

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 15.11.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.A.No.357 of 2014

M.Jose Sebastian

.. Appellant

Vs

1.M.Sundarraaj

2.Mrs.Padma

3.M.S.Anand

4.Mrs.Sujatha Premkumar

... Respondents

Criminal Appeal filed under Section 397 and 401 of Cr.P.C. praying to allow the present Criminal Appeal by setting aside the Judgment dated 26.04.2013 made in C.C.No.392 of 2010 on the file of the Judicial Magistrate No.VI, Coimbatore.

For Appellant : Mr.B.Kumarasamy

For R1 and R2 : Mr.S.Jayaseelan

For R3 : No appearance

J U D G M E N T

For the sake of convenience, parties will be referred to as the complainant and the accused. It is the case of the complainant that, Sundarraaj (A1) represented to him that he is the owner of the building bearing No.141, Thiruvalluvar Nagar, Ramanathapuram, Coimbatore, measuring 2916 sq.ft and Sundarraaj (A1) entered into a Sale Agreement dated 30.01.2008, agreeing to sell the property to the complainant, for a total sale consideration of Rs.30,00,000/- and received Rs.5,00,000/- as advance; the complainant paid the balance amount in installments to Sundarraaj (A1), pursuant to which, Sundarraaj along with his wife Padma (A2), son Anand (A3) and daughter Sujatha (A4) executed a Sale Deed in favour of the complainant, which was registered as document No.2371 of 2008 before the Sub Registrar, Peelamedu; at the time of entering into the sale agreement, the accused represented that there is no encumbrance on the property nor litigation pending; on 29.08.2008, when the complainant visited the property, he found a few persons there and had them removed with the help of Police; during enquiry, he came to know that one Veerakumar had filed a suit in O.S.No.572 of 2008 against Sundarraaj (A1) for enforcing a sale agreement allegedly between them, in

which, the District Court, Coimbatore had passed decree for specific performance against Sundarraaj; hence, on the allegation that Sundarraaj (A1) and his family members had cheated him by concealing the fact that they had entered into a sale agreement with Veera Kumar, a private complaint in C.C.No.392 of 2010 was filed before the Judicial Magistrate No.VI, Coimbatore, against Sundarraaj and his family members for the offences under Section 406 and 420 IPC. The complainant examined himself as PW1 and also examined his brother-in-law Jimmy Jose Manuel as PW2 and marked thirteen exhibits. When the accused were questioned under Section 313 Cr.P.C about the incriminating circumstances appearing against them, they denied the same. After considering the evidence on record and hearing either side, the trial Court, by judgment dated 26.04.2013 in C.C.No.392 of 2010, acquitted the accused, challenging which, the complainant is before this Court, after obtaining special leave.

2.Heard Mr.B.Kumarasamy, learned counsel for the petitioner and Mr.S.Jeyaseelan, learned counsel appearing for the respondents 1 and 2.

3.Very recently, a Three Bench Judgment of the Supreme Court in Mallikarjun Kodagali Vs. State of Karnataka (2018 SCC on line SC 1941) has held as follows:

"79.As far as the question of the grant of special leave is concerned, once again, we need not be overwhelmed by submissions made at the Bar. The language of the proviso to Section 372 of the Cr.P.C. is quite clear, particularly when it is contrasted with the language of Section 378(4) of the Cr.P.C. The text of this provision is quite clear and it is confined to an order of acquittal passed in a case instituted upon a complainant. The word 'complainant' has been defined in Section 2(d) of the Cr.P.C. and refers to any allegation made orally or in writing to a Magistrate. This has nothing to do with the lodging or the registration of an FIR, and therefore it is not at all necessary to consider the effect of a victim being the complainant as far as the proviso to Section 372 of the Cr.P.C is concerned."

4.In V.Sejappa Vs State by Police Inspector, Lok Ayukta, Chitradurga [(2016) 12 SCC 150] the Supreme Court has made the following observation:

"22.If the evaluation of the evidence and the findings recorded by the trial court do not suffer from any illegality or perversity and the grounds on which the trial court has based its conclusion are reasonable and plausible, the High Court should not disturb the order of

acquittal if another view is possible. Merely because the appellate court on reappreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. In State v. K. Narasimhachary [State v. K. Narasimhachary, (2005) 8 SCC 364 : (2006) 1 SCC (Cri) 41], this Court reiterated the well-settled principle that if two views are possible, the appellate court should not interfere with the acquittal by the lower court and that only where the material on record leads to an inescapable conclusion of guilt of the accused, the judgment of acquittal will call for interference by the appellate court. The same view was reiterated in T. Subramanian v. State of T.N. [T. Subramanian v. State of T.N., (2006) 1 SCC 401 : (2006) 1 SCC (Cri) 401]"

5. Bearing in mind the afore said legal principle, if the evidence on record is evaluated, it is seen that the complainant has purchased the property valued at around Rs.46,00,000/- for Rs.30,00,000/- from the accused and has thereafter, entered into an agreement dated 23.05.2009 vide (Ex.P5) with Veerakumar for selling the property and sharing the proceeds equally.

6. Thus, on a reading of the evidence on record, it is seen that the complainant has failed to prove that the accused had suppressed the earlier agreement with Veerakumar and had sold the property to the complainant. Thus, under such circumstances, this Court does not find any infirmity in the order of acquittal passed by the trial Court warranting interference.

In the result, this appeal is devoid of merits and is dismissed.

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Sd/-/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

To

Judicial Magistrate No.VI,
Coimbatore.

2.The section officer,(Records)
Criminal Section,High court,Madras

+1cc to Mr.B.Kumarasamy , Advocate SR.No.78249

+1cc to Mr.S.Jayaseelan , Advocate SR.No. 78528

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ASK(04/12/2018)