision arises against two concurrent judgments of Courts below convicting the petitioner for offence u/s.420 IPC and sentencing him to 1 year S.I. and fine of Rs.2,000/- i/d 3 months S.I.

2. Respondent preferred a private complaint informing that believing petitioner that his mother had settled the subject property in his favour under a Deed of Settlement dated 19.08.1999 and that he was in possession of the same, she purchased the property from him on 16.05.2007. On 17.04.2010, upon sisters of petitioner informing that they are also entitled to the property, the respondent came to know about the fraud played upon her by petitioner. The complaint of the respondent was taken on file in C.C.No.427 of 2010 on the file of learned Judicial Magistrate II, Nagapattinam.

3. Before the trial Court, on the side of complainant, three witnesses were examined and two exhibits were marked. None were examined on behalf of the defence nor were any exhibits marked. Trial Court, under judgment dated 08.07.2011, convicted the petitioner and sentenced him to 1 year S.I. and fine of Rs.2,000/- i/d 3 months S.I. The appeal preferred by petitioner in C.A.No.38 of 2011 on the file of learned Sessions Judge, (Fast Track Mahila Court), Nagapattinam, came to be dismissed under judgment dated 06.06.2016. Hence, this revision.

4. Heard learned counsel for petitioner and learned counsel for respondent.

5. Learned counsel for petitioner submits that the conviction of petitioner for offence u/s.420 IPC cannot be substantiated. Learned counsel contends that petitioner having received property under a Deed of Settlement dated 19.08.1999 executed in his favour by his mother had effected sale thereof to the respondent on 16.05.2007. It is the admission of respondent as PW-2 and in the course of her cross-examination that she was aware of the pending litigation regards the property. Learned counsel contends that the petitioner has not intended to deceive the respondent, there was no deception at inception and in the absence thereof, no offence of cheating would be made out.

6. Learned counsel for respondent, on the other hand, places reliance on the judgments of Courts below and submits that in a suit for partition preferred by the sisters of petitioner in O.S.No.20 of 2004 on the file of Sub Court, Nagapattinam, a preliminary decree was passed on 16.12.2004. It was only upon coming to know thereof that the respondent had, in 2010, sought to implead herself as party in the proceedings. Such application is still pending. To the chagrin of the respondent, she came to know that petitioner had dealt with the property with several persons and many of them have also sought to take part in the final decree proceedings.

7. On consideration of rival submissions, particularly, taking note of the evidence of respondent given in cross-examination that she was not aware of the partition suit preferred by sisters of the petitioner till 2010, this Court is inclined to concur with the findings of Courts below that offence of cheating does stand committed in the case. The evidence of respondent, in the course of cross-examination that she knew about the partition suit cannot be read out of context. Evidence is to be read as a whole and when so read the conclusion would be that it is the respondent's evidence that she came to know of the pendency of the suit for partition filed by the sisters of petitioner only in 2010.

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The Criminal Revision Petition shall stand dismissed.  
Connected miscellaneous petitions are closed.

-s/d-  
Assistant Registrar

True Copy

Sub-Assistant Registrar

gm

To

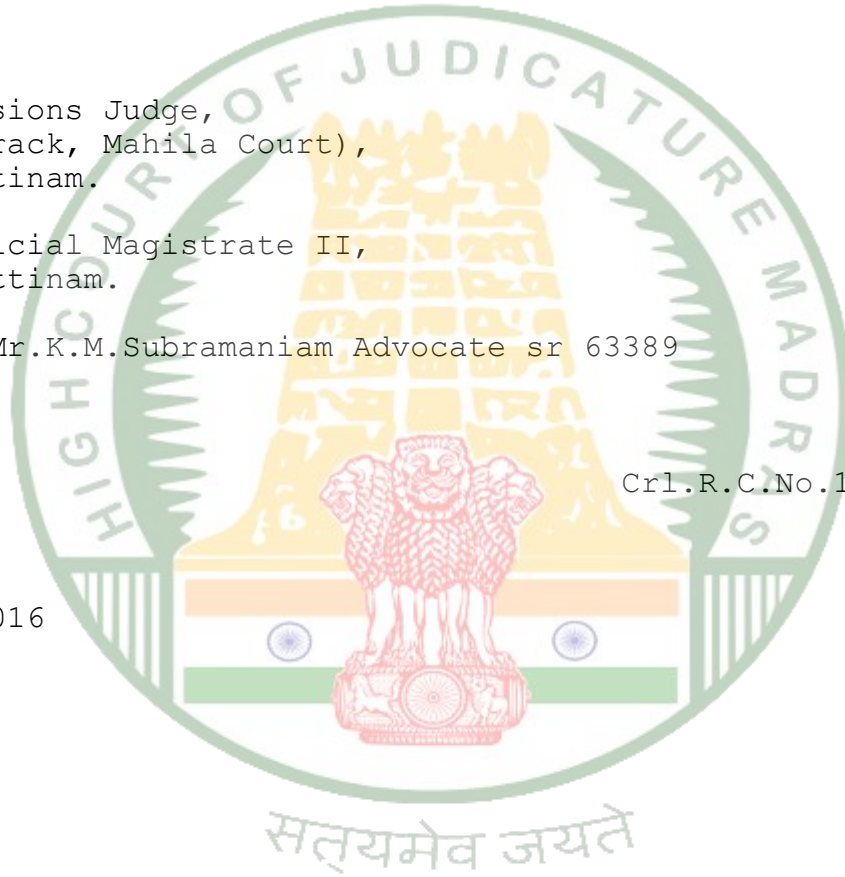
1.The Sessions Judge,  
(Fast Track, Mahila Court),  
Nagapattinam.

2.The Judicial Magistrate II,  
Nagapattinam.

+1 cc to Mr.K.M.Subramaniam Advocate sr 63389

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