

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

CRIMINAL REVISION CASE No.2015 of 2006

ORDER:

The present Criminal Revision Case, under Section 397 and 401 of the Code of Criminal Procedure, 1973 (for short, 'the Code'), is preferred by accused No.1 questioning the conviction recorded under Section 248 (2) of the Code and the sentence of Rigorous Imprisonment for one year and fine of Rs.5,000/-, with default sentence to suffer Simple Imprisonment for two months, for the offence punishable under Section 420 IPC, inflicted by the Additional Judicial First Class Magistrate, Hyderabad West and South, Ranga Reddy District, by his judgment dated 17.05.2004 in C.C.No.703 of 2001, as affirmed by the learned Additional Metropolitan Sessions Judge, holding Full Additional Charge of the Metropolitan Sessions Judge, Cyberabad, in his judgment dated 05.12.2006 in CrI.A.No.68 of 2004.

2. In fact, the learned Magistrate convicted both the accused i.e., Accused Nos.1 and 2 with the aforesaid sentence of imprisonment and fine, having acquitted them for the offences punishable under Sections 120-B and 506 IPC.

3. The learned lower appellate Judge dealt with both the appeals preferred by accused Nos.1 and 2, respectively, in Criminal Appeal Nos.68 and 64 of 2004, and rendered a common judgment, by which he has allowed the latter Criminal Appeal preferred by accused

No.2 acquitting him assigning certain reasons, but, however, dismissed the former Criminal Appeal preferred by accused No.1, confirming the conviction and sentence of imprisonment and fine inflicted on accused No.1. That is how the present Criminal Revision Case is preferred by accused No.1.

4. On 16.11.2017, Sri Sriman, learned counsel for the revision petitioner, submitted that he had learnt that the revision petitioner is no more, but, taken time to submit authentic information. Thereafter, more than half a dozen times i.e., on 23.11.2017, 30.11.2017, 05.12.2017, 06.12.2017, 08.12.2017, 11.12.2017 and 13.12.2017, the matter was adjourned and no information was passed on to the Court. Meanwhile, the learned Special Assistant Public Prosecutor for the State of Telangana was also required to ascertain the information passed on by the learned counsel for the revision petitioner.

5. Today, the learned Special Assistant Public Prosecutor would submit that he received instructions that despite making various efforts, neither the complainant nor the revision petitioner is found. Thus, what is open to this Court is instead of keeping the present revision case, which relates to the year 2006, pending, a finality can be given to it observing that in case the revision petitioner is no more and the information passed on by the learned counsel for the revision petitioner is found to be true later, the present revision case automatically stands abated and, in case the revision petitioner is alive

and conviction imposed against him under the order under revision is required to be confirmed, he shall be traced out and produced before the learned Magistrate so as to serve out the sentence. These are the two options available to this Court in the circumstances submitted by the learned Special Assistant Public Prosecutor.

6. Perused the judgments pronounced by both the Courts below. The relevant facts that are necessary to decide the question, whether there is any patent illegality in the findings recorded by the courts below or not are, that the revision petitioner has showed a plot situated at Madhapur to the *de facto* complainant - PW.1 telling him that it was for sale and, thus, made PW.1 to believe that the said plot belongs to him and got entered an agreement of sale with him on 17.01.2000 for a total consideration of Rs.6,00,000/-, out of which an earnest money of Rs.80,000/- was paid to the revision petitioner on 25.01.2000 and Rs.70,000/- was paid on 24.02.2000, and got registered the said plot through accused No.2 on 23.03.2000 misrepresenting that accused No.2 is the owner of the said land and took the balance sale consideration amount and, two months thereafter, the *de facto* complainant found a compound wall was got constructed in the said plot by the Mandal Revenue Officer and, on enquiry, he came to know that the plot, which was sold to him, belongs to the Government and then he approached accused No.1 to repay the amount or to settle the dispute in regard to the said plot, but accused No.1 went on dodging the matter and, having felt that he was

deceived, the *de facto* complainant lodged a complaint against accused Nos.1 and 2.

7. Before the trial Court, PWs.1 to 10 were examined and Exs.P1 to P17 were marked. The learned Magistrate, having appreciated the evidence on record, found that from the beginning, the accused had an intention to deceive the *de facto* complainant and, ultimately, with deception, the *de facto* complainant was made to part with a huge amount of Rs.6,00,000/- and, thus, finding that the ingredients of Section 420 IPC were satisfied, convicted both the accused and sentenced them as afore-mentioned. Challenging the same, both the accused preferred two different appeals as stated in the above.

8. The learned Sessions Judge has affirmed the conviction recorded against accused No.1, who is the revision petitioner, and set aside the conviction and sentence of imprisonment inflicted on accused No.2 as mentioned in the above.

9. Now, turning to the question whether there are any legal infirmities in the findings recorded by the lower appellate Court, the reasons for acquitting accused No.2 are found to be convincing, as the lower appellate Court recorded that in the cross-examination of PW.1, it came out that there were no money transactions between PW.1 and accused No.2 with regard to purchase of the subject plot and that accused No.2 also purchased the land through one Laxman, the GPA holder of one Anjaneyulu, and that that was the reason to introduce

accused No.2 and to execute the sale deed, at the instance of accused No.1. Thus, the learned Sessions Judge felt that accused No.2 had no role to play and he did not receive any amount and, only because of GPA, accused No.2 was also convinced to execute the registered sale deed, according to the evidence on record, and, thereby, the conviction and sentence inflicted on accused No.2 was set aside.

10. Concerning accused No.1, the learned Sessions Judge found that accused No.1 was absolutely aware of the plot belonging to the Government and the encumbrances thereon, but, only with dishonest intention, he lured or instigated PW.1 to purchase it with a view to knock away the amount from him and collected entire amount of Rs.6,00,000/- and he even issued cheques, which were subsequently dishonoured, and, thus, holding that the evidence on record would clearly establish the guilt of accused No.1, confirmed the conviction and sentence inflicted on accused No.1.

11. These findings, certainly, do not suffer from any patent illegality so as to warrant interference. It is a case where the prosecution could prove the dishonest intention right from the beginning. Therefore, there is no merit in the present Criminal Revision Case.

12. The Present Criminal Revision Case is, accordingly, dismissed. The revision petitioner - accused No.1 is directed to surrender before the trial Court by 23.01.2018 to serve out the sentence. In case he fails to surrender, the learned Magistrate is

directed to secure his presence by issuing non-bailable warrant, if necessary, and send him to prison to serve out the sentence.

13. As already observed in the above, in case the revision petitioner is not alive, the present Criminal Revision Case would stand dismissed as abated.

Miscellaneous applications, if any, pending in the Criminal Petition stand closed.

JUSTICE A.SHANKAR NARAYANA

18.12.2017

v v

