

HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL REVISION CASE No.885 of 2004

JUDGMENT:

Petitioners/A-1 & A-2 filed this criminal revision case by invoking the provisions under Sections 397(1) & 401 of the Criminal Procedure Code, being aggrieved by the judgment, dated 21.05.2004, rendered in Criminal Appeal No.546 of 2001 by the IX Additional Sessions Judge (Fast Track Court), Guntur, whereby and whereunder the conviction of the petitioners/A-1 & A-2 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 each and to pay a fine of Rs.5,000/- each, in default of suffer Simple Imprisonment for a period of three (3) months each was modified to Rigorous Imprisonment for a period of three (3) months and the sentence of fine was confirmed.

2. The brief facts, that are necessary for the disposal of the present Criminal Revision Case, may be stated as follows:

P.W.1 is the resident of Battavari Street, Ganganammabet, 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.

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 & D-2 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 them as stated above. Aggrieved by the conviction order, the petitioners 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 revision case is filed.

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

8. After hearing the arguments of the learned counsel for both sides and after perusing the material available on record, this Court is of the view that there are no reasons to set aside the conviction against the petitioners/A-1 & A-2 for the offence under Section 420 IPC. When this Court expressed its opinion that this Court is not inclined to interfere with the concurrent findings of the Courts below, learned counsel for the petitioners submitted that he will confine his arguments only to the extent of the period of imprisonment imposed against the petitioners.

9. Considering the facts and circumstances of the case and also in view of the submission of the learned counsel for the petitioners, this Court is inclined to reduce the sentence of imprisonment imposed against the petitioners for the offence under Section 420 IPC to that of the period, which the petitioners/A-1 & A-2 have already undergone.

10. In the result, the conviction recorded against the petitioners/A-1 & A-2 by the Additional Munsif Magistrate, Tenali, in C.C.No.291 of 1999, vide Judgment, dated 22.10.2001, for the offence under Section 420 IPC, as confirmed by the IX Additional Sessions Judge (Fast Track Court), Guntur, in Crl.A.No.546 of 2001, vide judgment, dated 21.05.2004, is hereby confirmed.

However, the sentence of imprisonment imposed by the trial Court, as modified by the lower appellate Court, is modified to that of the period, which the petitioners/A-1 & A-2 have already undergone. However, the sentence of fine imposed by the trial Court shall not be interfered with.

11. The Criminal Revision Case is, accordingly, allowed in part. Consequently, the Miscellaneous Petitions pending, if any, shall stand closed.

RAJA ELANGO, J

Date: 2nd August, 2016

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HONOURABLE SRI JUSTICE RAJA ELANGO**CRIMINAL REVISION CASE No.885 of 2004**Date: 11th August, 2016

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