HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL REVISION CASE No.1233 OF 2009

JUDGMENT:

Questioning the order of acquittal dated 15.04.2009 in C.C. No.200 of 2005 recorded by the learned Judicial Magistrate of First Class, Rajahmundry, under Section 248(1) of the Code of Criminal Procedure, 1973 (for short 'Code'), for the charges under sections 406, 420 and 417 read with Section 34 of Indian Penal Code, 1860, the present Criminal Revision Case is preferred by the *de facto* complainant under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short 'Code').

2. Heard Sri Ch. Dhanumjaya, learned counsel for the revision petitioner, and the learned Assistant Public Prosecutor for the State of Andhra Pradesh, and Dasari S.V.V.S. Prasad, learned counsel for the accused.

3. A few facts, which are absolutely relevant for the purpose of analysing whether the approach of the learned trial Court is on correct lines in recording acquittal against respondent Nos.1 and 2, are, accused Nos.1 and 2 own Ac.0-03 cents of land in R.S. No.656/20A located in Sakhinetipalli village and further extents of Ac.0-15 cents, Ac.0-61 cents and Ac.0-09 cents in R.S. Nos.348/7, 348/9 and 326/7 respectively, in Gudapalli village and Malikipuram Mandal. Accused No.1 does coconut business and he had contracted a loan from State Bank of India, S.K. Palli Branch, for which transaction, accused No.2

stood as surety and the title deeds of the aforesaid extents were deposited with the State Bank of India, S.K. Palli Branch. The limit was also extended to Rs.1,00,000/-, later, that was on 16.08.2000.

4. While the things stood thus, the Bank filed a suit for recovery of money and a decree was also passed therein for Rs.1,37,141/- with interest against the respondents herein. Suppressing the fact of mortgaging the property, the said extents were sold to the *de facto* complainant under a registered sale deed dated 12.04.2002 and possession was also delivered to them. The *de facto* complainant subsequently learnt about the said mortgage, having felt that he was cheated, he filed a complaint and the same was referred to the police station under Section 156(3) of the Code. Investigation was done and charge-sheet was laid for the offences punishable under Sections 420 and 417 read with Section 34 of Indian Penal Code, 1860, against the accused and when the accused were examined under Section 239 of the Code, they pleaded not guilty and, therefore, it went for trial. The learned Magistrate has taken cognizance against the accused for the offence punishable under Section 420 of IPC.

5. During trial, PWs.1 to 6 were examined and Exs.P-1 to P-3 were marked. A portion of the statement recorded under Section 161 of the Code relating to PW.2 was marked as Ex.D-1.

6. The learned Magistrate analysed the evidence on record and finding that PW.2 is no other than the brother-in-law of accused No.1,

as accused No.1 married PW.2's sister, PWs.1 to 4 are interrelated and even PW.4's evidence showing that they all knew that accused No.1 contracted loan and PW.4 stood as a guanrator and in view of the admission that previously there were family disputes between the families of accused persons and PW.1, the learned Magistrate opined that there was every reason for implicating the accused persons and thereby given benefit of doubt to the accused and acquitted them. Aggrieved over the same, the *de facto* complainant preferred the present revision case.

7. The learned counsel for the revision petitioner would submit that the evidence on record would clinchingly show that the property was mortgaged prior to entering into sale transaction and nothing more is required to hold that right from the inception, the accused persons, dishonestly to make wrongful gain, have sold the extents knowing fully-well that they mortgaged the property with the State Bank of India, S.K. Palli Branch, and, therefore, according to him, the order passed by the learned Magistrate is liable to be set aside and the matter be remitted to the trial Court for disposal afresh.

8. A thorough scanning of the evidence on record would undoubtedly unravel that the witnesses are interrelated. When PW.2 is no other than the brother-in-law of accused No.1 and PW.4 is absolutely aware of the mortgage of the property covered by the sale, it cannot be said that PW.1 being a close relative of PW.2, ignorant of the mortgage. This apart when he hails from the very same village, in

case, there is any defect in the title, invariably a clause would be incorporated in the sale deed that the vendor would make good the loss. This apart a duty is also cast on the vendee to find out from the registration department before purchasing property, whether there was any encumbrance over the property sought to be purchased. Nothing of this sort is forthcoming in the complaint or in the statement made by PW.1. What is required to prove when the offence of cheating is alleged, the dishonest intention on the part of the vendor from the very beginning or in the beginning of the transaction which is conspicuously absent in the present case. Thus, when viewed, the finding recorded by the Court below cannot be said to be legal or infirm. Thus, there is no merit in the present case warranting interference with the finding recorded by the Court below. No patent illegality is pointed out by the learned counsel for the revision petitioner.

9. Therefore, the Criminal Revision Case is dismissed confirming the order under challenge.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the present revision case stand dismissed.

A. SHANKAR NARAYANA, J

December 11, 2017.
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