

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CRIMINAL REVISION CASE No.70 OF 2014

ORDER:

This Criminal Revision Case, under Sections 397 and 401 of the Code of Criminal Procedure, 1973, is filed by the petitioners-A.4 and A.5 to set aside the order of dismissal dated 23.07.2013 passed in CrI.M.P. No.7 of 2012 in C.C. No.6 of 2009 on the file of the Principal Special Judge for C.B.I. Cases, Visakhapatnam (for short, 'the trial Court') filed under Section 239 Cr.P.C. seeking their discharge in C.C. No.6 of 2009 for the offences punishable under Sections 120B, 420, 468, 471 and 477A I.P.C.

2. Heard the learned counsel for the petitioners-A.4 and A.5 and the learned Special Public Prosecutor for C.B.I., apart from perusing the material on record.

3. Learned counsel for the petitioners-A.4 and A.5 would submit that the petitioners-A.4 and A.5 are the land owner and contractor of the subject flat in Divya Residency, situated at Devi Nagar, Vijayawada; the petitioner-A.4 sold semi finished flat to A.3 for Rs.2,10,000/- and they entered into an agreement on 20.04.2005 and paid an advance of Rs.10,000/- on the date of execution of the said agreement; A.3 entered into an agreement on 20.04.2005 with the petitioner-A.5 who undertook to complete the semi finished flat for Rs.5,80,000/- and paid an advance of Rs.90,000/- on the same day; A.3 approached the Vijaya Bank, Benj Circle Branch, Vijayawada, for loan during the year 2005 and the bank sanctioned loan of Rs.5,50,000/-; there is no material to hold that the petitioners-A.4 and A.5 conspired with the other accused in this case and had inflated the value of the subject flat and allowed the purchaser to

obtain loan; the prosecution relied on the valuation made by the bank in the year 2008, wherein the valuer gave the value of flat at Rs.6,16,978/-; the petitioners-A.4 and A.5 have no mala fides; both the petitioners are innocent persons; and ultimately, prayed to set aside the impugned order and discharge the petitioners-A.4 and A.5 in C.C. No.6 of 2009 for the aforesaid offences.

4. On the other hand, learned Special Public Prosecutor for C.B.I. would contend that the petitioners-A.4 and A.5 were conspired with the other accused in committing the offences alleged; there is record to show that there is a *prima facie* case against the petitioners-A.4 and A.5 to proceed against them for the offences punishable under Sections 120B, 420, 468, 471 and 477A I.P.C.; and ultimately, prayed to dismiss the criminal revision case.

5. In view of the submissions made on behalf of both sides, the point that arises for determination is, whether the impugned order is liable to be set aside and the petitioners-A.4 and A.5 can be discharged in C.C. No.6 of 2009 for the offences punishable under Sections 120B, 420, 468, 471 and 477A I.P.C.?

6. **POINT**: The petitioners-A.4 and A.5 are being prosecuted for the offences under Sections 120B, 420, 468, 471 and 477A I.P.C. It is not the case of the prosecution that these petitioners have indulged in any fabrication of false documents for grant of loan in favour of the other accused in this case. The allegation is that the petitioners-A.4 and A.5 have conspired with the other accused in this case and inflated the value of the subject flats in Divya Residency, situated at Devi Nagar, Vijayawada and allowed the purchasers to obtain loan. It is pertinent to state that the prosecution agency had not got valued the subject flat. It placed reliance

on the valuation made by the banker through one Phaneendranadh in the year 2008 in respect of the subject flats. He has given the value of the subject flat at Rs.3,68,000/- in the year 2008 and the said flat was sold in an auction took for Rs.5,63,000/-. The contention of the petitioners-A.4 and A.5 is that the land and construction value always would be fluctuating. It is not constant at any point of time. When the market value of the land, building and flats is fluctuating always, it is difficult to arrive at correct value of the building at a particular point of time. The agreements in question were made in the year 2005, but the valuation of the property was made in the year 2008 by the valuer of the bank. In the course of investigation, the investigator had not valued the property from any other person. The investigator relied on the valuation made by the valuer of the bank. The investigator ought not have relied on the valuation given by the valuer of the bank, but he could have depended on the value of the property at relevant point of time. Further, there should be atleast some oral evidence of the neighbours who purchased the same flats in the vicinity to compare the questioned certificates. There is no such record. In a criminal trial, the accused cannot be prosecuted without there being sufficient material, except alleging that the accused Nos.4 and 5 have inflated the value of the subject flats. There is no material to substantiate the allegations. Under these circumstances, proceeding with the trial of the case against the petitioners-A.4 and A.5 would be a fertile exercise. There are no sufficient grounds to proceed against these petitioners-A.4 and A.5 for the offences under Sections 120B, 420, 468, 471 and 477A I.P.C. Therefore, the impugned order is liable to be set aside.

7. Accordingly, the Criminal Revision Case is allowed setting aside the impugned order dated 23.07.2013 passed by the trial Court in CrI.M.P. No.7 of 2012 in C.C. No.6 of 2009, and consequently, the

petitioners-A.4 and A.5 are discharged in C.C. No.6 of 2009 pending before the trial Court for the offences under Sections 120B, 420, 468, 471 and 477A I.P.C. Miscellaneous petitions, if any, pending in this Criminal Revision Case, shall stand closed.

Dr. SHAMEEM AKTHER, J

Date: 25-10-2018

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