

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.10.2019

PRONOUNCED ON : 25.10.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.R.C.No.1530 of 2013

Gomathi .. Petitioner/PW1
de facto complainant

Vs

1.The State rep. by
Sub Inspector of Police,
C-5 Pallikaranai Police Station,
Chennai. .. 1st Respondent/
Complainant/I.O.

2.Kuppan
3.Pon Jegatheesan
4.Mahadevan .. Respondents 2 to 4/
A1 to A3/Accused 1, 2 & 3

Criminal revision preferred under Section 397 and 401
Cr.P.C. to set aside the judgment and order dated 31.07.2006
passed by the Judicial Magistrate, Alandur in C.C.No.721 of
2003.

For Petitioner : Mr.A.Ilangovan

For R1 : Mrs.P.Kritika Kamal,
Govt. Advocate (Crl. Side)

For R2 & R3 : Mr.M.Udayakumar

For R4 : Mr.L.Rajasekar

O R D E R

This Criminal Revision has been preferred challenging
the judgment and order dated 31.07.2006 passed by the Judicial
Magistrate, Alandur in C.C.No.721 of 2003.

2.For the sake of convenience, the parties are
referred to by their name.

3.It is the case of Gomathi (de facto
complainant/petitioner herein) that she purchased a property
in survey No.139 in Nanmangalam village from one Saroja and

her son Mohan on 18.06.1986 for Rs.13,448/-; in 2002, she found one Kuppan (A1) constructing a house on the said land; on enquiries, she learnt that the said Kuppan (A1) along with Pon Jagadeesan (A2) and Mahadevan (A3), had setup a lady to impersonate her (Gomathi) and had a sale deed dated 24.12.1991 executed in favour of Kuppan (A1) and the document was registered as document No.5042 of 1991 on the file of the SRO, Pallavaram.

4.On these allegations, she gave a complaint, based on which, the police registered a case in Crime No.121 of 2002 and after completing the investigation, filed a final report in C.C.No.721 of 2003 before the Judicial Magistrate, Alandur against Kuppan (A1), Pon Jagadeesan (A2) and Mahadevan (A3) for the offences under Sections 465, 468 and 420 IPC. After a full-fledged trial, the accused viz. Kuppan (A1), Pon Jagadeesan (A2) and Mahadevan (A3) were acquitted by the trial Court on 31.07.2006. Challenging their acquittal, Gomathi filed the present criminal revision with a delay of 126 days. The Registry returned the petition for certain compliances and the same was re-presented with a delay of 248 days. This Court condoned the delay of 248 days in M.P.No.1 of 2008 on 13.03.2008. The delay of 126 days in filing the criminal revision was condoned by this Court on 04.12.2013 in M.P.No.2 of 2008. Thereafter, the criminal revision was numbered and notice was ordered to the accused.

5.When the matter was posted for final hearing, there was no appearance for Gomathi and therefore, the criminal revision petition was dismissed for default on 08.04.2019. Gomathi filed an application in CrI.M.P.No.14591 of 2019 in CrI.R.C.No.1530 of 2013 for restoration, which was allowed by this Court on 15.10.2019.

6.Heard the learned counsel for Gomathi, accused and the State.

7.Mrs.P.Kritika Kamal, learned Government Advocate (CrI. Side) submitted that Pon Jagadeesan (A2) is no more. Since the acquittal of the accused by the trial Court was in the year 2006 and this criminal revision was filed in the year 2007, the proviso to Section 372 Cr.P.C. which came into force on 31.12.2009, will not have application. Learned counsel for Gomathi submitted that the trial Court had failed to give sufficient opportunity to the prosecution to prove that the sale deed dated 24.12.1991 was executed by an impostor in the name of Gomathi. He contended that the Prosecutor had also filed an application for further investigation to send the impugned sale deed to the handwriting expert for opinion and without waiting for the opinion, the trial Court had proceeded with the trial and had acquitted the accused erroneously.

8.Per contra, learned counsel for the accused submitted that Gomathi, the de facto complainant is into real

estate business and it was she, who came to the Registrar's office to execute the sale deed in the year 1991 and after the land price soared, she has taken a stand that she had not executed the impugned sale deed on 24.12.1991. They further contended that Gomathi's son Ramanan, in whose name the property was purchased when he was a minor, filed a suit in O.S.No.42 of 2008 before the Sub Court, Tambaram, against the accused for declaring the sale deed dated 24.12.1991 as null and void. After a bitter contest, the said suit was dismissed on 28.01.2019 by holding that it was Gomathi, who had registered the sale deed and has thereafter, repudiated its execution. A copy of the judgment was submitted to this Court.

9.This Court gave its anxious consideration to the rival submissions.

10.The fact remains that the accused were acquitted as early as on 31.07.2006. Assuming for a moment that the accused had set up an impostor to execute the sale deed dated 24.12.1991 in the name of Gomathi, then, the original title deed viz. the sale deed dated 18.06.1986 (document No.1888 of 1986) through which, Gomathi purchased the property in the name of her minor son Ramanan would have been with Gomathi, whereas, that sale deed is with Kuppan (A1).

11.Before the trial Court, the accused had never objected to the sending of the impugned sale deed to the expert for opinion. It is Gomathi's case that she had given the parent document viz. sale deed dated 18.06.1986 to Mahadevan (A3), for getting patta and forgot to take it back. This explanation given by Gomathi sounds Gilbertian.

12.In a revision against acquittal, this Court can, at the most, order retrial and cannot reverse the acquittal. That apart, the presumption of innocence has been further reinforced by the acquittal of the accused, after a full-fledged trial, which should not be lightly interfered with. Thus, this Court does not find any infirmity in the acquittal of the accused warranting interference.

In the result, this Criminal Revision is dismissed.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

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To
1.The Judicial Magistrate Court,
Alandur.

- 2.The Chief Judicial Magistrate,
Chengalpattu (Do through)
- 3.The Sub Inspector of Police,
C-5 Pallikaranai Police Station,
Chennai.
- 4.The Inspector of Police,
C5, Pallikaranai Police Station,
Chennai.
- 5.The Assistant Commissioner of Police,
Pallikaranai, Chennai 600 091.
- 6.The Public Prosecutor,
High Court, Madras.
- 7.The Section Officer,
Criminal Section,
High Court, Madras.

+3cc to Mr.M.Udaya Kumar, Advocate, S.R.No. 89426

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VBA(CO)
GN(22/11/2019)