THE HON'BLE SRI JUSTICE RAJA ELANGO

CRIMINAL REVISION CASE No.991 OF 2008

ORDER:

The petitioner/*de facto* complainant has preferred the present criminal revision case by invoking the provisions under Sections 397 and 401 of Code of Criminal Procedure (Cr.P.C.,) being aggrieved by the order, dated 19.12.2007 passed in C.C.No.975 of 2002, by the Court of the I Additional Chief Metropolitan Magistrate, Hyderabad, whereby the learned Magistrate found A.1 and A.2/respondents 1 and 2 not guilty for the offences under Sections 420, 406, 467, 468, 423 IPC read with Section 34 IPC and accordingly acquitted them.

Heard and perused the material available on record.

The case of the prosecution is as follows. The house property bearing No.14-10-547 was inherited to P.W.1 from his father, who died on 28.06.1991. A.1 took the original documents from petitioner's late father saying that he will get the said property transferred on the names of the complainant/P.W.1 and his brothers. But the accused has not taken any steps to transfer the above property on the names of the complainant and his brothers. After the death of petitioner's father, on 31.03.1993 A.1 fraudulently executed a registered General Power of Attorney vide document No.254/1993 in the office of the Sub Registrar, Doodh Bowli and notarized sale of agreement in favour of A.2. In the above fictitious agreement, A.1 acted as the petitioner's late father and that A.2 kept the said documents with P.W.4 as mortgage and took Rs.1,00,000/- as handloan. Thus, the accused committed offences punishable under Sections 420, 406, 467, 468, 423 IPC read with Section 34 IPC.

To substantiate the case of the prosecution, P.Ws.1 to 4 were examined and Exs.P.1 to P.16 were marked. No oral evidence was adduced on behalf of the defence, but Exs.D.1 to D.6 were marked.

On appreciation of oral and documentary evidence, the trial Court dismissed the complaint and acquitted A.1 and A.2 for the offences under Sections 420, 406, 467, 468, 423 read with Section 34 IPC.

The main ground urged by the petitioner herein is that the General Power of Attorney was allegedly executed by the father of the petitioner herein in 1993, whereas his father died in 1991, and as such, there cannot be any such General Power of Attorney in existence. But, the learned trial Judge observed that it is the duty of the petitioner herein to establish the fact that his father is the owner of the subject property and in order to grab the said property, the accused have created the General Power of Attorney and that the petitioner failed to prove the same. Secondly, it is the case of the prosecution that the property is mortgaged by A.2 in favour of P.W.4, but P.W.4 deposed before the Court that no such property is mortgaged with him, and more particularly by A.2. Hence, it cannot be believed the version of the petitioner that A.2 mortgaged the said property with P.W.4. Further, the failure on the part of the petitioner herein to establish the fact that the property, which is in question, belongs to the father of the petitioner, creates a doubt about the case of the prosecution. This Court is also of the view that unless and until the petitioner proves the fact that the subject property belongs to his late father, creation of forged documents and mortgaging the said property does not arise. The criminal revision case fails and is liable to be dismissed.

The criminal revision case is accordingly dismissed. Consequently, the miscellaneous petitions, if any pending in this revision case, shall stand closed.

JUSTICE RAJA ELANGO

06.09.2016
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