

HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL APPEAL No.1396 of 2006

JUDGMENT:

1. This appeal is filed by the State against the judgment dated 31.3.2005 passed by the III Metropolitan Magistrate, Visakhapatnam in C.C.No.344 of 2002.

2. Brief facts of the case are as follows:

Sri Krishna Co-operative House Building Society started functioning from 9.5.1976. A1 was elected as President of the above society unanimously. A2 is the Secretary and A3 is one of the Directors of the said Society from 1.5.1991. The General Body of the society consists of one President, one Vice President, one Secretary and four Directors. The object of the society is to carry on for the benefit of its members, the trade of building, buying, selling, hiring, letting and developing land in accordance with the Co-operative Principles and to give loans to the members for the construction of new dwelling houses. The share capital of the society for the present period is two lakhs and made up of 20,000 shares of Rs.10/- each. The President and Secretary are the custodians and responsible persons to deal with the business of the society and to allot the plots to the members on seniority basis by passing resolutions in the meetings of the General Body. According to the bye-laws, the meeting of the Board of Directors shall be atleast once in a month. The quorum for the meeting of the Managing Board of Directors shall be 5. All the questions before the Board of Directors shall be decided by majority of votes. During the tenure of the accused in the general body, they had indulged in irregular transactions. P.W.2 being the person-in-charge on 1.12.1995 noticed some

irregularities in the maintenance of the society and informed the same to P.W.1 in writing and P.W.1 in turn consulted the District Co-operative Officer, Visakhapatnam, who in turn appointed P.W.3 as enquiry Officer. P.W.3 conducted enquiry and submitted his report on 5.11.1997 to the District Co-operative Officer, Visakhapatnam. The District Collector issued orders for prosecuting the delinquents and P.W.1 gave a report to the police, on the basis of which, P.W.8 registered a case and investigated into. In the enquiry, it was noticed that P.W.7, who was allotted with plot No.1 requested for alteration of the plot, since the original plot was lost due to acquisition by VUDA for laying road, the accused wantonly postponed the issue and subsequently, plot No.2, the cost of which is Rs.51,000/-, was allotted to her and registered. But the cost was not paid by her immediately. P.W.7 made payment to A1 in three instalments. But A1 did not debit the transaction in the cash book and misappropriated the cash of Rs.50,000/-. Further, it was noticed that a resolution was passed for allotment of Plot No.104 to the wife of A1 with an extent of 600 sq. yards. But the total extent of plot allotted to her is 917 sq. yards whereas in the sale deed it was shown as 600 sq.yards. But the cost of site was collected at Rs.51,000/-. Excess amount of Rs.32,945/- was misappropriated. But the wife of A1 partitioned the above extent and sold 303 ½ sq. yards to one P. Sree Devi and 457 ½ sq. yards to one G. Tavitayya and the remaining extent to one N.S. Raju. Subsequently, she died. But the usufructs of the said property are under the enjoyment of A1. Thus, the accused violated the bye laws. After completion of the investigation, charge sheet was filed against the accused for the offence punishable under Sections 409 and 420 IPC.

3. The learned Magistrate took the case on file for the offence under Sections 409 and 420 IPC. The learned Magistrate after following the procedure, framed charges under Sections 409 and 420 IPC, read over and explained to them, for which they pleaded not guilty and claimed to be tried.

4. During the course of trial, P.Ws.1 to 8 were examined and Exs.P1 to P11 were marked on behalf of the prosecution. Exs.D1 to D16 were marked on behalf of the accused.

5. After considering both the oral and documentary evidence, the trial Court found A1 to A3 not guilty for the offence punishable under Sections 409 and 420 IPC, acquitted them. Aggrieved by the same, the State filed the present appeal.

6. The main allegations against the accused are that the accused allotted plot No.2 in LP No.29/91 worth Rs.51,000/ to P.W.7 and the sale proceeds were not brought on record; Plot No.104 was allotted to the wife of A1 to an extent of 600 sq. yards. But 917 sq. yards were registered showing it as 600 sq.yards and that the accused had allotted the plots without approval of VUDA.

7. From the evidence on record, it is clear that P.W.1, who is a Divisional Co-operative Officer, categorically deposed that he does not know anything about the affairs of the Krishna Co-operative House Building Society and he does not know how many plots were laid in LP NO.29/91 and that he has no idea about the contents in Ex.P1 report. P.W.1 did not say anything against the accused. P.W.2, who is the Co-operative Sub-Registrar, Visakhapatnam also categorically deposed in his evidence that he does not know anything about allotment of plot Nos.13

to 20, 41, 42, 46, 53, 96 and 97 in LP No.29/91 and by the time of the allotment, he was not the member of the managing committee of the society. P.W.3-Retired Co-operative Sub Registrar did not explain the irregularities committed by the accused. P.W.4-Elected Secretary of Krishna Housing Co-operative Society deposed that he has no knowledge about the facts. P.Ws.5 to 7 also did not state anything against the accused.

8. The prosecution witnesses failed to establish the fraudulent intention of the accused and misappropriation of the amounts. As there is no relevant evidence on record establishing the case of prosecution, the learned Magistrate acquitted the accused.

9. Considering the findings of the Court below, this Court is of the view that the judgment of the Court below does not suffer from any illegality or irregularity warranting interference by this Court and hence, the appeal is liable to be dismissed.

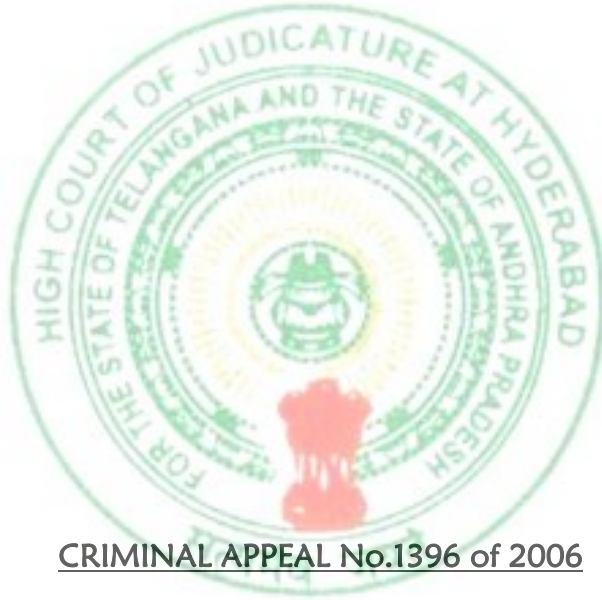
10. Accordingly, the Criminal Appeal is dismissed. Consequently, miscellaneous petition pending, if any, shall stand dismissed.

RAJA ELANGO, J

Date: 22nd September, 2016

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