

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL REVISION CASE No.3017 OF 2017

JUDGMENT:

The present Criminal Revision Case is preferred by the *de facto* complainant - N. Vijaya Krishna, who was unsuccessful in bringing home the alleged guilt of respondent No.2 - accused for the charge under Section 420 of the Indian Penal Code, 1860 (for short 'IPC'), before both the Courts below, under Sections 397 and 401 of the Code of Criminal Procedure, 1973, challenging the judgment, dated 07.08.2017, passed in Criminal Appeal No.101 of 2015 by the learned IV Additional Sessions Judge, Nellore, whereby and where-under, the learned Sessions Judge confirmed the order of acquittal, dated 23.02.2015, passed by the learned IV Additional Judicial Magistrate of First Class, Nellore, in C.C. No.604 of 2007, for the charge under Section 420 of IPC.

2. The facts, which are relevant to adjudicate upon the grounds agitated by him in the present Criminal Revision Case, are:

i) Respondent No.2 herein alleged to have executed an Agreement of Sale on 24.07.2003, in favour of the revision petitioner herein, agreeing to sell an extent of Acs.6-03 cents of land for a total consideration of Rs.91,65,000/- and received Rs.30,00,000/- towards advance, and one of the stipulations was that an amount of Rs.51,65,000/- was to be paid on or before 30.08.2003 and the balance

amount of Rs.10,00,000/- on or before 15.10.2003 by the *de facto* complainant, and on receipt of the entire sale consideration, respondent No.2 was to execute a registered sale deed.

ii) The *de facto* complainant alleges that he paid various amounts as per the letters addressed by respondent No.2 on 30.12.2013 and 16.03.2004. A table is given by mentioning the dates, name of the Bank, name of the person, demand drafts and the amounts respectively, mentioning 28 items amounting to Rs.49,00,000/- and, thus, according to the revision petitioner - *de facto* complainant, a total sum of Rs.79,00,000/- was received. But, despite his requests, respondent No.2 went on postponing the receipt of balance amount and execution of sale deed.

iii) Thereafter, respondent No.2 has also filed suit O.S. No.375 of 2004 on the file of the learned Senior Civil Judge, Nellore, seeking permanent injunction, and when respondent No.2 tried to alienate the property through a real-estate broker, Sri Yemula Ramanaiah, the revision petitioner filed a suit in O.S. No.37 of 2004 on the file of the District Judge, Nellore, for specific performance of agreement of sale. Later, the *de facto* complainant learnt that respondent No.2 suppressed the right of his mother in the suit property and entered into the agreement of sale with him in order to deceive him.

iv) According to him, respondent No.2 also obtained pass book on the said lands only to show his right over the suit land. Since he suppressed the fact of his mother having a right, the revision petitioner filed complaint against respondent No.2 for deception alleging the offence punishable under Section 420 IPC.

v) The learned Magistrate proceeded with trial as respondent No.2 pleaded not guilty and examined PWs.1 to 7 and marked Exs.P-1 to P-22, and defence documents Exs.D-1 and D-2, which are certified copies of plaint in O.S. No.62 of 2006 and O.S. No.37 of 2004. The learned Magistrate having analyzed the evidence of PWs.1 to 5 and the documentary evidence, more particularly, Ex.P-19, taken the admission of PW.1 that he was due an amount of Rs.12,65,600/- as mentioned in Ex.P-19 by the date of filing the suit in O.S. No.37 of 2004 by him, and found that the *de facto* complainant failed to perform his obligation under the agreement of sale observing that the revision petitioner never complained as to the defective title of respondent No.2, opining that the learned Magistrate cannot go into the title in assessing whether respondent No.2 committed breach subsequent to the contract, recorded a finding that the prosecution failed to prove the charge under Section 420 IPC. The learned Magistrate has also referred to as many as 15 judgments relied on by the prosecution and found that the ratio laid down in various

judgments is inapplicable to the fact-situation occurring in the instant case, thereby recorded acquittal.

3. Aggrieved over the order of acquittal recorded by the learned Magistrate, when the revision petitioner approached the learned Sessions Judge in Criminal Appeal No.101 of 2015, the learned Sessions Judge having formulated the point for consideration in paragraph No.11, taken independent appraisal of evidence on record. The learned Sessions Judge having discussed the civil suits and appeal suits, where interim suspension of a portion of judgment and decree was also obtained and referring to the decisions in **Thrilo Singh and others v. Satyadev Tripathi**¹, **Sagar Suri v. State of U.P.**², **M/s. Indian Oil Corporation v. M/s. NEPC India Limited**³, opined that there was no deception or cheating on the part of the 2nd respondent and thereby confirmed the acquittal recorded by the learned Magistrate.

4. Heard Sri Sasanka Bhuvanagiri, learned counsel for the revision petitioner, and the learned Assistant Public Prosecutor for the State of Andhra Pradesh, and opined to dispose of the matter at the admission stage itself.

5. The learned counsel, no doubt, would contend that both the Courts below went wrong in recording acquittal without properly

¹. AIR 1980 SC 850

². 2000 (2) SCC 638

³. AIR 2006 SC 2780

appreciating the evidence on record and both the Courts below overlooked the payment of Rs.30,00,000/- and Rs.48,00,000/- later to different persons by way of 28 demand drafts and there was deception from inception and the fact-situation would entirely attract the ingredients of Sections 415 and 420 IPC and, therefore, sought to set aside the judgments of both the Courts below.

6. When perused the findings recorded by both the Courts below, it is no doubt true, major chunk of the consideration amount has been transferred to respondent No.2, but the rights flow from the agreement of sale entered into in regard to which, already suits were filed by the revision petitioner and respondent No.2, though, respondent No.2 initially filed the suit for perpetual injunction, whereas the revision petitioner filed the suit for enforcement of agreement of sale. Whether the mother of respondent No.2 has got right over the property or not is to be examined by a Civil Court. Further, the revision petitioner was also bound to probe into title even before entering into agreement of sale to purchase the property by examining the concerned records with the Revenue Department. Therefore, it is difficult to hold that the prosecution could prove the dishonest intention to cheat the revision petitioner and deliberately did not execute a registered sale deed. All rights that flow from agreement of sale and mutual obligations, pending for scrutiny by the Civil Courts. Therefore, the findings recorded by the Courts below

cannot be faulted. There are no legal infirmities in recording the findings. Thus, there is no merit in the present Criminal Revision Case.

7. Accordingly, the Criminal Revision Case is dismissed.

As a sequel thereto, miscellaneous petitions, if any, pending in the present revision, stand closed.

A. SHANKAR NARAYANA, J

December 04, 2017.

PV/Mgr

