

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CRIMINAL APPEAL No.1276 OF 2004

JUDGMENT:

This appeal is filed by the State under Sub-sections (3) and (1) of Section 378 Cr.P.C., challenging the judgment dated 04.7.2003 passed in C.C.No.908 of 2002 on the file of the Court of Special Judicial First Class Magistrate (Mobile), R.R. District, L.B. Nagar, Hyderabad, wherein and whereby the trial Court found accused No.1 not guilty for the offences under Sections 506 and 468 of IPC and accused No.2 not guilty for the offence under Section 420, 468 and 506 of IPC, consequently acquitted them of the said offences.

2. One B.Janardhan Reddy-P.W.1 lodged a complaint-Ex.P.2 on the file of the Court of Additional Judicial First Class Magistrate, West and South, Rangareddy, under Section 200 of Cr.P.C., against accused Nos.1 and 2, who are father and son respectively, for the offences under Sections 420, 468 and 506 of IPC. The learned Magistrate forwarded the complaint under Sub-section (3) of Section 156 Cr.P.C., to the Station House Officer, Chandanagar Police Station for investigation and report on 18.6.1999, who in turn registered a case in Crime No.189 of 1999, issued the First Information Report-Ex.P.33 and investigated into.

3. After completion of the investigation, the Station House Officer, Chandanagar Police Station filed the charge sheet on the file of the Court of the Additional Judicial First Class Magistrate, West and South, Rangareddy against accused Nos.1 and 2 for the offences under Sections 420, 468 and 506 of IPC. The learned

Magistrate took the cognizance of offence under Sections 420, 468 and 506 of IPC and numbered the charge sheet as C.C.No.97 of 2000. Subsequently, the case was transferred to the Court of Special Judicial First Class Magistrate (Mobile), R.R. District at L.B. Nagar, Hyderabad, and re-numbered as C.C.No.908 of 2002.

4. The case of the prosecution in brief is that accused No.1 entered into an agreement of sale with the complainant-P.W.1 agreeing to sell an extent of Acs.9.20 guntas of land situated in survey Nos.100/1 and 101/1 of Serilingampally Village and Mandal, Ranga Reddy District for an amount of Rs.4,75,000/-. Accused No.1 received the full sale consideration by receiving Rs.3,15,000/- in cash and Rs.1,00,000/- and Rs.60,000/- in the form of Demand Draft Nos.000796, dated 24.11.1996 and 000797, dated 24.12.1996 respectively and issued the receipt-Ex.P.5 dated 24.12.1996. The accused executed registered sale deed in favour of the complainant-P.W.1 in respect of Acs.4.00 in survey No.101/1 on 26.12.1996 promising to register the sale deed in respect of the remaining extent of Acs.5.20 guntas in a short time. The accused by forging the signatures of one Naresh Chand on the sale deed dated 26.12.1996 got registered sale deed in favour of the complainant-P.W.1 in respect of Acs.4.00 of land. The complainant-P.W.1 filed O.S.No.643 of 1997 on the file of the Court of II Additional Senior Civil Judge, Ranga Reddy District, for specific performance of agreement of sale in respect of Acs.5.20 guntas. The accused filed O.S.No.655 of 1997 for recovery of possession of Acs.4.00 of land from the complainant-P.W.1 claiming that he is the owner of the land. While the things stood

thus, the complainant-P.W.1 had received a legal notice issued by one Mrs.Surchi Chand stating that accused have no right to sell the land covered by survey Nos.100/1 and 101/1, without her consent and approval, as her husband by name Naresh Chand, who is the owner of the property, expired. In the notice, it is further stated that Mrs.Surchi Chand also got issued paper publication in Deccan Chronicle on 27.11.1995 indicating that she became the owner of the property covered by survey Nos.100/1 and 101/1 by virtue of the Arbitration Award. The complainant-P.W.1 had also received notice in LGC No.29 of 1999 filed by one E.Venkat Reddy against the complainant, accused No.1 and his brothers on the file of the Special Court under Land Grabbing Act, Hyderabad. As per the Gazette Notification dated 24.8.1992 published by the Government of Andhra Pradesh, one Syed Ali Mohammed Hussaini is the owner of the land covered by survey Nos.100/1 and 101/1 of Serilingampally Village and Mandal, Ranga Reddy District. Subsequent to registration of the sale deed-Ex.P.4 in favour of the complainant-P.W.1 in respect of Acs.4.00 of land in survey No.101/1, accused Nos.1 and 2 along with goondas came to the land and threatened him to vacate the same.

5. On appearance of the accused, learned Magistrate had supplied the necessary copies of the documents as contemplated under Section 207 of Cr.P.C., and framed charges for the offences under Sections 420, 468 and 506 of IPC, read over and explained to them in Telugu for which they pleaded not guilty and claimed to be tried.

6. To bring home the guilt of the accused, P.Ws.1 to 6 were examined and Exs.P.1 to P.35 were marked. To dislodge the case of the prosecution, D.Ws.1 to 4 were examined and Exs.D.1 to D.11 were marked.

7. Basing on the oral, documentary evidence and other material available on record, the trial Court arrived at a conclusion that the accused No.1 not guilty for the offences under Sections 468 and 506 of IPC, and accused No.2 not guilty for the offences under Section 420, 468 and 506 of IPC. However, the trial Court found accused No.1 guilty of the offence under Section 420 of IPC, convicted and sentenced him to undergo simple imprisonment for a period of one year and also to pay a fine of Rs.1,000/- in default to suffer simple imprisonment for a period of thirty (30) days. Feeling aggrieved by the judgment of the trial Court, to the extent of acquittal of the accused under the above sections of law, the State preferred the present appeal.

8. Learned Public Prosecutor representing the State attacked the judgment of the trial Court on the following grounds:

- 1) The oral testimony of P.Ws.1 and 2 clinchingly establishes that the accused along with the goondas threatened P.W.1 with dire consequences;
- 2) The trial Court failed to consider that accused No.1 forged the signature of Naresh Chand and executed registered sale deed- Ex.P.4; and
- 3) The findings recorded by the trial Court are not based on evidence much less legally admissible evidence.

9. Now the points that arise for consideration in this appeal are:

- 1) Whether the prosecution has established the guilt of the accused Nos.1 and 2 for the offence under Sections 468 and 506 of IPC, and accused No.2 for the offence under Section 420 of IPC or not? and
- 2) Whether the findings recorded by the trial Court are sustainable in law?

10. Both the points are interlinked with each other; hence, this Court is inclined to address both the points simultaneously in order to avoid recapitulation of facts and evidence.

11. The sum and substance of the prosecution case is that accused No.1 received Rs.4,75,000/- from P.W.1 towards sale consideration agreeing to sell the land admeasuring Acs.9.20 in survey Nos.100/1 and 101/1, and executed Ex.P.4-registered sale deed dated 26.12.1996 in respect of Acs.4.00 in survey No.101/1 forging the signatures of one Naresh Chand and agreed to execute the sale deed in respect of remaining extent within a short period. Accused Nos.1 and 2 came to the land in survey No.101/1 along with goondas and threatened P.W.1 to vacate the land. Thus, accused Nos.1 and 2 have committed the offences punishable under Sections 420, 468 and 506 of IPC.

12. To convict a person under Section 506 of IPC, the prosecution has to establish that he has threatened another with dire consequences. In order to prove the guilt of the accused Nos.1 and 2, the prosecution mainly relied upon the testimony of P.Ws.1 and 2. As per the testimony of P.W.1, the accused came to the land in survey Nos.1001/1 and 101/1 of Serilingampally on 08.6.1999, 10.6.1999 and 13.6.1999 and stopped the work. As

per the testimony of P.W.2 also, the accused came to the land on 08.6.1999, 10.6.1999 and 13.6.1999 and threatened P.W.1 to vacate the land. There is no whisper in the testimony of P.W.1 that accused Nos.1 and 2 threatened him with dire consequences. If the testimony of P.W.1 is taken into consideration, accused Nos.1 and 2 had trespassed into the land. If the testimony of P.W.2 is taken into consideration, accused Nos.1 and 2 threatened P.W.1 to vacate the land. The testimony of P.Ws.1 and 2 is not corroborating with each other on material aspects. In view of the material contradictions in the testimony of P.Ws.1 and 2, the trial Court discredited the same.

13. In the light of the above discussion, I am of the considered view that it is not safe to place reliance on the testimony of P.Ws.1 and 2. The trial Court considered the oral and documentary evidence in right perspective and came to the conclusion that the prosecution failed to prove the guilt of the accused for the offence under Section 506 of IPC. I am fully agreeing with the finding recorded by the trial Court that the accused Nos.1 and 2 are not guilty of the offence under Section 506 of IPC.

14. To constitute the offence of forgery punishable under Section 468 of IPC, the prosecution has to establish that the accused has created a false document. P.Ws.1 and 6 are the competent persons to establish that accused No.1 has executed Ex.P.4 registered sale deed dated 26.12.1996, by forging the signatures of Naresh Chand. As seen from the testimony of P.W.1, the accused No.1 agreed to sell an extent of Acs.9.20 guntas in survey Nos.100/1 and 101/1 of Serilingampally in his favour. His testimony further reveals that

he paid an amount of Rs.4,75,000/- to accused No.1 towards total sale consideration. His testimony further reveals that accused No.1 got registered Ex.P.4 sale deed in his favour in respect of an extent of Acs.4.00 in survey No.101/1 of Serilingampally and promised to execute the sale deed for the remaining extent of land within a short period. Accused No.1 got himself examined as D.W.4. As per the testimony of D.W.4, he executed Ex.P.4 sale deed in favour of P.W.1. As seen from the testimony of P.W.1, accused No.1, without any right over the land in survey Nos.100/1 and 101/1, executed Ex.P.4 sale deed by forging the signatures of Naresh Chand. The said Naresh Chand is none other than the own brother of accused No.1. As per the testimony of D.W.1, the Sub-Registrar, he collected deficit stamp duty on 08.1.1997 and issued Ex.D1 receipt in the name of P.W.1. A perusal of Ex.D1 clearly reveals that P.W.1 paid the deficit stamp duty of Rs.1,32,500/-. In the cross-examination, P.W.1 admitted that accused No.1 handed over Ex.P.4 sale deed to him. As per the testimony of P.W.6, the Investigating Officer, Ex.P.4 contains the signatures of Naresh Chand. If really accused No.1 forged the signature of Naresh Chand on Ex.P.4 sale deed, what prevented P.W.6 to secure admitted signatures of Naresh Chand and send the same along with the disputes signatures on Ex.P.4 sale deed to the Forensic Science Laboratory for comparison and report. A perusal of the record reveals that no effort was taken by P.W.6 to send Ex.P.4 sale deed for expert opinion. Mere allegation in the charge sheet itself is not sufficient to prove that the accused committed the offence under Section 468 of IPC. It is not even the case of the prosecution that accused No.2 forged the signatures of Naresh

Chand. The oral and documentary evidence placed before the trial Court falls short to establish that the accused committed an offence punishable under Section 468 of IPC. Hence, I am agreeing with the finding recorded by the trial Court that accused Nos.1 and 2 are not guilty of the offence under Section 468 of IPC.

15. There is no allegation in the charge sheet that accused No.2 induced P.W.1 to enter into agreement of sale with accused No.1 knowing fully well that accused No.1 is not the owner of an extent of Acs.9.20 guntas in survey Nos.100/1 and 101/1 of Serilingampally Village. There is no whisper in the testimony of P.W.1 that he entered into agreement of sale with accused No.1 to purchase an extent of Acs.9.20 guntas in survey Nos.100/1 and 101/1 of Serilingampally Village at the instance of accused No.2. The material available on record bereft of the basic ingredients of Section 420 of IPC so far as accused No.2 is concerned. Even if the uncontroverted allegations ;made in the charge sheet are *ex facie* taken to be true and correct, no case is made out against accused No.2 for the offence under Section 420 of IPC. Basing on the oral and documentary evidence available on record, the trial Court has rightly found that accused No.2 not guilty of the offence under Section 420 of IPC. I am fully endorsing the finding recorded by the trial Court on this aspect.

16. As per the principle enunciated in **State of Rajasthan vs. Mohan Lal**¹ and **State of Maharashtra v Dnyaneshwar Laxman Rao Wankhede**², where it is possible to have two views – one in

¹ AIR 2009 SC 1872

² (2009) 15 SCC 200

favour of the Prosecution and the other in favour of the accused – the latter view should prevail. Accused No.2 is the son of accused No.1. Admittedly, civil disputes are pending between P.W.1 and the accused. In view of pendency of civil disputes, the possibility of foisting a criminal case against the accused No.2 by P.W.1 cannot be ruled out completely.

17. Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, I am of the considered view that the prosecution failed to prove the charges under Sections 468 and 506 of IPC against accused No.1 and under Sections 420, 468 and 506 of IPC against accused No.2. I am fully agreeing with the findings recorded by the trial Court. There are no grounds much less valid grounds to interfere with the finding recorded by the trial Court.

18. In the result, the appeal is dismissed. Miscellaneous petitions, if any pending in this appeal shall stand closed.

T. SUNIL CHOWDARY, J

Date: 07.2.2018

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