

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.10.2018

DELIVERED ON : 14.03.2019

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Criminal Appeal Nos.349 of 2008 and 264 of 2012

and

M.P.No.1 of 2012

Crl.A.No.349 of 2008

M.A.R.Rameeza Begam

W/o. Nazir Ahmed Bijli (late)

...Appellant/Complainant

Vs.

1.N.Baburathinam

S/o.N.Duraisamy Naidu

2.R.Kumar

S/o.M.P.Rajendran (late)

3.Chandra Mohan

S/o.Baburathinam

..Respondents/Accused

Prayer in Crl.A.349 of 2008:-

Criminal Appeal filed u/s.378 of the Code of Criminal Procedure against the judgment of learned XIII Metropolitan Magistrate, Egmore, Chennai, passed in C.C.No.25616 of 2004 on 21.02.2008.

Crl.A.No.264 of 2012

M.A.R.Rameeza Begam

W/o. Nazir Ahmed Bijli (late)

...Appellant/Complainant

Vs.

N.Baburathinam

S/o.N.Duraisamy Naidu

..Respondents/Accused

Prayer in CrI.A.264 of 2012:-

Criminal Appeal filed u/s.378 of the Code of Criminal Procedure against the judgment of Fast Track Court II, Chennai, passed in C.A.No.78 of 2008 on 09.02.2010.

For Appellant : Mr.N.Alamelu Mangai
[in both appeals]

For Respondents: Mr.R.Vivekananthan
[in both appeals]

COMMON JUDGMENT

CrI.A.No.349 of 2008 arises against the judgment of learned XIII Metropolitan Magistrate, Egmore, Chennai, passed in C.C.No.25616 of 2004 on 21.02.2008. CrI.A.No.264 of 2012 arises against the judgment of learned Additional and District Sessions Judge, Fast Track Court II, Chennai, passed in C.A.No.78 of 2008 on 09.02.2010. Both appeals arise out of C.C.No.25616 of 2004.

2. Appellant is the de facto complainant in the case in C.C.No.25616 of 2004. Since the complaint preferred by her husband referred to as 'mistake of fact', appellant/de facto complainant preferred a private complaint alleging that her husband (since deceased) was running a partnership firm under the name and style 'Green Auto Industries', in which A1 and one M.P.Rajendran (since deceased) were partners. Since the husband of de facto complainant was unable to administer the day-to-day affairs of the partnership firm owing to his illness, the management of the firm was entrusted to A1 and the other partner. The partnership business was carried out in a rented premises at Door No.45/46, Whites Road. One Mannulal was the owner of the property and there were 33 occupants in the said property. Mannulal has filed a suit for eviction against one R.P.Shasthri and eviction has also been ordered. Despite that, he was unable to take delivery of the property and the occupants have filed a suit for injunction. While so, Mannulal decided to sell the 'A Schedule Property' to those occupants who had offered to purchase the property. Ex.P5, sale deed, clearly establishes that only to put an end to the prolonged litigation, Mannulal has decided to provide alternate land to the occupants and has taken away the land which they have occupied. The land offered for vacating the premises at Door No.45, Whites Road, should have been executed in favour of the partnership firm. Instead, by showing that A2 and A3 were doing business at Door No.45, Whites Road, A1 and M.P.Rajendran, without the consent of complainant's husband, registered the property in the names of

A2 - son of the deceased M.P.Rajendran and A3 - son of A1. A2 and A3 have also deliberately described themselves as if both were sharing the said business premises. Thus, all the accused were charged for offences u/s.409 r/w 120-B IPC.

3. Before trial Court, appellant/de facto complainant examined herself as PW-1 and one bank witness as PW-2 and marked 9 exhibits. On the side of defence, A1 examined himself as DW-1 and marked 3 exhibits.

4. On questioning u/s.313 Cr.P.C., accused denied charges. On appreciation of materials before it, trial Court, under judgment dated 21.02.2008, while acquitting A2 and A3 of all charges and A1 of offence u/s.120-B IPC, convicted A1 for offence u/s.409 IPC and sentenced him to 1 year R.I. Against such finding, A1 preferred Crl.A.No.78 of 2008 on the file of learned Additional and District Sessions Judge, Fast Track Court II, Chennai, which came to allowed under judgment dated 09.02.2010 and A1 was acquitted of offence u/s.409 IPC. Against the judgment of trial Court as well as the appellate Court, appellant/de facto complainant has preferred the present appeals.

5. Heard learned counsel for appellant and learned counsel for respondents. Perused the materials available on record.

6. The Partnership Firm viz., 'Green Auto Industries' was commenced in the year 1979 by late Nazir Ahmed Bijli, Babu Rathinam, M.P.Rajendran (late), through a Partnership Deed dated 14.09.1979. It is an admitted fact that appellant's husband was actively taken part in the day-to-day affairs of the firm till 1984 and thereafter, he had not done so owing to ill-health. The appellant herself was employed at Syndicate Bank from 1969 to 1997. In the year 1989, dispute arose between appellant's husband and other partners, which resulted in filing of a complaint and a civil case by appellant's husband. The matter was referred to Arbitration, which has been failed. The Partnership Firm was run in a rented building wherein there was a prolonged litigation between the landlord and his tenants and his sub-agents. In view of the litigation, a portion of the property was offered for sale and the sons of M.P.Rajendran and Babu Rathinam have purchased the same through sale deed dated 17.02.1992 through Ex.P5, sale deed. The appellant's husband died in the year 1995. The grievance of the appellant is that the funds of the Partnership Firm were utilized for purchase of land in Ex.P5. The property should have been purchased in the name of the Partnership Firm and not in the names of A2 and A3, who are none other than the sons of other partners namely M.P.Rajendran and Babu Rathinam. It is pertinent to note that PW-2, Bank Manager, had categorically stated that no amount was withdrawn from the Partnership Firm's account during the

relevant point of time indicating the fact that the funds of the Partnership Firm were not utilized for purchase of the property. He has also produced the statement of account for the same. It is to be seen that the appellant's husband was running a proprietary concern in the name of M/s.Green Auto Industries and the other partners of Green Auto Industries have bailed him out from several financial liabilities. No statement of account has been produced to show that the Partnership Firm of appellant's husband was making huge profits and the profits have been utilized by other partners in purchasing the property. The other grievance of the appellant is that the other partners viz., M.P.Rajendran and Babu Rathinam had also purchased properties in their names using the funds of the Partnership Firm which fact has not been proved. The grievance of the appellant, at the most, would lead to a civil remedy and not a criminal case. The earlier complaint has been closed referring the dispute as civil in nature. Admittedly, the property was purchased in the year 1992 and the appellant's husband died in the year 1995. The appellant herself was employed till 1997 and the case came to be registered belatedly in the year 2004. There was no explanation for the delay in preference of complaint. The appellant admits that she had not taken part in any of the activities of the Partnership Firm namely M/s.Green Auto Industries and had not taken any steps to continue the Partnership Firm. Appellant had not proved the fact of any entrustment. Only on the proof of entrustment, conversion or misappropriation would arise. The trial Court, on appreciation of materials before it, rightly had acquitted A2 and A3 in the case and on the same set of facts, convicted A1. However, the appeal preferred by A1 rightly was allowed by the lower appellate Court and A1 was acquitted of all charges. This Court finds no reason to interfere with the judgments under challenge.

In the result, the Criminal Appeals are dismissed. Connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The XIII Metropolitan Magistrate,
Egmore, Chennai.

2.The Additional District
and Sessions Judge,
Fast Track Court II,
Chennai.

CrI A.Nos.349 of 2008
and 264 of 2012

Kak (22/05/2019)



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