

THE HON'BLE SRI JUSTICE P. KESHA RAO

CRIMINAL REVISION CASE No.160 of 2018

ORDER:

Heard the learned counsel for the petitioner as well as the learned counsel for the respondent Nos. 1 to 3 and the learned Public Prosecutor.

The present criminal revision case is filed aggrieved by the Judgment passed in Cr1.A.No.22 of 2014, dated 25.09.2017 on the file of the X Additional District and Sessions Judge, Tirupathi, confirming the Judgment passed in C.C.No.803 of 2009, dated 16.7.2013 on the file of IV Additional Junior Civil Judge, Tirupathi.

The brief facts of the case are that the respondents 1 to 3 herein have cheated the *de facto* complainant i.e., the petitioner herein and received an amount of Rs.11,00,000/- towards the sale consideration of house plot in Sy.No.314/B of Maruthi Nagar, M.R. Palle Panchayat on 25.08.2007 and 6.9.2007. Since the said land was already proposed by the TUDA for the purpose of formation of a road, the same was shown in the master plan. Since the piece of land was shown in the master

plan for the purpose of formation of the road and as the respondents 1 to 3 herein are aware of the said fact and have sold the said plot to the petitioner herein, they have cheated the petitioner. In those circumstances, the petitioner herein lodged a complaint which was referred to Police under Section 156(3) Cr.P.C, and registered as Crime No.52 of 2008 for the offence under sections 406 and 420 read with 34 IPC. After investigation, a charge sheet was filed and the Court below has taken cognizance of the offence and numbered the same originally as C.C.No.269 of 2009 and later renumbered the same as C.C.No.803 of 2009. The prosecution in order to prove its case, examined PWs-1 to 6 and marked the documents Exs.P1 to P5. After completion of investigation on prosecution side, the said accused were examined under Section 313 Cr.P.C. and since they denied the incriminating evidence advanced on behalf of the prosecution side and reported no evidence, the trial Court, after appreciating the entire evidence found that the respondents 1 to 3 are not guilty of the offences punishable under Sections 406 and 420 read with 34 IPC and were acquitted under Section 248(1) Cr.P.C. Aggrieved by the same, the petitioner herein filed CrI.A.No.22 of 2014 on the file of the X Additional District and Sessions

Judge, Tirupathi. After hearing, the lower appellate Court dismissed the appeal by Judgment, dated 25.9.2017 confirming the Judgment of the Trial Court. Assailing the said Judgment, the present Criminal Revision Petition is filed.

The learned counsel appearing for the petitioner would submit that both the Courts below committed an error in appreciating the evidence and acquitted the respondent Nos. 1 to 3. In fact, from the statements of the witnesses examined on behalf of the prosecution, a specific case is made out against the respondents 1 to 3 for cheating the petitioner, since they have received an amount of Rs.11,00,000/- towards sale consideration of house plot knowing fully well that the said property was included in the master plan of TUDA for the purpose of formation of 80 feet road.

Per contra, the learned counsel appearing for the respondents 1 to 3 supported the Judgments of both the Courts below.

From the material on record, the admitted facts are that the respondent Nos. 1 to 3 herein have sold the house plot in Sy.No.314/1B of Maruthi Nagar, M.R. Palle Panchayat, Tirupathi to the petitioner herein under an

agreement of sale and received a sale consideration of Rs.11,00,000/-. It is also the case of the prosecution that by the time, the house plot was sold to the petitioner herein, the said plot was earmarked in the master plan for the purpose of formation of 80 feet road. To prove the guilt of the respondents 1 to 3, the prosecution ought to have produced the evidence to the effect that by the time the house plot was sold in favour of the petitioner herein, the respondent Nos. 1 to 3 are aware of issuance of G.O., by the Government earmarking the subject house plot for formation of 80 feet road. On the other hand, the prosecution failed to examine any of the vendors of the respondent Nos. 1 to 3, as to whether they were aware of the inclusion of subject house plot in the master plan for the purpose of formation of road. In the absence of these vital issues regarding the knowledge of the respondent Nos. 1 to 3 or their vendors that the subject plot has been ear marked for formation of road in the master plan prior to selling it to the PW-1, the question of establishing the offences as alleged against the respondents Nos. 1 to 3 may not arise. In fact, the trial Court while acquitting the respondent Nos. 1 to 3 did observe that the Investigating Officer did not choose to procure the land acquisition proceedings, documents showing the date of preliminary

notification, the date of hearing objections, the date of issuing notices to the persons interested and to whomsoever notices were served with regard to the objections, by the TUDA before issuance of the G.O. Further, the investigating officer did not make an attempt to examine those persons who were served notices and also the neighbouring land owners to know that whether they have knowledge about the G.O. or not. Issuance of the said G.O., in the year 2005, prior to the execution of agreement of sale in favour of PW-1, is not a ground to come to the conclusion that the respondents 1 to 3 had knowledge of acquiring the land by TUDA for the purpose of formation of 80 feet road. Therefore, in view of the above lapses on the part of the investigating officer and in the absence of cogent and positive evidence on record, it is unsafe to draw an inference against the respondents 1 to 3 basing on the oral testimony of PWs 1 to 3 that with dishonest intention they sold the subject house plot to PW-1. Even the lower appellate Court, while confirming the Judgment of the trial Court observed that the vendors of the respondent Nos. 1 to 3 were not examined, no evidence that from the year 2005 to August, 2007, the TUDA has proposed to acquire the subject plot by securing the possession for the formation of the road, is let in and no

Government Order is placed to that extent. In the light of the same, the arguments advanced by the learned counsel for the petitioner that the statements of the witnesses recorded on behalf of the prosecution established the offences against the respondents 1 to 3, cannot be countenanced.

Though charge was framed under Section 406 IPC against the respondents 1 to 3, the admitted facts in this case do not attract the ingredients of Section 406 IPC. Further, without prior knowledge of acquisition of subject house plot for the formation of road in the master plan to the respondent Nos. 1 to 3, the ingredients of Section 420 cannot be attracted. Therefore, viewed from any angle, no case is made out for convicting the respondents 1 to 3 for the offences, they were charged. Therefore, this Court is of the opinion that there are no merits in the revision and the same is liable to be dismissed.

Accordingly, criminal revision case is dismissed.

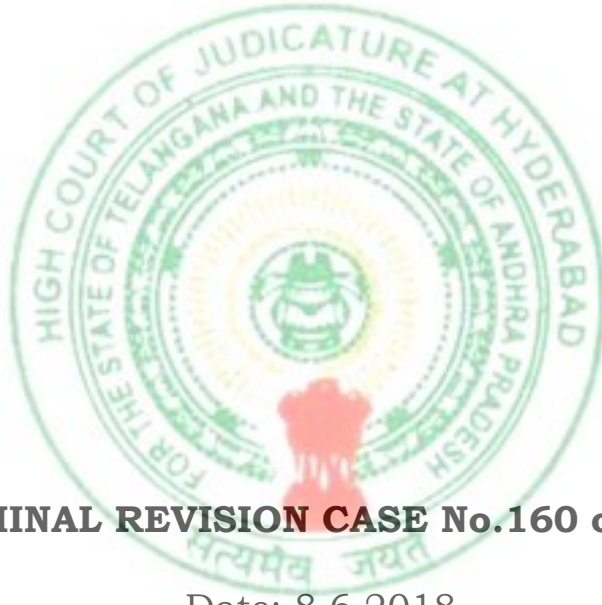
Miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

JUSTICE P.KESHA RAO

Date:8.6.2018
Slk



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