

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CRIMINAL REVISION CASE No.1801 of 2016

ORDER:

The revision petitioner P. Tyagaraju was the complainant in private complaint filed before the learned II Additional Judicial Magistrate of First Class, Nellore, against 4 accused who are the revision respondent Nos.2 to 5 by names i.e., M.Venkaiah, M.Ramadevi, Sadda Hazarat Reddy and M.Suneel Kumar Reddy. From the private complaint referred to police for investigation, the I Town Police Nellore registered FIR in crime No.203/2014 dated 13.08.2014 for the offences punishable under Sections 418, 420, 427, 466, 467, 468 and 341 read with 34 IPC. His grievance was that A.1 and A.2 i.e., M.Venkaiah @ Venku Reddy and M.Ramadevi @ Sadda Haritha (wife of A.3 S. Hazrat Reddy), leave about A.4-M.Suneel Kumar Reddy S/o. M.Venku Reddy (A.1), the owners of the house site in an extent of 32 Ankanams, 6 square feet in Mulapet, Nellore and A.3 and A.4 are partners of Om Sri Venkaiah Swamy Constructions. All being family members, A.3 and A.4 started construction work with municipal approval and sold flats and in that course flat No.405 to one Shaik Jameela under registered sale deed dated 18.07.2008 and said Jameela while in possession and enjoyment sold in turn to the complainant and the construction is with shop in entrance of ground floor and pent house in 5th floor, however there was permission only for 4 floors other than ground floor and the accused suppressed the factum of no permission and the construction unauthorizedly sold to the vendor of the complainant under sale deed dated 18.07.2008 supra and the

agreement of construction entered in between A.1 and A.2 of one party and A.3 and A.4 of another party with municipal approval for limited construction and by unauthorized construction without approval.

A perusal of the plan submitted for approval by the municipality for ground floor with parking and with 4 floors only and the owners names mentioned as M.Kameswaramma (not among accused), M.Ramadevi (uraf Sadda Harita-A.2) and M.Venkaiah-A.1. The police final report dated 14.12.2015 speaks that the investigation reveals from 9 witnesses examined including the municipal officials show there is no any forgery in the plans and signatures of officers, but for the said Kameswaramma and 3 others submitted the plans seeking permission for construction of ground + 3 floors residential building that was approved in B.A.No.1111/2006/G4 dated 06.01.2006 and parking and 2 flats proposed in ground floor and 2 each floor. Later the builders constructed and completed with pent house unauthorizedly in the year 2007 and sold the flats to others and the defacto complainant P.Tyagaraju purchased flat No.405 in the 4th floor in 2010 from one Jameela GPA holder of Md. Nazeem and even by that time the pent house and the 2 flats in the ground floor were existed even and by knowing all these, he purchased from Jameela and on knowing the deviations, the municipal authorities stopped the work of pent house and removed the centring. Later the building owners and the developers approached the Civil Court and filed O.S.No.2 of 2007 against municipality and they also submitted application in BPS.No.2882/2008 a part of penal amount of Rs.9,000/- for

regularization of buildings under the scheme and defacto complainant not purchased the flat No.405 from any of the accused, but from his vendor no other than vendee from the accused persons to say there is not direct transaction between accused persons and defacto complainant to say any cheating or misrepresentation and any unauthorized construction made by the accused, the defacto complainant's liberty to approach the municipal authorities to take action and from the legal advice it is referring as civil in nature for the essential ingredients of the penal offence for which the crime registered not made out.

The plan was sanctioned on 06.01.2006 to complete the construction within 3 years by 05.01.2009. Undisputedly there are unauthorized constructions including the flat No.405 as part of unauthorized constructions and for regularization applied is even in 2008 as can be seen from the final referred report the full amount was not paid under the scheme and it was not even regularized. Once the investigation nowhere revealed accused persons informed the defect to the vendor of the defacto complainant and he knowingly purchased the same and in turn while selling not disclosed to the complainant to say complainant's vendor is accused if at all and not the other accused, when it was not investigated in that line and protest application already filed referring to these facts, the impugned order dated 24.06.2016 of the learned Magistrate in dismissing the protest application saying by the time the complainant purchased flat No.405 from Sk. Jameela, there was no construction in the ground floor meant for parking only and subsequently 2 flats, one shop were constructed even in the

ground floor meant for parking area by closing one gate out of 3 gates revealed from the blue print approved plan and even for the flat No.405 or for entire 4th floor construction and also the pent house above it there is no permission and the municipal authorities also stated the same to Lokayukta that is also submitted by the complainant to the police officials and deposed same in his sworn statement, from that what the learned Magistrate observed is these will not attract any penal consequence but for any civil remedy to pursue. It is the same now impugned in the revision.

The plan applied leave about M.Kameswaramma among the 3 persons, the other 2 are A.1 and A.2 who obtained but the construction even as per the complaint made is by A.3 and A.4. The 4th floor is entirely unauthorized construction from the prima facie material leave about ground floor meant for parking also covered with unauthorized construction out of parking area. Once such is the case, the sale of the flats without disclosing that there is no approved plan and the construction is unauthorized even to the vendor of the complainant by accused persons is nothing but prima facie a deception to have wrongful gain by causing wrongful loss to say an offence under Section 420 IPC that attracts also from the fact that but for applied for regularization even in 2008 by payment of paltry amount of Rs.9,000/- and it was not caused regularization even the scheme is in vogue to regularize and to make the title over the property clear which is also one of the facts to substantiate the offence of cheating and even other penal consequence of Section 427 or 466 or 467 or 468 or 341 IPC that have no application and the

learned Magistrate ought to have thereby taken cognizance for the offence under Section 420 IPC.

Accordingly and in the result, the criminal revision case is allowed by setting aside the dismissal of the protest application by the learned Magistrate as unsustainable and the matter is remitted back to the learned Magistrate to go through the material afresh and pass appropriate orders according to law for taking cognizance for the offence under Section 420 IPC against the accused persons.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

Date: 01.03.2017
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JUSTICE Dr. B.SIVA SANKARA RAO

