

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.09.2017

PRONOUNCED ON : .05.2018

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Criminal Revision Case No.258 of 2016

V.T.V.Sharma

.. Petitioner/Accused

Versus

The Sub Inspector of Police,
E-1, Mamallapuram Police Station,
Mamallapuram.
(Crime No.88 of 2007)

.. Respondent/Complainant

Criminal Revision Case has been filed under Section 397 r/w 401 of Cr.P.C. seeking to call for the records culminating in the impugned order dated 12.01.2016 passed by the learned District Munsif-cum-Judicial Magistrate, Thirukazhukundram in C.M.P.No.4180 of 2012 in C.C.No.242 of 2007 and to set aside the same.

For Petitioner : Mr.Arun Anbumani

For Respondent : Mr.C.Iyyapparaj,
Additional Public Prosecutor

ORDER

This Criminal Revision Case has been filed against the order passed by the District Munsif-cum-Judicial Magistrate, Thirukazhukundram in C.M.P.No.4180 of 2012 in C.C.No.242 of 2007 by order dated 12 .01.2016.

2. According to the respondent/prosecution, the revision petitioner herein was the owner of the property of seven grounds of vacant land with 600 sq.ft. building at S.No.268/2 and 269/1 at Sulurikadu Hamlet, Nemili village under the jurisdiction of the respondent police. The defacto complainant, one Mukund Chand Bothra had entered into an agreement of sale with the revision petitioner in the year 1996, to purchase the said property, for which a sum of Rs.4 Lakhs was given as advance at the time of entering into the agreement.

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3.It is the case of the prosecution that, thereafter, when the defacto complainant/Bothra, approached the revision petitioner/ Sharma, for executing the sale deed, the revision petitioner did not accede to the request of the defacto complainant, therefore, in the

year 1997, the defacto complainant, filed a civil suit in C.S.No.1160 of 1997 before the City Civil Court, Chennai for a bare injunction where, an injunction was granted not to alienate the property to third party and thereafter, in the year 1999, the defacto complainant also filed a civil suit in C.S.No.205 of 1999 before this Court on the original side where, a decree was passed in the year 2002 directing the revision petitioner to execute the sale deed in favour of the defacto complainant and hand over the possession of the suit property.

4. It is the further case of the prosecution that inspite of two orders passed by the Court of law, the revision petitioner on 14.11.2003, through his power of attorney holder, executed a sale deed in favour of one Kulwant Singh in respect of the said property that too for a very low price than the market price. Thereafter, the defacto complainant, filed execution petition in E.P.No.100 of 2005 before this Court, wherein, this court directed the Assistant Registrar of this Court, to execute the sale deed in favour of the defacto complainant accordingly, on 10.02.2005 the sale deed was executed and registered in favour of the defacto complainant. Thus, the revision petitioner/accused having known the facts that, courts have

<http://www.judis.nic.in> passed an order restraining him from alienating the property to any

third party other than the defacto complainant or his nominee, with the intention of cheating the defacto complainant, had executed the sale deed through power of attorney to and in favour of one Kulwant Singh in the year 2003 and thereby, the revision petitioner/accused committed the offence punishable under Section 420 of IPC read with Section 188 of IPC.

5. In fact, a complaint to that effect was given by the defacto complainant on 07.10.2005, and the said complaint since has not been investigated, it seems that the defacto complainant approached this Court and after obtaining an order from this Court, pursuant to which only, investigation was completed by filing an FIR on 20.04.2007, and based on such investigation only, the said charge sheet was filed by the respondent/prosecution on 05.09.2007.

6. It must also be relevant to state that, originally the case was registered against the revision petitioner for alleged offences punishable under Section 420, 448 and 506(i) of IPC however, subsequently, by alteration report dated 21.04.2007, the respondent police had stated that on investigation, it was found that the alleged

offence punishable under Section 448, 506(i) of IPC were not made out

against the revision petitioner/accused and therefore, the charge was altered from under Section 420 and 448 and 506(i) of IPC to only under Section 420 of IPC. Therefore, the final charge sheet dated 05.09.2007 was filed as stated supra, against the revision petitioner/accused for the offence punishable under Section 420 of IPC read with Section 188 of IPC.

7. On filing of the charge sheet before the Court below, the revision petitioner had filed a petition to discharge the revision petitioner/accused from the charge in the aforesaid CMP.No.4180 of 2012 in C.C.No.242 of 2007. In the said CMP seeking to discharge the revision petitioner from the charge, the Trial Court, after having heard both sides passed an order dated 12.01.2016 whereby, rejected the petition filed by the revision petitioner/accused seeking to discharge. As against the said order, the present Criminal Revision Case has been filed.

8. Though it appears to be a simple case of a complaint filed by the defacto complainant for the alleged offences punishable under Section 420 of IPC, originally on the allegation so made, the

<http://www.judis.nic.in> respondent police filed the charge sheet for offence punishable under

Sections 420 and 448 and 506(i) of IPC and after further investigation the respondent police found that the accused is not guilty of the offence under Sections 448 and 506(i) of IPC and accordingly, charge sheet was altered only for the offence under Section 420 of IPC read with Section 188 of IPC, the case has some chequered history on the civil side of the issue.

9. In order to appreciate the said background of the case which would greatly help this Court to come to a conclusion as to whether the plea raised by the revision petitioner before this Court can be accepted or not, it became necessary to travel, ofcourse in nutshell, about the said background history on the civil side of the issue.

10. On 01.02.1996, the revision petitioner/accused and the defacto complainant had entered into an agreement for sale of the aforementioned property, belongs to the revision petitioner. It seems that, subsequently, on 05.02.1996, 21.03.1996 and on 10.04.1996 some further payment had been made by the defacto complainant

towards the sale, to the revision petitioner. On 31.05.1996, the

revision petitioner had sent a letter to the defacto complainant that, the sale agreement entered into between them was cancelled and the part of the advance amount was also refunded. On 08.06.1996, however, a reply was sent by the defacto complainant to the revision petitioner and thereafter, on 09.06.1996, a legal notice also was sent by the defacto complainant to the revision petitioner. Thereafter, on 13.10.1996, the revision petitioner sent further reply to the defacto complainant to receive back the advance.

11. In the circumstances, in the year 1997, a civil suit in O.S.No.1160 of 1997 was filed by the defacto complainant in the City Civil Court, Chennai for permanent injunction. In the said suit a prohibitory order also had been obtained by the defacto complainant restraining the revision petitioner from alienating the property to any third party.

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12. In the meanwhile, according to the revision petitioner, since the defacto complainant had not come forward to pay the full sale consideration and get execution of the sale deed inspite of the repeated request and reminder made by the revision petitioner, after

<http://www.judis.nic.in> having cancelled the agreement entered with the defacto

complainant, the revision petitioner entered into an agreement with one R.J.Surendranath, on 27.04.1996 and on 24.05.1996 the revision petitioner executed a power of attorney in favour of one Anita Kapoor, wife of R.J.Surendranath and the said Power of Attorney was registered as document No.346 of 1996 at the Sub Registrar Office at Chennai, Central.

13. Thereafter, the defacto complainant filed a further civil suit in C.S.No.205 of 1999 only on 28.01.1999 before the original side of this Court seeking for a specific performance against the revision petitioner and also for recovery of possession of the suit property or in the alternate for refund of advance money.

14. Simultaneously, on 19.02.1999, the earlier suit filed before the City Civil Court I.e., O.S.No.1160 of 1997 was decreed with the permanent injunction and on 02.09.2002, the civil suit No.205 of 1999 decreed in favour of the defacto complainant ofcourse, by way of an ex-parte decree. On 14.11.2003, the Power of Attorney of the revision petitioner namely, Anita Kapoor, executed a sale deed in favour of one Kulwant Singh. Thereafter, since the defacto

to the order passed by this Court in the said E.P., the Assistant Registrar Original Side of this Court executed a sale deed on 10.02.2005, in favour of the defacto complainant.

15. The resultant situation was that, one Kulwant Singh purchased the property by way of sale deed executed by the Power of Attorney holder of the revision petitioner on 14.11.2003 and the defacto complainant also purchased the same property by way of sale deed executed through the Assistant Registrar original side of this court dated 10.02.2005.

16. Only in that context, the criminal complaint was given by the defacto complainant making the allegation against the revision petitioner that, he, knowing well that there was a prohibitory/injunction order passed by a Civil Court against him and also was knowing the fact that a suit was decreed for specific performance by order dated 02.09.2002, clandestinely with the intention to cheat or defraud the defacto complainant, executed a sale deed through his Power of Attorney holder on 14.11.2003 to and in favour of one Kulwant Singh and on that strength, they wanted to take away the property which, the defacto complainant received

through the sale deed executed by the order of this Court dated 10.02.2005 and therefore, according to the defacto complainant, the revision petitioner had committed an offence punishable under Section 420 of IPC.

17. Only in that context, after having investigating the matter, the respondent police filed the aforesaid charge sheet against the revision petitioner and the same was since taken on file by the Trial Court in the aforesaid C.C.No.242 of 2007 where, the revision petitioner filed discharge petition which was dismissed by the impugned order of the Trial Court, as against which only, the present revision has been filed.

18. It is further interesting to note certain factor relatable to the issue raised in this revision case which are necessarily to be gone into before arriving at a conclusion in this revision case.

19. Two sale deeds were executed in respect of the same property originally belong to the revision petitioner as has been set out above i.e., one sale deed dated 14.11.2003 in favour of Kulwant

Singh and another sale deed dated 10.02.2005 infavour of the defacto complainant.

20. In view of the two sale deeds to two different persons in respect of the same property, the said Kulwant Singh claiming to be the bonafide purchaser of the property, had already approached this Court by filing civil suit in C.S.No.456 of 2007 for the relief of declaration that the decree dated 02.09.2002 passed by this Court in C.S.No.205 of 1999 as nullity and not binding on the complainant and also for a prayer of declaration that the order dated 23.07.2004 passed by the Execution Court in E.P.No.100 of 2003 is a nullity and not binding on the plaintiff and for a further prayer of declaration that, the sale deed dated 10.02.2005 registered as Document No.1999 of 2005 on the file of the Sub Registrar Office, Tiruporur in respect of the suit schedule property executed by the Assistant Registrar, High Court, Madras in favour of the first defendant (Defacto complainant) is null and void and non-est in law.

21. The said civil suit in C.S.No.456 of 2007 filed by the said Kulwant Singh had been admitted and is pending before this Court. In the said suit, the defacto complainant filed an application in

A.No.6341 of 2009 seeking to reject the plaint in C.S.No.456 of 2007. In the said suit, the said Kulwant Singh, who was the plaintiff therein, filed an application in O.A.No.638 of 2007 seeking an order, restraining the respondent therein, to do any act on the basis of the sale deed dated 10.02.2005, executed in favour of the defacto complainant pursuant to the order dated 23.07.2004 in E.P.No.100 of 2003 in C.S.No.205 of 1999. In the said suit, yet another application was filed by the said Kulwant Singh to condone the delay the 222 days, in filing the application to set aside the judgement and decree dated 02.09.2002 in C.S.No.205 of 1999.

22. All these applications came to be heard by a learned Judge of this Court in the original side and by common order dated 24.02.2010, the learned Judge having considered all these aspects comprehensively for the purpose of disposal of those applications, has passed a detailed order.

23. Certain aspects of the finding given by the learned Judge in the said common order in those applications referred to above are relevant to be noted herein. The learned Judge has given the following observation about the judgement of this Court in deciding

the civil suit i.e., C.S.No.205 of 1999 where, an exparte decree was passed in favour of the defacto complainant. The relevant portion of the order of the learned Judge reads thus:

4. It will be interesting to note that the suit property was admittedly situate beyond the jurisdiction of this Court. The plaintiff not merely asked for a decree of specific performance, but also asked for recovery of possession specifically, as one of the reliefs. Therefore, the suit was obviously one on land and no leave under Clause 12 of the Letters Patent could have been granted, as this Court had no jurisdiction to entertain the suit. However, the suit was not only entertained but was also decreed as prayed for.

5. Apart from the issue of jurisdiction, there was one more issue. The decree contained not only a direction for specific performance, but also a direction for refund of advance money. I do not know if this was to the advantage of the defendant, who remained ex parte.

6. Be that as it may, the plaintiff filed E.P.No.100 of 2003, for execution of the above decree. Since notices in the Execution Petition could not be served on the defendant, paper publications were effected and the E.P., was ordered on 23.7.2004 and a Sale Deed was executed by the Assistant Registrar of this Court on 10.2.2005."

24. The learned Judge has given the following finding in deciding the said application No.6341 of 2009 in C.S.No.456 of 2007 filed by the defacto complainant seeking to reject the plaint filed by the said Kulwant singh. The following findings are necessary to be noted.

“12. Since this is an application to reject the plaint in C.S.No.456 of 2007, let me take up this application first.

13. As stated earlier, this application is filed by the decree-holder in C.S.No.205 of 1999, praying for rejection of the plaint in C.S.No.456 of 2007 under Order VII, Rule 11, CPC. The rejection of the plaint is sought on two grounds viz., (i) that it is an abuse of the process of law and (ii) that the plaintiff in C.S.No.456 of 2007, cannot claim the benefit of being a bona fide purchaser, since the Sale Deed in his favour was much after the decree for specific performance was passed in C.S.No.205 of 1999.

14. However, I do not consider the suit C.S.No.456 of 2007 to be an abuse of the process of law. As per the plaint averments, the original owner Hymavathi Constructions represented by its Managing Partner V.T.V. Sharma entered into an agreement for the sale of the suit schedule property with one Mr.R.J.Surendranath, on 27.4.1996. Subsequently, V.T.V.Sharma also executed a general power of attorney dated 24.5.1996 in favour of Anita Kapoor, wife of the agreement-holder R.J.Surendranath. It is a registered power of attorney. The power agent Anita Kapoor sold the suit schedule property to the plaintiff Kulwant Singh, by a registered Sale Deed dated 14.11.2003. Therefore, the plaintiff Kulwant Singh claims that

he is a bona fide purchaser of the property for valuable consideration, without notice of the decree passed against the original owner.

15. In the light of the plaint averments in C.S.No.456 of 2007, extracted in the preceding paragraph, now let us take a look at the dates and events that ultimately culminated in a decree for specific performance in favour of the plaintiff in C.S.No.205 of 1999.

1.2.1996 - Agreement of Sale between Mukan Chand Bothra and V.T.V. Sharma.

5.2.1996, 21.3.1996 & 10.4.1996 – Further payments made.

31.5.1996 – A registered letter sent by V.T.V.Sharma to Bothra stating that the Agreement of Sale stood cancelled and part of the advance refunded.

8.6.1996 – A reply sent by Bothra to V.T.V.Sharma.

9.9.1996 – Legal notice sent by Bothra to V.T.V.Sharma.

13.10.1996 – Reply sent by V.T.V.Sharma, requesting Bothra to receive back the advance.

1997 – Bothra files O.S.No.1160 of 1997 on the file of the City Civil Court for a permanent injunction. No leave under Order II, Rule 2, CPC obtained for instituting a fresh suit for larger reliefs on the same cause of action.

28.1.1999 – Mukan Chand Bothra files C.S.No.205 of 1999 for specific performance and for recovery of possession or in the alternative for refund of advance money.

19.2.1999 – The suit O.S.No.1160 of 1997, on the file of the First Assistant City Civil Court, Chennai, for permanent injunction decreed.

2.9.2002 – Suit decreed ex parte.

2003 – E.P.No.100 of 2003 filed

23.7.2004 – E.P. ordered.

10.2.2005 – A Sale Deed is executed by the Assistant Registrar, Original Side.

16. If we telescope the dates and events listed in the preceding paragraph, into the dates and events indicated in the plaint in C.S.No.456 of 2007, we would find the following combined list of dates and events:-

1.2.1996 – Agreement of Sale between V.T.V.Sharma and Bothra.

27.4.1996 – Agreement of Sale between V.T.V.Sharma and R.J.Surendranath

24.5.1996 – Registered general power of attorney executed by V.T.V.Sharma in favour of Anita Kapoor, wife of R.J.Surendranath.

31.5.1996 – Notice sent by V.T.V.Sharma to Bothra stating that the Agreement of Sale dated 1.2.1996 was cancelled.

28.1.1999 – C.S.No.205 of 1999 filed by Bothra for specific performance.

19.2.1999 – The suit for permanent injunction O.S.No.1160 of 1997 filed by Bothra against V.T.V.Sharma decreed by First Assistant City Civil Court.

2.9.2002 – C.S.No.205 of 1999 for specific performance decreed in favour of Bothra.

14.11.2003 – Sale Deed executed by Anita Kapoor, power agent of V.T.V. Sharma in favour of Kulwant Singh.

10.2.2005 – Sale Deed executed by Assistant Registrar in favour of Bothra.

17. Keeping the above combined list of dates and events in mind, if we look at the facts, it is seen -

(i) that Kulwant Singh, the plaintiff in C.S.No.456 of 2007 entered the fray, after the decree for specific

performance, but before the execution of the Sale Deed in the E.P.;

(ii) that the alleged Agreement of Sale between V.T.V.Sharma and R.J. Surendranath dated 27.4.1996 and the registered power of attorney executed by V.T.V.Sharma in favour of Anita Kapoor on 24.5.1996, were much before the institution of any of the suits O.S.No.1160 of 1997 or C.S.No.205 of 1999 by Bothra;

(iii) that even in his application A.No.5021 of 2007 to condone the delay in seeking to set aside the ex parte decree, V.T.V.Sharma made a mention about the Agreement of Sale in favour of R.J.Surendranath and the power of attorney in favour of Anita Kapoor;

(iv) that even as per plaint averments in C.S.No.205 of 1999, V.T.V. Sharma informed Bothra, of the cancellation of the Agreement, way back on 31.5.1996, despite which, Bothra first filed a suit for bare injunction in 1997 and filed the suit for specific performance only in 1999; and

(v) that V.T.V.Sharma was set ex parte not only in the suit C.S.No.205 of 1999, but also in E.P.No.100 of 2003, resulting in the other agreement holder R.J.Surendranath, the power agent Anita Kapoor and the purchaser Kulwant Singh, remaining completely ignorant of the proceedings initiated by Bothra;

Therefore, it cannot be said that the suit C.S.No.456 of 2007 filed by Kulwant Singh is an abuse of the process of law. In C.S.No.456 of 2007, the plaintiff has not merely impleaded the prior decree-holder Mukan Chand Bothra, but also impleaded his vendor V.T.V.Sharma and the power agent Anita Kapoor. The question whether the plaintiff in C.S.No.456 of 2007 is entitled to the reliefs sought for in the plaint, is completely different from the question whether the suit is an abuse of the process of law. If this distinction is kept in mind, it is not

difficult to hold that C.S.No.456 of 2007 is not an abuse of the process of law."

25. Ultimately, the learned Judge has given the following findings and decision:

"20. Two things are very clear from the Explanation to Section 52. They are (i) that the presentation of the plaint or the institution of the proceeding must have been in a Court of competent jurisdiction and (ii) that the pendency continues till a complete satisfaction or discharge of the decree had been obtained.

21. In the case on hand viz., C.S.No.456 of 2007, the plaintiff has raised a very substantial issue relating to the jurisdiction of this Court to pass a decree for specific performance and recovery of possession in respect of a property situate outside the jurisdiction of this Court. The suit C.S.No.205 of 1999 is obviously a suit on land in respect of the property situate outside the jurisdiction of this Court and hence prima facie it appears that the decree in C.S.No.205 of 1999 was not by a Court of competent jurisdiction.

22. In any event, the decree passed in C.S.No.205 of 1999 has not so far been completely satisfied or discharged. By the time E.P.No.100 of 2003 was ordered on 23.7.2004, a Sale Deed had already been executed by the power agent of V.T.V.Sharma in favour of the plaintiff in C.S.No.456 of 2007, on 14.11.2003. It is only thereafter that the Sale Deed in favour of the decree-holder Bothra was executed by Court on 10.2.2005. Therefore, it cannot be said that the plea of bona fide purchaser is not available to the

plaintiff in C.S. No.456 of 2007.

23. I am not for a moment recording a finding that the plaintiff in C.S. No.456 of 2007 is a bona fide purchaser. Whether he is one or not is a question of fact to be decided after trial. I am only on the preliminary objection as to whether the plea of bona fide purchaser is available at all to the plaintiff in C.S.No.456 of 2007 and for the reasons stated above, I am of the view that it is available to the plaintiff.

24. The plaint in C.S.No.456 of 2007 cannot be rejected very lightly, without a trial. It is for the reason that the plaintiff raises very serious issues about the validity of the decree in C.S.No.205 of 1999, in execution of which, Mr.Bothra had obtained a Sale Deed.....
....."

26. The ultimate conclusion of the learned Judge reads thus:

"25. The above issues raised by the plaintiff in C.S.No.456 of 2007 are very substantial in nature and cannot be brushed aside as hollow or frivolous. Therefore, it is not a case where any of the grounds prescribed in Order VII, Rule 11 for the rejection of the plaint, are available. Hence, A.No.6341 of 2009 for rejection of plaint in C.S.No.456 of 2007 is dismissed.

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28. In contrast, the plaintiff in C.S.No.456 of 2007 claims to be in possession of the suit property. He has filed

the property tax receipts for the years 2003-2004, 2004-2005 and 2006-2007 as plaint document Nos.4, 5 and 7. He has also filed the electricity meter card issued by the Tamil Nadu Electricity Board in his name, as plaint document No.8. Therefore, prima facie, the plaintiff in C.S.No.456 of 2007 appears to be in actual physical possession of the property, while the decree-holder in C.S.No.205 of 1999 is yet to get the decree for delivery of possession executed in a manner known to law. In such circumstances, I am of the view that the status-quo as on date has to be preserved, as otherwise, the plaintiff in C.S.No.205 of 1999 may seek the assistance of the Executing Court for delivery of possession. Therefore, O.A.No.638 of 2007 is ordered, directing the parties to maintain status-quo till the disposal of the suit.

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31. In fine, A.Nos.6341 of 2009 and 3877 of 2008 are dismissed. O.A.No.638 of 2007 is ordered, directing the parties to maintain status-quo till the disposal of the suit. No costs.

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27. Interestingly, as against the said order exhaustively extracted herein above, the defacto complainant filed intra court appeal in O.S.A.No.248 and 249 of 2010 before a Division Bench of this Court where, the Division Bench by order dated 10.01.2012 has made the following order:

are claiming title under documents i.e. the appellant herein has obtained a sale deed from the Court of law. The first respondent has obtained a sale deed from the power of attorney of the second respondent (i.e.) the third respondent. Subsequently, Electricity Service Connection has been transferred in the name of the first respondent on the basis of the order passed by the learned Single Judge in W.P.No.15967 of 2009. In such circumstances, the learned Single Judge has ordered directing the parties to maintain the status-quo till the disposal of the suit. So we are of the view that the learned Single Judge has considered this aspect in a proper perspective and hence we do not find any reason warranting interference with the findings of the learned single Judge in this aspect.

25. In the result, Original Side Appeals are dismissed. However, the observation made in para-20 to 22 of the order passed by the learned Single Judge is ordered to be eschewed. Both the parties are directed to bear their own costs. Consequently, connected Miscellaneous Petitions are closed."

28. It is further informed by the learned counsel for the petitioner that as against the said decision of this Court referred to above in the aforesaid original side appeals where, the appeals filed by the defacto complainant were dismissed, the defacto complainant

preferred SLP and the said SLP also has been dismissed by the Honourable Apex Court.

29. Therefore, it became crystal clear that the issue with regard to the judgement and decree made by this Court in C.S.No.205 of 1999 dated 02.09.2002 though appears to be concluded, is yet to be concluded in view of the categorical findings of the learned Judge referred to above in the order dated 24.02.2010 as confirmed by the Division Bench of this court dated 10.01.2012, as concluded by dismissal of SLP by the Honourable Apex Court. Therefore, the issue is very much lingering before this Court and the same can only be decided on the ultimate conclusion or after the trial in the Civil Suit in C.S.No.456 of 2007 filed by the said Kulwant Singh. In a parallel development, the revision petitioner also filed a comprehensive civil suit in C.S.No.132 of 2010 with the following prayer:

"VI. The plaintiff therefore prays for a Judgement and Decree against the 1st defendant:

A). For a Declaration declaring that the Judgement and Decree dated 02.09.2002 passed by this Hon'ble Court in C.S.No.205 of 1999 is null and

void as the same has been obtained by practising fraud and consequentially set aside the same;

B). For a Consequential declaration declaring the Sale Deed bearing Document No.1999 of 2005 dated 10.02.2005 registered with the Sub Registrar's Office, Thriuporur in favour of the 1st defendant, as null and void and not binding on the plaintiff;"

30. The main prayer sought for in this suit filed by the revision petitioner i.e., C.S.No.132 of 2010 as well as the main prayer sought for by the said Kulwant Singh in the said suit i.e., C.S.No.456 of 2007 are one and the same, as both were seeking a declaration of the decree and the judgement made in C.S.No.205 of 1999 dated 02.09.2002 as null and void. If ultimately, the plaintiff's in both the suits succeeded and atleast even in the suit filed by the said Kulwant Singh i.e., in C.S.No.456 of 2007 is decreed in favour of the plaintiff therein, then the decree made in C.S.No.205 of 1999 became null and void and therefore, based on such decree, any order passed by this Court including the order pursuant to which a sale deed has been executed in favour of the defacto complainant in the year 2005 would

by this Court in the said proceedings i.e., in both suits filed and pending before this Court, after trial.

31. In these background and chequered history, the present charge has been framed against the revision petitioner stating that knowing well that there was a civil Court decree in favour of the defacto complainant, the property was sold to a third party namely, the said Kulwant Singh and therefore, because of the said sale executed by the revision petitioner, he had been guilty of the offence punishable under Section 420 of IPC read with 188 of IPC. Those charges made by the prosecution was only based on the Civil Court decree in C.S.No.205 of 1999 and the consequential sale deed in the year 2005.

32. In so far as the validity of the decree is concerned, this Court has already expressed its prima facie view with regard to the judgements of this Court in the said suit i.e., C.S.No.205 of 1999 for a specific performance and recovery of possession of immovable property, which was admittedly not within the jurisdiction of this Court.

33. Moreover, the said decree dated 02.09.2002 made in C.S.No.205 of 1999 was an exparte decree and therefore, it is not known specifically whether the revision petitioner was put on notice about the exparte decree passed by this Court against him.

34. Moreover, the agreement to sale was entered into between the revision petitioner and one R.J.Surendranath on 27.04.1996 and a registered Power of Attorney was executed in favour of one Anita Kapoor, who is the wife of R.J.Surendranath on 24.05.1996 which were much before the institution of the suits i.e., O.S.No.1160 of 1997 and C.S.No.205 of 1999 by the defacto complainant. Therefore, based on the said sale agreement as well as the subsequent Power of Attorney executed in favour of one Anita Kapoor, she executed a sale deed to and in favour of this Kulwant Singh on 14.11.2003. Therefore, the execution of the said sale by Anita Kapoor as a Power of Attorney Holder of the revision petitioner on 14.11.2003 on the strength of the power executed by the revision petitioner to the said Anita Kapoor as early as in the year 1996 itself cannot be, prima facie, in the opinion of this court, construed as an act, which is to be punished under Section 420 of IPC and also under

35. The said Anita Kapoor, Power of Attorney holder, is none other than the wife of the said R.J.Surendranath, who was the agreement holder with the revision petitioner and therefore, the said Power of Attorney holder on the strength of the power dated 24.05.1996 executed the sale on 14.11.2003 and therefore, the reason for execution of said sale deed may not be attributed towards the revision petitioner.

36. Assuming that the revision petitioner being the owner of the property, whatever has been done by his Power of Attorney shall be construed only as against the principal i.e., the revision petitioner, the same cannot be taken as a proceeding warranting punitive action against him. Moreover, the validity of the civil suit i.e., C.S.No.205 of 1999 and the decree made therein ex-parte on 02.09.2002 itself is in question as the suit seeking declaration of the said decree as null and void has been taken on file and admitted by this Court and the plea made by the defacto complainant to reject the plaint has been

http://www.judis.nic.in negated by an exhaustive and reasoned order of this Court by a

learned Single Judge which has been confirmed by the Honourable Division Bench of this Court and ultimately, concluded by the dismissal of SLP.

37. Therefore, in respect of the charge now made against the revision petitioner for the alleged offence punishable under Section 420 of IPC mainly on the ground alleged by the prosecution that the revision petitioner had been guilty of the offence punishable under Section 420 of IPC on the ground that he had executed a sale deed in the year 2003 through his Power of Attorney Holder to the said Kulwant Singh knowing well that there had been Civil Court Orders against him cannot be termed as an act which requires for a trial in a criminal jurisdiction for the alleged offence punishable under Section 420 of IPC read with Section 188 of IPC. Therefore, for all these reasons, this Court is of the view that the respondent/prosecution has not made out any prima facie case to proceed further in the trial in view of the chequered history on the Civil side of the issue where, the findings has been given by this Court as has been referred to above and therefore, the petitioner is entitled to seek for discharge.

38. In the result, this Criminal Revision Case is allowed and the petitioner is discharged from the charge made against him before the court below in C.C.No.242 of 2007.

.05.2018

Index :Yes/No
Speaking order/Non-speaking order
smi

To

- 1.The District Munsif-cum-Judicial Magistrate,
Thirukazhukundram
2. The Sub Inspector of Police,
E-1, Mamallapuram Police Station,
Mamallapuram.
3. The Public Prosecutor,
High Court, Madras.



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R.SURESHKUMAR, J.

smi



Pre-Delivery Order in
Crl. R.C No.258 of 2016

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.05.2018