

HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL APPEAL No.178 OF 2006

JUDGMENT:

This Criminal Appeal, under Section 378(3) & (1) of the Code of Criminal Procedure, 1973 (for short, "Cr.P.C."), is filed by the State against the judgment, dated 21.05.2004, in CrI.A.No.546 of 2001, on the file of the IX Additional Sessions Judge (FTC), Guntur, whereunder and whereby, the conviction of the respondent/A-3 for the offence punishable under Section 420 IPC recorded in judgment, dated 22.10.2001, in C.C.No.291 of 1999, by the Additional Munsif Magistrate, Tenali, was confirmed, but the sentence to undergo Rigorous Imprisonment for a period of three (3) years and to pay a fine of Rs.5,000/-, in default of suffer Simple Imprisonment for a period of three (3) months was modified to Rigorous Imprisonment for a period of three (3) months and the sentence of fine was confirmed.

2. Case of the prosecution, in brief, is as follows:

P.W.1 is the resident of Battavari Street, Ganganammampet, Tenali, and doing business in timber. A-3 is the friend of P.W.1. In the first week of August, 1999, A-3 requested P.W.1 to arrange a loan of Rs.2,00,000/- each to A-1 & A-2 and P.W.1 agreed to give the loan on security. On 12.08.1999, A-3 brought A-1 & A-2 to the house of P.W.1 and informed that A-1 & A-2 will transfer the Mortgage Deeds executed by Korlapati Sambasivarao and Korlapati Srinivasa Rao in their favour to P.W.1. P.W.1 verified the mortgage documents and himself and A-3 called for the scribe for preparing the transfer mortgage

deeds. P.Ws.2 & 3, who were attending to welding work and painting work respectively in the house of P.W.1 were present. P.W.4 prepared the transfer mortgage deeds in favour of P.W.1 and A-1 and A-2 signed on the deeds. P.Ws.2 & 3 and A-3 also signed on the deeds as witnesses. A-3 made P.W.1 to believe that A-1 and A-2 will register the transfer mortgage deeds in his favour in the Sub-Registrar Office, Tenali, and believing the words of A-3, P.W.1 gave cash Rs.1,91,000/- each to A-1 & A-2. P.W.4 handed over the two mortgage bonds, dated 02.08.1996, one in favour of A-1 and the other in favour of A-2 along with the two transfer mortgage deeds, dated 12.08.1999, executed by A-1 & A-2 and informed P.W.1 that the time for presenting the said two transfer mortgage deeds for registration was over. A-3 informed P.W.1 that he will bring A-1 & A-2 to the Sub-Registrar office on the next day and went away by keeping the two registered mortgage bonds and the two transfer mortgage deeds with P.W.1 and he believed the words of the accused. As promised, A-1 to A-3 did not come on the next day for registration and when P.W.1 asked A-3 as to why he did not bring A-1 & A-2 for registration, he gave prevaricative replies saying that he would bring them on the next day and that he need not worry as the two original mortgage bonds and two transfer mortgage deeds are with him. P.W.1 kept quiet for some days and afterwards, he learnt that A-3 made A-1 & A-2 to cancel the two mortgage bonds, dated 02.08.1996, in the Registrar Office as they received the full amount due under the said bonds and since then, A-1 to A-3 were not seen. Later P.W.1 obtained the Registration Extracts of the said cancellation

deeds. With fraudulent intention, A-1 to A-3 avoided the registration of transfer mortgage deeds on 12.08.1999 after receiving cash of Rs.3,82,000/- from P.W.1 and subsequently, A-1 & A-2 cancelled the two original mortgage bonds, dated 02.08.1996, and cheated P.W.1. P.W.1 filed a private complaint vide C.F.R.No.4350 of 1999 which was endorsed to P.W.5 for investigation. P.W.5 registered the C.F.R. as Crime No.183 of 1999 under Section 420 IPC read with Section 156(3) Cr.P.C. of Tenali II Town Police Station and investigated into the case.

3. During the course of investigation, P.W.5 visited the scene, secured the presence of P.Ws.1 to 4 and recorded their detailed statements under Section 161 Cr.P.C. and the investigation disclosed a *prima facie* case against A-1 to A-3 under Section 420 IPC. P.W.6 verified the investigation of P.W.5 and continued the investigation. P.W.6 arrested A-1 and A-2 on 27.10.1999 and sent them for remand. The respondent/A-3 has been absconding ever since the commission of the offence.

4. On appearance of the accused before the trial Court, the charge under Section 420 IPC was framed against the accused, read over and explained to them, for which, they pleaded not guilty and claimed for trial.

5. To substantiate its case, prosecution got examined PWs.1 to 6 and marked Exs.P-1 to P-8. On behalf of defence, D.Ws.1 & 2 were examined and Exs.D-1 to D-11 were marked.

6. After appreciating the oral and documentary evidence available on record, the trial Court found the accused guilty of the offence punishable under Section 420 IPC, and accordingly, convicted and sentenced him as stated above.

Aggrieved by the conviction order, the respondent/accused filed Crl.A.No.546 of 2001. The lower appellate Court dismissed the appeal by confirming the conviction made in the judgment, dated 18.04.2006, in C.C.No.291 of 1999, but the sentence was modified by reducing Rigorous Imprisonment from three (3) years to three (3) months and the sentence of fine was confirmed. Challenging the same, the present criminal appeal is filed by the State.

7. Heard and perused the entire material available on record.

8. After perusing the judgments of the trial Court and the lower appellate Court and also the material available on record, this Court is of the view that the findings of the learned lower appellate Judge are in accordance with law and the judgment of the lower appellate Court does not suffer with any perversity or illegality, necessitating interference by this Court.

9. Further, in a case of acquittal, if the trial Court considered the two views and basing on one of the views, which is in favour of the accused, acquits the accused, normally, the appellate Court will not interfere with the judgment of the trial Court unless and otherwise, the evidence adduced by the prosecution clinchingly points towards the guilt of the accused. In the present case, the learned trial Judge has considered all aspects and acquitted the accused. Hence, this Court is not inclined to interfere with the judgment of the lower appellate Court and the appeal fails and is liable to be dismissed.

10. Accordingly, this Criminal Appeal is dismissed confirming the judgment, dated 21.05.2004, in Crl.A.No.546 of

2001, on the file of the IX Additional Sessions Judge (Fast Track Court), Guntur. Miscellaneous petitions pending, if any, in this Criminal Appeal shall stand closed.

RAJA ELANGO, J

Date: 11th August, 2016

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