HON'BLE SRI JUSTICE P. KESHAVA RAO

CRIMINAL REVISION CASE No.2531 of 2011

ORDER:

Heard learned counsel for the petitioner and the 1st respondent.

The present revision case is filed challenging the judgment passed in Crl.A.No.17 of 2010 dated 21.10.2011 on the file of the I Additional District and Sessions Judge, Vizianagaram, acquitting the 1st respondent for the offence under Section 420 IPC.

The facts in brief are that the petitioner herein filed a complaint stating that the 1st respondent approached him stating that he is doing real estate business and he is the owner of plot Nos.14 and 15, which are available for sale. Pursuant thereto, the petitioner agreed to purchase the same @ Rs.760/- per square yard and paid an amount of Rs.10,000/- in advance on 27.12.2003. However, on the very next day itself i.e., on 28.12.2003, the 1st respondent has taken the petitioner to one V. Gangadhar, who is the original owner of the plots. After discussion, the petitioner paid a sum of Rs.50,000/- to the said Gangadhar and obtained receipt, whereunder the plot numbers are not mentioned. In the said receipt, it is mentioned that registration of the plots will be done within two months. However, the said Gangadhar, in spite of receipt of Rs.50,000/- from the petitioner, has not executed the registered sale deed in his favour on the ground that Rs.10,000/- paid to the 1st respondent towards advance was not paid to him. In these circumstances, the petitioner filed a private complaint and the same was referred to the concerned police under Section 156 (3) Cr.P.C. After investigation, a charge sheet was laid. The learned Additional Judicial Magistrate of First Class, Vizianagaram, after taking cognizance of the offence, numbered the case as C.C.No.59 of 2007.

The prosecution in order to bring home the guilt of the accused, examined PWs.1 to 4 and marked Exs.P1 and P2. On behalf of the accused, one S. Buchibabu was examined as DW.1, but no documents were marked. After hearing and appreciation of the evidence on record, the learned Magistrate convicted the 1st respondent for the offence under Section 420 IPC and sentenced him to suffer rigorous imprisonment for a period of six months and shall also pay a fine of Rs.10,000/-, in default, to suffer simple imprisonment for a period of one month by judgment dated 25.02.2010. Aggrieved by the said judgment, the 1st respondent filed an appeal in Crl.A.No.17 of 2010 on the file of the I Additional District and Sessions Judge, Vizianagaram. The learned Sessions Judge, after hearing the parties and analyzing the evidence brought on record, allowed the appeal by judgment dated 21.10.2011 and set aside the conviction and sentence imposed in C.C.No.59 of 2007 dated 25.02.2010. Aggrieved by the said judgment, the present revision case is filed.

Learned counsel appearing for the petitioner basically contended that though the 1st respondent is not the owner, has collected a sum of Rs.10,000/- towards advance representing that he is the absolute owner of plot Nos.14 and 15. The lower appellate Court failed to appreciate the statement given by Gangadhar, who is the original owner, i.e., Ex.P2 in which he has categorically stated that he is the absolute owner of the above said plots, but not the 1st respondent. Learned counsel also emphasized that the evidence of PW.1 i.e., the petitioner has been corroborated by PWs.2 and 3 with respect to receipt of Rs.10,000/- by the 1st respondent and also claiming that he is the owner of the above said plots apart from other aspects.

Per contra, learned counsel appearing for the 1st respondent supported the impugned order.

Having heard both the counsel and from the perusal of the material on record, it is revealed that the petitioner lodged a complaint leading to registration of C.C.No.59 of 2007 for the offence under Section 420 IPC against the 1st respondent. The basic allegation made against the 1st respondent is that he offered to sell plot Nos.14 and 15 to the petitioner misrepresenting that he is the absolute owner. However, subsequently, the petitioner came to know that the 1st respondent is not the owner. It is relevant to mention that even according to the petitioner, the 1st respondent received Rs.10,000/- on 27.12.2003 from him towards advance for sale of the above said two plots. But, on the next day itself i.e., 28.12.2003 the 1st respondent has taken the petitioner to one Sri V.Gangadhar, who is admittedly the owner of the above said plots, and introduced to him. After discussion, the petitioner was made to pay Rs.50,000/- to the said Gangadhar and obtained a receipt for the said amount. It is curious to know that payment of Rs.10,000/- to the 1st respondent towards advance is not mentioned in the said receipt. Further, when the said Gangadhar has not executed the registered sale deed in his favour, the complaint/petitioner lodged the above said complaint. From the perusal of the complaint also it is evident that there is no whisper with regard to misrepresentation by the 1st respondent that he is the absolute owner of the above said plots. That apart, though the petitioner came to know that the 1st respondent is not the absolute owner of the above two plots, she has not lodged any complaint against the 1st respondent immediately. In fact, he lodged the complaint after two years three months stating that the 1st respondent has induced him to part with Rs.10,000/- under protest of selling of plot Nos.14 and 15. However, the 1st respondent has totally denied the said transaction. The lower appellate Court after appreciation of the evidence has categorically held that when the petitioner has paid a sum of Rs.10,000/- towards advance to the 1st respondent on 27.12.2003, in ordinary course of business, the amount would have been mentioned in the receipt executed on 28.12.2003 for Rs.50,000/-.

Be that as it may, if really the petitioner was serious about the misrepresentation, and when he came to know on 28.12.2003 itself that the 1st respondent is not the owner, he has not taken any action against the petitioner, more particularly, filing of the present complaint after expiry of two years three months. This fact itself speaks about volumes about lack of bona fides on the part of the petitioner. In the absence of any documentary evidence, more particularly, when the petitioner has categorically pleaded that he paid Rs.10,000/- to the 1st respondent, the oral evidence cannot be believed. Therefore, this Court does not find any irregularity or illegality in the judgment passed by the lower appellate Court. Hence, there are no merits in the revision case and the same is liable to be dismissed.

Accordingly, the criminal revision case is dismissed.

Miscellaneous petitions, if any, shall also stand dismissed.

P. KESHAVA RAO, J

Date: 04.10.2018.
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