

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 02.08.2019

CORAM

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Cr1.A.No.65/2007

V.Chockalingam,
Managing Partner,
Sivashakthi Enterprises,
No.13, Second Floor,
General Patters Road,
Anna Salai, Chennai -2.

...Appellant

-Vs-

1.K.John Vedamanikam
former president,
Kodaikanal Taluk Co-op.
Housing Society Ltd.,

2.Sebastian
Former Vice President

3.Selvam
Former Director.

...Respondents

Prayer:- The Criminal Appeal is filed under section 378 [4] Cr.P.C., to allow the appeal and set aside the judgment and order of acquittal, pronounced by the Court of XI Metropolitan Magistrate, Saidapet, Chennai, dated 30.10.2006, passed in CC.No.8192/2004 and to hold the respondents guilty of the offences charged with and deal with the respondents according to law.

For Appellant : Mr.Saravanavel for
M/s.S.Nethaji
For Respondents : No Appearance

JUDGMENT

- 1.This is an appeal against acquittal filed by the Defacto complainant against the judgment passed by the learned XI Metropolitan Magistrate, Saidapet, Chennai dated 30.10.2006 made in CC.No.8192/2004. Before the Trial Court, the respondents/accused stood charged and tried for the

commission of the alleged offence u/s.420 read with 34 IPC. Having considered the oral and documentary evidence on either side, the Trial Court had acquitted the respondents/accused holding that the complainant did not prove his case beyond reasonable doubt.

2. The brief facts of the case as per the complainant is that the respondents/accused, with a common intention to cheat the appellant/complainant and under the guise of developing the land of the complainant measuring 20 acres situated at Vilpatti Village, Kodaikanal, and to convert the same into housing plots and for selling the said at a higher price, had entered into an agreement with the complainant and also received a sum of Rs.6 Lakhs on various dates and they, neither repaid the amount to the appellant/complainant nor developed the land for re-sale and thereby, cheated the complainant. Hence, the complaint was filed against the respondents/accused for the offence under Section 420 read with 34 IPC.
3. The case was taken on file in CC.No.8192/2004 on the file of the learned XI Metropolitan Magistrate, Saidapet, Chennai and summons were issued to the accused. On appearance of the accused, Section 207 Cr.P.C. are complied with as the case being of otherwise, on police report, the complainant was required to examine the witnesses and thereby, the complainant examined P.W.1 to P.W.4 including himself to prove the case against the accused and closed the evidence at that stage. After perusal of the evidence of P.W.1 and P.W.4 necessary charges were framed against the accused for the offence under section 420 read with 34 IPC and the accused pleaded not guilty to the charge framed against them. Thereafter, they were questioned under section 246(4) Cr.P.C. and they wanted to cross examine the witnesses, thereby the witnesses on the side of the complainant were recalled and cross-examined by the learned counsel for the accused. Thereafter, when the accused were questioned about the incriminating circumstance having adduced against them, under section 313 (1) (b) Cr.P.C, they denied the offence and thereafter the accused had examined two witnesses on their side.
4. The Court below, after hearing the arguments advanced on either side and also looking into the materials available on record, had acquitted the respondents/accused as referred to above, which is challenged in this Criminal Appeal.
5. The appeal has been preferred by the Complainant. The Trial Court while acquitting the respondents/accused had

given the findings that the dispute between the appellant/complainant and the respondents/accused are civil in nature and that the complainant has to approach the Civil Court for appropriate relief and that since no intentional deception or fraudulent or dishonest intention of money promise was in existence right from the date of entering into agreement is made out, the essential ingredients of section 420 IPC is missing. Further, the Trial Court also held that Ex.P.1-Agreement was entered into between the parties on 07.06.2000 ; whereas, as per the documents produced on the side of the respondents/accused, viz., Exs.D3 to D6, the parties have already entered into an agreement for converting the land into housing sites prior to the Agreement under Ex.P.1. Challenging the said impugned judgment of acquittal, the complainant is before this Court.

6. The learned counsel appearing for the appellant/complainant while assailing the impugned judgment of acquittal, had put forth the following submissions:-

- a) The judgment of acquittal passed by the learned Trial Judge acquitting the respondents/accused on 30.10.2006 in CC.No.8192/2004 is illegal and contrary to the evidence before the Court.
- b) The Trial Court had erred in arriving at the conclusion that the case is one of 'civil nature' ; however, in the case of cheating money or its value would be involved and the Court has to see whether the accused had intentionally induced the complainant to part with the amount, causing damage to the property of the complainant.
- c) The Trial Court had erred in believing the evidence of D.W.1 who had stated that he had paid money to one Ponnusamy for laying road to have easy access to the property in question ; whereas, it is the case of the appellant/complainant that Ex.P.1-Agreement does not make it an obligation for the accused to lay any road and the complainant had never asked for such road at any point of time.
- d) The Trial Court had erred in believing the documents produced on the side of the respondents/accused to render a finding that the respondents/accused had started the work prior to the date of Agreement under Ex.P.1. However, it is admitted by the 1st respondent/A-1 in the chief examination that he commenced the work only after entering into the Agreement under Ex.P.1. It is to point out that the appellant/complainant is not a party to the documents produced on the side of the respondents/accused.
- e) The Trial Court had failed to appreciate and consider Ex.P.2 - Undertaking Letter given by A-1 which amply establishes the intention on the part of the accused to

cheat the complainant and it failed to consider the evidenciary value of the documents produced on the side of the appellant/complainant.

7. When the matter was taken up for final hearing, there is no representation on behalf of the respondents/accused.
8. I have given my careful and anxious consideration to the contentions put forward by the learned counsel for the appellant/complainant and thoroughly scanned through the entire evidence available on record and also perused the impugned judgement of conviction.
9. The point arises for consideration is whether the impugned judgment of acquittal of the Trial Court warrants interference?
10. While analysing the evidence adduced on the side of the appellant/complainant, P.W.1-Chockalingam / complainant had stated that he knew the accused and that he is a resident of Chennai. He had also stated that he owns a property measuring 20 acres, at Vilpatti Village, Kodaikanal and that the accused had approached P.W.1 to sell the said land for a better price after making some developments in the land and to divide the same into housing plots on behalf of the Kodaikanal Circle Cooperative Housing Board Society and also demanded money for doing such development works and that A-1, who was the President of the said Society, had also executed an agreement under Ex.P.1. They demanded an advance amount of Rs.6 lakhs for carrying out the development works and P.W.1 is stated to have given the said sum in five instalments. However, the respondents/accused had neither done any work for developing the land nor repaid the amount paid by the appellant/complainant and thereby, cheated him. P.W.1 further stated that one Swaminathan, had introduced the accused persons to him and that it was he who had brought the accused to the house of P.W.1 at Chennai. When Swaminathan questioned the accused as to why they did not do any work, the accused threatened him with dire consequences. Hence, P.W.1 lodged a complaint before the respondent police and the accused were called for an enquiry and that, during enquiry the accused, especially, the 1st respondent/A-1 had given a written undertaking under Ex.P.2 that they would be able to give only Rs.5 lakhs and not Rs.6 lakhs. Despite the said undertaking before the police, they had never repaid the amount. Since the intention of the accused was to escape from the police enquiry and to cheat the complainant/P.W.1, they had given such an undertaking. Hence, P.W.1 had preferred a Protest Petition and the case was taken on file by the jurisdictional Court. In his cross examination, P.W.1 had stated that the accused persons were introduced by Swaminathan during the year 2000 and that, the accused had

told him that they would like to procure the land on behalf of the Kodaikanal Cooperative Housing Board Society, and to develop the same in order to make the said land suitable for housing plots. P.W.1 had further stated that on 07.06.2000, he had parted with a sum of Rs.70,000/- and that he had given a sum of Rs.6 lakhs in five instalments within three months and the entire amount was given in cash and that he did not receive any receipt from the accused for such payment. However, the accused had given an agreement of contract.

11.P.W.2-Swaminathan, is a resident of Kodaikanal and he had stated that he knew both the complainant/P.W.1 and the accused/respondents and that it was he who had introduced the accused to the complainant. He had further stated that the complainant/appellant had owned a land at Kodaikanal measuring 20 acres and that by acting as a broker, he had acquired the said land from the complainant to the accused. P.W.2 had also stated that A-1/1st respondent herein had stated to him that they are running a Cooperative Society and that, through the said Society, they undertake to sell the said land for a better price and believing those words of A-1, P.W.2 took the accused/respondents to the house of P.W.1/complainant and in his presence, the respondents/accused had entered into an Agreement under Ex.P.1 in which P.W.2 attested as a witness. It is further statement that in the said Agreement, development works pertaining to different kinds of lands, had been written and that the complainant/appellant had given the sum of Rs.6 lakhs in five instalments. Since the accused/respondents did not act as per Ex.P.1, P.W.2 questioned them and the accused/respondents had replied that they will not do any development work on the land and that P.W.2 can receive anything from them as per his wish. When P.W.2 had informed the same to P.W.1, he had told P.W.2 to enquire the accused/respondent twice or thrice. Despite asking the accused, P.W.2 was threatened with dire consequences by them and that he would finished off by plying a lorry on him. He had also stated he came to know of the intention of the respondents/accused only at a later point of time. In the cross examination, P.W.2 had stated that he is a Real Estate Broker by profession and that P.W.1 was introduced to him by his friend Rajendran. He had further stated that A-1 is the President of the Kodaikanal Society ; A-2 is the Vice President and A-3 is the Assistant in the said Society. As the land seems to be a good one, the accused had requested P.W.2 to introduce the owner of the land / complainant herein and in his presence only, A-1/1st respondent had received the amount in instalments on various dates.

12.P.W.3-Vetrichezhiyan, the Sub Inspector of Police at the

relevant time, had stated that the initial investigation in the case in Crime No.377/2002 for the alleged offences u/s.406, 420 read with 34 IPC, was done by one Kesavan, Sub Inspector of Police and that he took up the further investigation in the case and filed the Final Report. He also enquired and recorded the statement of the complainant/P.W.1 and that, before closing the case as 'further action dropped', he enquired both the complainant and A-1 and however, he did not effect the arrest of A-1. He had further stated that for the aforesaid offences, the police can drop further action even without getting prior permission of the Court and on requisition of both parties concerned. He had also stated that the appellant/complainant had handed over a copy of Ex.P.1-Agreement to him and however, he did not send the same along with the Final Report to the Court. In the cross examination, he had stated that upon the request of P.W.1/complainant, further action was dropped in the case and the said Report was submitted before the Court concerned only after obtaining the permission/approval and opinion of the higher officials.

13. P.W.4-Thomas had stated about the accused persons, being the President, Secretary and Assistant of the Kodaikanal Cooperative Housing Board Society, approaching P.W.1/complainant for acquiring 25 acres of the land owned by P.W.1 and to develop them in order to divide the said land into housing plots and to sell the same for a better price and also enticed the complainant/P.W.1 by saying that since it is a hilly area, it would be appropriate for P.W.1 to get orders/sanction in order to convert the lands into housing plots and since the accused are familiar with the officials concerned, it would be easier for the complainant/P.W.1 to get the orders through them. He had further stated that on 26.05.2000, P.W.1 had requested P.W.4 to come to his house as the respondents/accused are coming for having a talk regarding the said issue and that, A-1 demanded a sum of Rs.6 lakhs for getting such orders from the officials concerned. A-2 had shown the copies of the orders, similar in nature pertaining to other lands to P.W.1. As the documents were found to be genuine, P.W.1 had agreed for their suggestions/consultations and subsequently, as the accused had told P.W.1 that they would come along with an Agreement for the said proposal, P.W.1 invited P.W.4 and accordingly, after the receipt of the Agreement, P.W.1 paid a sum of Rs.70,000/- and the remaining amount has been paid in 4 instalments. He had further stated that despite receiving the money, the accused had neither obtained any orders nor repaid the amount. Hence, the complainant had given a complaint before the Court and the Court in turn, had sent the same

to the Crime Branch and since the Investigating Officer did not conduct the investigation in a proper perspective, the complainant/P.W.1 had once again lodged a complaint before the Court. In the cross examination, P.W.4 had stated that he knew the complainant for the past 20 years and that he had met the accused for the first time in the house of the complainant/P.W.1 and that, the accused had received Rs.6 lakhs from P.W.1 under the pretext of getting orders from the officials concerned in respect of converting the land into house sites and that the complainant/P.W.1 can get Rs.35 lakhs if he sells those house sites and believing their words, the complainant entered into a contract / Agreement with the accused.

14. On the side of the defence, D.W.1 and D.W.2 were examined. D.W.1-Natarajan, had stated that he is a resident of Redhills and that he knew John Vedamanickam, the 1st respondent herein/A-1 and that A-1 was the holding the post of President in Kodaikanal Cooperative Housing Board Society and that, A-1 was in search of land for house sites and at that time, the accused were conversing about the land owned by the complainant/P.W.1 at Kodaikanal and that, if the complainant/P.W.1 is willing to give his land, A-1 is ready to buy the same. D.W.1 had further stated that when he went near them, A-1 had told the complainant that appropriate orders / certificates have to be obtained from the Government Officials for conversion of the land into house sites and that he required money for obtaining the said certificates. He had also stated that he did not know whether any amount has been paid by the complainant/P.W.1 and however, A-1 had told him that necessary orders/certificates have been obtained and thereafter, the Government had changed. In the cross examination, he had admitted that for converting the land into housing plots, approximately a sum of Rs.5 lakhs to Rs.6 lakhs is required and further, he had also admitted that A-1, had obtained the required Certificates after getting the amount in question from the complainant/appellant. However, he had stated that he did not know as to how much amount had A-1 received from the complainant. Further, he had stated that on requisition of A-1 only, he came to depose as a witness and that it was A-1 who had informed D.W.1 about the next date of hearing.

15. John Vedamanickam, the 1st respondent/A-1 in this case, had examined himself as D.W.2. He had stated that he is the first accused in this case and that he is an agriculturist by profession and also plying a lorry. Further, he was also holding the post of President in Kodaikanal Taluk Society and that it was only P.W.2 and one Ramalingam, who had introduced the complainant/appellant to him. He had further stated that he was arranging for housing plots on

behalf of the Society and at that time, the appellant/complainant, P.W.2 and Ramalingam had approached him and requested D.W.2/A-1 in this case, to convert the land of the appellant/complainant into housing plots and in response to the same, D.W.1/A-1 had stated that for the purpose of converting a land into housing plots/sites, one has to get 18 documents / certificates from the Government and after obtaining those 18 documents, the said housing sites can be sold. He had further stated that for the purpose of obtaining the said documents, D.W.2/A-1 used to get money from the appellant/complainant. The appellant/complainant gave the papers containing the survey number of his land situated at Kodaikanal, marked as Ex.D.1. He had also stated that he had obtained the Valuation Certificate dated 16.11.2000 under Ex.D.2 as per the Guideline Value Register maintained in the office of the Sub Registrar. He had also obtained a Certificate under Ex.D.3 from the President of Kodaikanal Panchayat stating that the said land of the complainant is a non-agricultural land and if only such a certificate is obtained, one can get No Objection Certificate from the other Departments. D.W.2 had further stated that he had also obtained [1] a No Objection Certificate under Ex.D.4 from the Department of Agricultural Engineering wherein it has been stated that the said land is suitable for constructing buildings ; [2] Certificate under Ex.D.5 from the Forest Department stating that the said land is not nearer to the Reserved Forest Area ; [3] Certificate under Ex.D.6 from the Pollution Control Board stating that no pollution would be caused in the event of converting the said land into housing plots/sites and construction of buildings. He had further stated that he had handed over the following documents to P.W.2:- [1] the Encumbrance Certificate obtained from the office of the Sub Registrar, Kodaikanal ; [2] Chitta and Adangal obtained from the Revenue Department in respect of the land owned by the appellant/complainant and also the certificates stating that the said land has neither been allotted to the Scheduled Castes nor a burial ground exist nearby to the said land. It is his categorical statement that he had obtained the above mentioned certificates only from and out of the amount received from the appellant/complainant and that he was making arrangements to get Authentication Certificate and since the said housing plots are intended to be sold through the Society, he had been granted exemption from paying the Stamp duty. D.W.2 had also stated that while the situation being so, in the year 2000, the Government had got changed and that his tenure as President of the Society had also got expired and thereby, he could not complete the work entrusted to him by the appellant/complainant in its entirety. He had stated

that he had paid money to one Krishnan Balu, Land Surveyor to conduct inspection on the land of the appellant/complainant and that, he had also paid one Ponnusamy, Proprietor of M/s.Best Builders, to lay road for the purpose of forming the house sites. In sum and substance, it is his statement that he had never cheated anyone.

16. In the cross examination, D.W.2 / A-1 had stated that the contents of the Contract under Ex.P.1 are true and that the same was written by him. It is also stated by him that Exs.D.1 to D.5 were obtained by from the respective Departments under the capacity of the President of the Society and that he had parted with monies to obtain the said documents and that he was in possession of Exs.D.1 to D.5 when police had enquired him on the basis of the complaint of the complainant and though D.W.2 / A-1 had stated about the same to the police, he did not handed over the said documents to them since the police did not seize them. It is his further statement that he had handed over all the documents in his possession to his Advocate during the first hearing of the case and that it is his specific and categoric statement that he commenced the work of converting the land of the complainant only after entering into a Contract under Ex.P.1 and that he did not commence any work prior to entering into the Contract. He had stated that he was removed from the post of President of the Society during May 2001 and that he had undertook to complete the work within three months under Ex.P.1. D.W.2 had further stated in the cross examination that prior to get Authentication Certificate for house site, there should be an access in the form of a road to the said land and since no road has been provided, the appellant/complainant himself had given a sum of Rs.10,000/- to him. He had also admitted that he did not complete the work as per the Contract under Ex.P.1 and that he had executed a Promissory Note for Rs.4 lakhs for the amount of Rs.3 lakhs received from the complainant. He had denied the fact that in order to arrive at an amicable settlement, he had requested the complainant to deduct Rs.1 lakh and for the balance amount of Rs.4,00,000/-, he had executed the Promissory Note and that he do not remember as to whether he had agreed to repay the amount of Rs.5 lakhs to the complainant and that, though he had agreed to repay the amount to the complainant by selling the land owned by him, he did not do so and that he had no intention to cheat the complainant after the receipt of money.
17. In this case, the respondents/accused have been charged for the offence u/s.420 read with 34 IPC. Section 420 IPC states that whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person,

or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

18. The essential ingredients of section 420 IPC are as follows:-

- (a) cheating ;
- (b) dishonest inducement to deliver property or to make, alter or destroy any valuable security or anything which is sealed or is capable of being converted into a valuable security ; and
- (c) mens rea of the accused at the time of making the inducement.

19. Section 34 IPC states that when a criminal act is done by several persons, in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.

20. The essential ingredients of section 34 IPC are as follows:-

- (a) there was common intention in the sense of a pre-arranged plan between the two ; and
- (b) the person sought to be so held liable, had participated in some manner or the act constituting the offence. Unless common intention and participation are both present, section 34 cannot apply.

21. The present appeal is against the acquittal of the respondents/accused on the private complaint preferred by the complainant/P.W.1. It is the case of P.W.1/Complainant that the accused persons had cheated him by receiving a sum of Rs.6 lakhs under the guise of developing/improving his land measuring 25 acres at Kodaikanal and converting the same into housing plots/sites to be sold through the Kodaikanal Cooperative Society. It is the further case of the complainant/P.W.1 that in order to carry out the said work, they have entered into an Agreement / Contract under Ex.P.1 and that, in the event of non-performance of the Contract within time, A-1/D.W.2 had given an Undertaking dated 07.01.2003 under Ex.P.2 stating that since he had not completed the work of developing/improving the land of P.W.1 within the time specified under Ex.P.1 despite having received a sum of Rs.5 lakhs, he is ready and repay the amount in question in three instalments; viz., Rs.2 lakhs within a period of two months from 07.01.2003 ; Rs.2 lakhs within a period of two months thereafter and Rs.1 lakh within a period of two months therefrom and that if he did not repay the amount as per his undertaking, P.W.1 can take legal action, both civil and criminal, against his movable

and immovable properties for making good the loss.

22. Thus, it is evident from the evidence of D.W.2 and Ex.P.2 that the respondents/accused had no intention to cheat the complainant/P.W.1 nor dishonestly induced him to deliver property. It is the categorical evidence of D.W.2 that he commenced the work only after entering into a Contract/Agreement with P.W.1 dated 07.06.2000 and not prior to that and that, as per the said Contract, he also initiated the work and had also obtained certificates from the respective Government Departments on various dates which are marked as Exs. D2 to D6 and due to the change in the Government during the year 2000, he had lost his position as the President of the Society and hence, he could complete the work as per the Contract/Agreement. Hence, this Court is of the opinion that the respondents/accused had neither cheated the complainant/P.W.1 nor had any intention to cheat. Further, a close scrutiny of the evidence of D.W.2/A-1/1st respondent herein coupled with Ex.P2 would reveal that D.W.2/A-1 had also given an undertaking on 07.01.2003 stating that he would repay the entire amount of Rs.5 lakhs received from P.W.1/complainant within six months. Hence, by no stretch of imagination, this Court comes to a conclusion that the ingredients of the offence under section 420 IPC is not made out.
23. Insofar as respondents 2 and 3 / A-2 and A-3 are concerned, it is seen that they accompanied D.W.2/A-1 to the house of the complainant/P.W.1 on various dates to discuss about the land in the presence of P.W.2 and 4 and they were present along with A-1 while receiving the amounts. However, it is seen that they accompanied A-1 in the capacity of Vice President and Secretary of the Society and that they had never shared any common intention to cheat or dishonestly induce or deceive the complainant/P.W.1 to part with the amount under the guise of developing/improving the land nor they preplanned to do such act. Hence, the essential ingredients of the offence u/s.34 IPC is also not made out. Further, section 34 IPC is attracted only when common intention and participation are purported to be present. In the case on hand, though A-1 to A-3 participated in the occurrence, the element of common intention is missing.
24. Further, a thorough scrutiny of the impugned judgment of the Trial Court would reveal that the learned Trial Judge, after elaborately considering the evidence let in and also scanning through the documents marked on either side, had arrived at a conclusion that the case is of civil in nature involving money transaction based on the Agreement and the proper remedy available to the complainant/P.W.1 is file a civil suit. It is further observed by the learned Trial

Judge that the accused/respondents herein had made some arrangements to plot out the land into housing sites and due to change in the Government, A-1 had lost his position as the President of the Society and as such, the question of cheating or inducing or deceiving P.W.1, does not arise at all. The learned Trial Judge also observed that the disputes with regard to execution of pronotes, bond, cheques etc., can only be resolved by approaching the Civil Court and that the same cannot be given as a criminal complaint before the Police or Magistrate and vide impugned judgment, the Trial Court had acquitted the accused persons. In the opinion of this Court, the Trial Judge was correct in arriving at such a finding and further, this Court is of the considered view that a civil case has been given a criminal colour. Further, this Court is of the considered view that the above act of the accused would reveal only breach of contract and not criminal breach of trust or cheating. Hence, I do not find any illegality, perversity or error in the impugned judgment of acquittal, warranting interference.

25. In the result, the criminal appeal is DISMISSED and the impugned judgment of acquittal dated 30.10.2006 passed in CC.No.8192/2004 by the learned XI Metropolitan Magistrate, Saidapet, Chennai, is hereby confirmed.

AP

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The XI Metropolitan Magistrate, Saidapet, Chennai,

2. The Chief Metropolitan Magistrate, Chennai.

3. The Section Officer (Records)
Criminal Section,
High Court, Madras - 104.

Crl.A.No.65/2007

Kak(22/09/2019)