

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.1044 of 2012

Krishna Samaraj

...Petitioner

Vs.

1. State rep. by
The Inspector of Police,
(City Crime Branch)
B-9, Saravanampatti Police Station,
Coimbatore.
(Crime No.1314 of 2005)

2. R.Arumugam @ Babu

...Respondents

Criminal Revision case filed under Sections 397 and 401 of Code of Criminal Procedure to call for records pertaining to the order dated 25.06.2012 made in Crl.A.No.171 of 2010 on the file of the I Additional District and Sessions Judge, Coimbatore, reversing the judgment of conviction and sentence dated 20.07.2010 made in C.C.No.482 of 2006 on the file of the Judicial Magistrate Court No.II, Coimbatore, and set aside the same.

For Petitioner: Mr.Doraisami, Senior Counsel for
M/s. Muthumani Doraisami

For Respondents: Mr.T.Shanmugarajeswaran,
Government Advocate (Crl.Side) for R1
Mr.S.Mukunth for
M/s.Sarvabhauman Associates for R2

WEB COPY
ORDER

This criminal revision case has been filed by the defacto complainant against the judgment of acquittal dated 25.06.2012 made in Crl.A.No.171 of 2010 by the learned I Additional District and Sessions Judge, Coimbatore, reversing the judgment of conviction and sentence dated 20.07.2010 made in C.C.No.482

of 2006 by the learned Judicial Magistrate No.II, Coimbatore, and set aside the same.

2 The first respondent police registered a case against the second respondent and yet another in Cr.No.1314 of 2005 for offence under Sections 468, 471 and 420 of IPC and after investigation, laid a charge sheet, which was taken on file in C.C.No.482 of 2006. The second respondent was arrayed as A2. The learned Judicial Magistrate No.II, after trial, found both the accused guilty for the offence punishable under Sections 468, 471 and 420 of IPC and hence by judgment dated 20.07.2010, convicted both the accused to undergo rigorous imprisonment for a period of six months for each of the offence with fine of Rs.300/-each, in default, to undergo rigorous imprisonment for a further period of one month for each of the offence. Aggrieved against the said judgment of conviction, both the accused had preferred separate appeals in C.A.Nos.171 & 173 of 2010. The learned I Additional District and Sessions Judge, Coimbatore, after hearing both the counsel and after perusing the records, not found the accused guilty for the offence charged against them and by judgment dated 25.06.2012, acquitted both the accused. Assailing the reversal judgment of acquittal made by the lower appellate Court, the defacto complainant had filed revisions separately before this Court. The second respondent is A2 and the defacto complainant had also filed another revision against acquittal of the first accused in CrI.R.C.No.1043 of 2012 and since A1 died, that was dismissed as abated.

3 The learned counsel appearing for the petitioner/defacto complainant would submit that the subject properties are belongs to the defacto complainant. The first accused has filed a suit against the defacto complainant and has lost his case and thereafter initiated several other proceedings, but, in all the proceedings, he failed. The first accused, who is the respondent in other revision filed by the petitioner/defacto complainant, has knowing fully well that he has no right over the properties, had appointed the second respondent/A2 as power agent for the subject properties, in order to cheat the defacto complainant and executed agreement to that effect, which was marked as Ex.P11. The second respondent/A2 colluding with the first accused, has executed sale agreements in favour of his mother and brother. When the petitioner/defacto complainant came to the knowledge of these facts, he filed complaint and the learned trial Magistrate also by appreciating the evidence on a right manner, has convicted the accused, whereas, the lower appellate Court, has erroneously acquitted the accused, which warrants serious interference.

4 The learned counsel appearing for the second respondent/ A2 would submit that being a power agent, the second respondent did not know anything about title of the properties, he agreed only to act as power agent of the first accused and subsequently, after execution of power deed, he executed Sale agreement and when the moment, the second respondent knows about the complaint filed by the defacto complainant, he cancelled the sale deeds and therefore he has not committed any offence as alleged by the prosecution. There is no iota of evidence to show that the second respondent/A2 was aware of the fact that the first accused had no title or interest over the subject properties and in order to cheat the petitioner/defacto complainant only he executed power deed in favour of the second respondent/A2. Further the defacto complainant neither in the complaint nor in the chief examination, has stated that the second respondent knows the first accused and the fraud said to have been committed by him. Even though, the trial Court, without any materials, convicted the second respondent, but, the lower appellate Court has rightly appreciated the evidence and acquitted the second respondent, which does not call for any interference.

5 The learned Government Advocate (Crl.Side) appearing for the first respondent police would submit that A1 & the second respondent/A2 were doing real estate business and suggestion was put to that effect, but, they denied, but the fact remains that they both known to each other, which was suppressed by them, and hence the Court can draw inference that in order to cheat the defacto complainant only the accused had created forged document. The trial Court has rightly appreciated the evidence and the documents filed by the prosecution and convicted the accused, but the lower appellate Court had erroneously come to the conclusion that the second respondent had not committed any offence and acquitted him, which is liable to be set aside.

6 Heard the learned counsel appearing on either side and perused the materials available on record.

7 It is seen that the defacto complainant was examined as P.W.1. As contended by the learned counsel appearing for the second respondent/A2, the petitioner/defacto complainant neither in the complaint nor in the chief examination has stated that the second respondent knows the first accused and the fraud committed by him. In the absence of any specific allegations against the second respondent/A2, he cannot be held for criminal offence. On reading of the evidence of prosecution, it reveal that none of the witnesses have specifically spoken that the second respondent/A2 was aware of the fact that the first accused had no title or interest over the subject properties and

knowing fully well, in order to cheat the defacto complainant, who is owner of the properties, both the first and second accused entered into agreement and through the same the second respondent/A2 executed sale agreements. Therefore, the second respondent/A2 is not liable for the offences charged against him. The second respondent/A2 has only accepted to act as power agent of the first accused, without knowing the fraud committed by him. In this case, prosecution has failed to prove its case. In criminal jurisdiction, mere suspicion alone would not be enough to accuse a person, it should be proved with incriminating materials during trial. Whatever the allegations or suspicious accusations found during investigation, that has to be substantiated before the Court of law. Unfortunately, in this case, prosecution has not substantiated through any oral or documentary evidence that the second respondent/A2 was aware of the fraud committed by the first accused. Therefore, in the absence of the same, this Court does not find any perversity in the judgment of acquittal made by the lower appellate Court. The lower appellate Court, being a final Court of fact finding, should not merely certify the judgment of the trial Court, and it has to re-appreciate entire evidence and give its own findings. In the present case on hand, the lower appellate Court, has re-appreciated entire evidence and given reason for reversing the judgment of the trial Court. On reading of the entire materials, this Court is of the view that prosecution has failed to prove its case against the second respondent/A2 beyond reasonable doubt. In criminal cases, when two views are possible, the view, which favours the accused has to be taken for consideration. In the present case, with the available materials and on reading of the judgment of the lower appellate Court, this Court does not find any reason to interfere with the judgment of the lower appellate Court acquitting the second respondent/A2.

8 In the result, the criminal revision case is dismissed and the judgment of the lower appellate Court acquitting the second respondent/A2 is hereby confirmed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

cgi

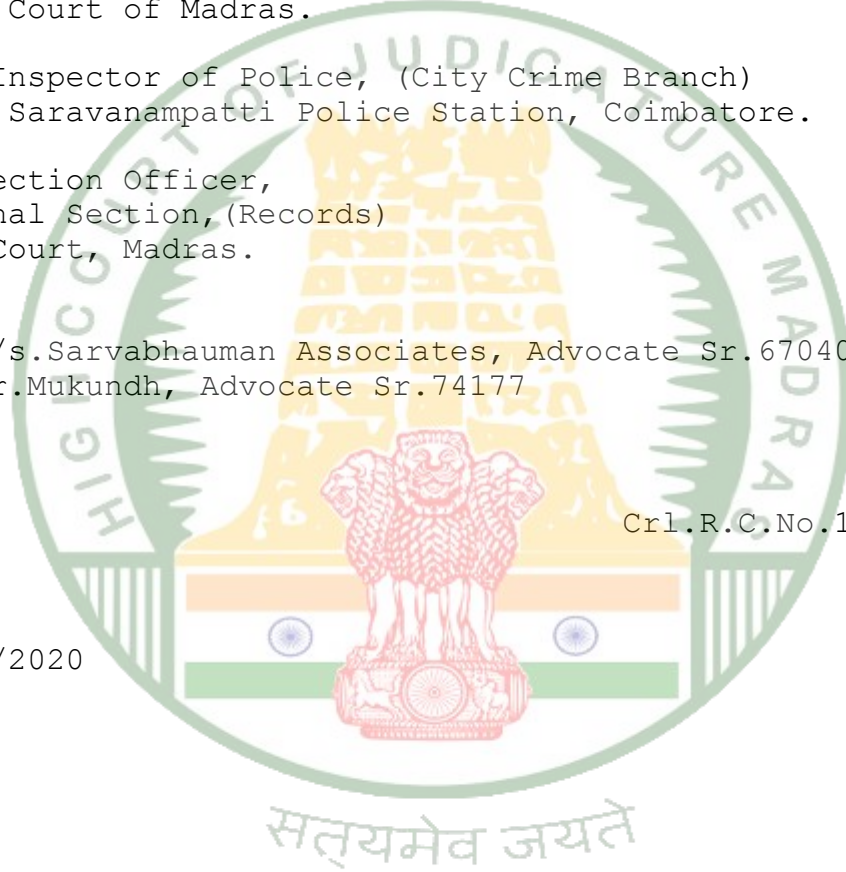
To

1. The Additional District and Sessions Judge,
Coimbatore.
2. The Judicial Magistrate No.II,
Coimbatore.
3. The Public Prosecutor,
High Court of Madras.
4. The Inspector of Police, (City Crime Branch)
B-9, Saravanampatti Police Station, Coimbatore.
5. The Section Officer,
Criminal Section, (Records)
High Court, Madras.

+1cc to M/s.Sarvabhauman Associates, Advocate Sr.67040
+1cc to Mr.Mukundh, Advocate Sr.74177

Crl.R.C.No.1044 of 2012

br[co]
srg 31/01/2020



WEB COPY