

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CRIMINAL REVISION CASE No.3167 of 2016

ORDER:

The petitioner/complainant in C.C.No.1048 of 2010 maintained the revision impugning the judgment dated 19.09.2016 in CrI.A.No.702 of 2015 on the file of Special Judge for Economic Offences-cum-VIII Additional Metropolitan Sessions Judge, Hyderabad, confirming the acquittal judgment dated 22.06.2015 in C.C.No.1048 of 2010 passed by the IV Additional Chief Metropolitan Magistrate, Hyderabad.

C.C.No.1048 of 2010 was filed by the complainant against accused Nos.1 to 12 for the offences punishable under Sections 406, 420, 109, 120-B, 511 read with Section 34 IPC. After taking cognizance for the offences supra by the learned Magistrate, the accused Nos.5 to 12 approached this Court by way of CrI.P.No.5862 of 2009 for quashing the proceedings against them and the proceedings against them were quashed by order dated 18.12.2011. Later, the proceedings were continued only against accused Nos.1 to 4 and a charge was framed under Section 420 read with Section 34 IPC. After trial and from the evidence of PWs.1 to 4 and Exs.P1 to P8 on behalf of the prosecution and from that of A.4 as DW.1 on behalf of the accused and after hearing both sides and by considering the material on record, the learned Magistrate on 22.06.2015, acquitted the accused.

Aggrieved by said acquittal judgment, the complainant preferred CrI.A.No.702 of 2015 against A.1 to A.4 and the learned Sessions Judge after hearing both sides and from the perusal of

material on record, dismissed the appeal vide order dated 19.09.2016 by confirming the acquittal judgment of the learned Magistrate.

Impugning the concurrent findings of the Courts below, the present revision is maintained by the complainant supra.

The grounds of revision vis-à-vis the oral submissions of the learned counsel for the petitioner/complainant are that the lower appellate Court erred in confirming the acquittal judgment passed by the trial Court without proper appreciation of the facts and circumstances of the case and though the petitioner/complainant brought the guilt of the accused persons for the offence under Section 420 r/w 34 IPC beyond reasonable doubt and the Courts below ought to have seen that there is an element of cheating on respondent Nos.2 to 5/accused Nos.1 to 4 since the date of execution of Ex.P1-agreement-cum-receipt dated 28.03.2008. The Courts below ought to have seen that the accused persons having entered into agreement with the petitioner in respect of the property owned by them resorted to execute a sale deed in favour of 3rd party clearly shows intention to defraud the petitioner to have wrongful gain and a strong prima facie case made out for the offence under Section 420 IPC and also the accused tried to defeat the right of the petitioner/complainant over the property covered by Ex.P1 supra by setting up their kith and kin to issue a legal notice which itself is sufficient to hold the deceitful intention of the accused.

The other contention is that the petitioner established by strong evidence to substantiate the accused are having evil

intention to cheat and defraud the petitioner as the accused having received the amounts and executed the Ex.P1 supra, sold away the property to third party and thus a prima facie case is made out against the accused under Section 420 IPC and the Courts below ought to have seen that the petitioner adduced oral and documentary evidence by examining PWs.1 to 4 and Exs.P1 to P8 were marked which clearly establishes the guilt of the accused and the accused except the sole testimony of DW.1(A.4) there is no other oral or documentary evidence is adduced and in the absence of any rebuttal evidence, it can be safely construed that the petitioner/complainant brought the guilt of the accused and thereby the trial Court should have been convicted the accused for the said offence and at least the lower appellate Court by reversing the acquittal judgment should have been found the accused guilty in convicting and sentencing them with imprisonment and fine and hence to allow the revision by setting aside the acquittal judgment and remand the matter for rehearing of the appeal, to decide afresh on merits.

Whereas it is the submission of the learned counsel for the respondent Nos.2 to 5/A.1 to A.4 that the acquittal judgments of the Courts below hold good and for this Court while sitting in revision there is nothing to interfere within the limited scope and hence to dismiss the revision.

Heard and perused the material on record.

The contention of the complainant right from the private complaint case including from evidence as PW.1 besides that of her husband as PW.2 is that the accused got dishonest intention

from inception of entering into and executing Ex.P1-agreement-cum-receipt dated 28.03.2008 with no intention to honour the agreement and it is as part of the said scheme they cause issued legal notice dated 23.07.2008 through A.5 to A.12 by setting them up no other than their kith and kin and the accused delivered Ex.P6-pattadar passbooks and revenue title deeds of A.1 to A.4 by receipt of Rs.3,00,000/- towards balance sale consideration having already paid Rs.6,25,000/- under Ex.P1 and the version of the accused of the pattadar passbooks are given only as security for repayment of Rs.3,25,000/- is not correct.

It is the crux therefrom as to which of two versions in relation to handing over of pattadar passbooks and title deeds- Ex.P6 is correct. The accused claims as security for payment of advance amount, whereas the complainant claims accused delivered the pattadar passbooks and title deeds at the time of receipt of Rs.3,00,000/- balance sale consideration. PW.1 in her evidence deposed that she did not obtain any receipt for the so called Rs.3,00,000/- paid and there is no independent witness examined as to PW.2 is no other than her husband to say the so called payment of Rs.3,00,000/- on 02.06.2008. It is for the prosecution to establish the case of there is element of cheating from the inception of entering into the contract and there was a contract for sale and there is payment pursuant thereto and it was not honoured. Once such is not proved much less any dishonest intention from the inception with intention not to perform the Ex.P1-contract, there is nothing to say any offence of cheating. That what the Courts below came to the conclusion,

more particularly, with reference to the expression in **Vesa Holdings Private Limited Vs. State of Kerala**¹.

Having regard to the above, there is nothing to interfere with the concurrent findings of the Courts below in acquitting the accused for this Court while sitting in revision that too besides the basic presumption of innocence of the accused, same is confirmed by acquittal judgments with concurrent findings of the Courts below.

Accordingly and in the result, the criminal revision case is dismissed.

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

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 18.04.2017
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¹ 2015 (2) Crimes 114 (SC)