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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.10.2021

PRONOUNCED ON : 07.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CrI.R.C.No.325 of 2018
and CrI.M.P.No.3939 of 2018

A.S.Ramasamy ... Petitioner/Complainant
Vs.

R.K.Selvam
Now working as Co-operative Sub Registrar,
Officer of the Deputy Registry,
R.M.S.Complex, Ist floor,
Trichy Road, Namakkal Town and Taluk,
Namkkal District. ... Respondent/Accused

Prayer: This Criminal Revision Case has been filed under Section 397 read with Section 401 of Cr.P.C. to call for the records in CMP.No.5919 of 2017 in STC.No.905 of 2007 order dated 22.11.2017 on the file of the learned Judicial Magistrate III, Salem and to set aside the same.

For Petitioner : Mr.Dr.A.Thiyagarajan
Senior Advocate
for Mr.M.Nalla Thambi

For Respondent : Mr.R.N.Chandrasekaran

O R D E R

(The case has been heard through Video Conference)

The private complainant is the revision petitioner herein.

2.For the sake of convenience, the parties are referred as per the ranking before the Trial Court.

3.The private complainant is the original land owner. The respondent viz., Selvam, who is working as Sub-Registrar of Cooperative Society, has taken the land from the complainant to sale the property and sold the land as per the understanding between the land owner and the Society and he has to make the payment. On behalf of the Society, the Special Officer has issued a cheque for a sum of Rs.6,81,521.50 and the said cheque was dishonoured and hence, the original land owner/private complainant has filed a complaint in STC.No.905 of 2007, for the



offence under Sections 420 of IPC and 138 of Negotiable Instruments Act, before the learned Judicial Magistrate No.III, Salem filed under Section 200 of Cr.P.C.

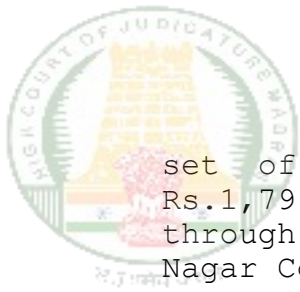
4.The learned Magistrate has chosen to take the cognizance only under Section 138 of NI Act but not Section 420 of IPC. Aggrieved against the said cognizance, the respondent herein has preferred quash petition before this Court in Crl.O.P.No.31501 of 2007, before this Court and the same was dismissed on 13.08.2010.

5.During the course of trial, on behalf of the complainant PW1 to PW3 were examined and Exs.P1 to P6 were marked. After closing of complainant side evidence, the accused was questioned under Section 313 of Cr.P.C. On the side of the accused, DW1 was examined. When the matter was posted for argument, the private complainant filed a petition under Section 216 of Cr.P.C in CMP.No.5919 of 2017, to frame additional charge under Section 420 of IPC, on the ground that the Sub-Registrar of Cooperative Society has made him to believe that on the sale of the land given by him to the society and the sale consideration of agreed amount to be given by the Society. But Society having sold his land to its members however failed to pay the agreed amount and dishonestly issued to the cheque only to cheat him. Hence, element under Section 420 IPC is also involved. The said CMP.No.5919 of 2017 was dismissed and hence, the Civil Revision Petition.

6.Heard both the learned counsels and perused the materials placed on record.

7.The sum and substance of the arguments of the learned counsel for the respondent is that the respondent herein is a Special Officer of the Sri Rajaganapathy Cooperative House building Society Limited and in such capacity, the respondent has issued a cheque to the defaco complainant viz., A.S.Ramasamy and the same was bounced. Hence, a case was instituted and the same was taken on file as STC.No.905 of 2007, before the learned Judicial Magistrate No.III, Salem. After completion of trial, when the matter was posted for arguments, the private complainant has filed a petition in CMP.No.5919 of 2017, under Section 216 of Cr.P.C., before the learned Judicial Magistrate No.III, Salem, to add charge viz., 420 of IPC and the said petition was dismissed by an order dated 22.11.2017.

8.The learned counsel for the accused would submit that during the pendency of the case, the accused was transferred to another Society and a subsequent Special Officer has settled entire amount covered under the cheque issued on behalf of the Society. Further, he has filed a counter and additional typed



set of papers and would submit that till date a sum of Rs.1,79,47,068.50/- was paid to the complainant for 62 plots, through his savings account number 15916 of the Subramaniya Nagar Co-operative Urban Bank to the complainant.

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9.The learned Senior Advocate appearing for the revision petitioner would contend that the respondent is none other than the Sub-Registrar of Co-operative Societies and he issued the cheque on behalf of the Society knowingly well that he has no sufficient funds in his account. This is in respect of the balance of payment for the land sold to the Co-operative Society an approval, plot were sold but, amount agreed by the parties were not paid and hence, the offence under Section 420 is made out.

10.Per contra, the learned counsel for the accused would contend that so far Rs.1,77,45,247.50/- amount has been paid and the surcharge proceedings conducted under Section 81 of Tamilnadu Co-operative Societies Act and it is found that the Society has paid excess amount of Rs.7,97,106/- to the complainant and hence, he has not committed any offence much less 420 of IPC.

11.Admittedly, on a perusal of the typed set of papers, it is seen that the private complainant is the revision petitioner/land owner and the land was sold through the Society. The Society has received amount from the purchaser, in turn the Society has to repay the agreed amount to the land owner, while the things be so, the accused as a Special Officer of the Society had issued cheque and the said cheque bounced for insufficient funds and hence, the learned Magistrate has taken cognizance of the offence under Section 138 of the Negotiable Instruments Act. There is more proof that the cheque bounced for insufficient funds and hence, Section 138 of the Negotiable Instruments Act is attracted.

12.However, in the circumstances of the case, it is for the Society to pay cost of the land to the land owner, from and out of the sale profits, sale consideration paid by the purchaser. The Society in turn has to issue the cost of the land as agreed upon to the original land owner.

13.When that being the case, the cheque was issued for agreed amount viz., sale consideration, towards the land given by the private complainant to the Society. No reply notice was given for statutory notice issued by the private complainant also assume significance.

14.It is seen from the evidence recorded before Trial Court that during the course of cross examination of PW1 it is

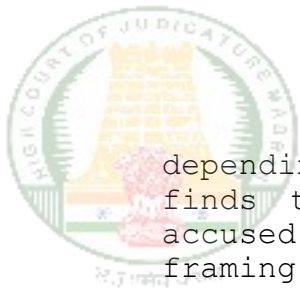


suggested that it is not known as to how this cheque was went into the hands of the private complainant. In other words, the Sub-Registrar of Cooperative Societies have taken a stand that he has not handover the cheque some how the private complainant has received the cheque. This Court unable to understand the plea taken by the accused. It is a Cooperative Society cheque and at the time of the issuance of the cheque the accused is Sub Registrar, competent person to issue the cheque and hence, he has not preferred any police complaint as to the missing of the cheque as alleged. The counter fail is also not produced before the Trial Court.

15.Hence, this Court finds that all is not well with the stand taken by the accused at the time of the trial. Since the judgment is yet to be pronounced before the learned Judicial Magistrate, in STC.No.905 of 2007, this Court is not expressing any opinion as it is likely prejudice the mind of Judicial Officer in the Trial. With regard to the ingredients of Section 420 of IPC both the counsels were heard.

16.The learned counsel for the accused would contend that so far the Society as paid a sum of Rs.1,79,47,068/- to the complainant. In the surcharge proceedings it was pointed out that the accused has paid excess amount to the land owner. Whether excess payment has been made to this land owner or not, is the matter for trial. Even assuming that excess payment is made to this petitioner, a matter for the Trial Court. The issuance of the cheque from the account of the Cooperative Society and the signature in the cheque are not disputed before the trial Court. Hence, it is for the Trial Court to decide about the offence Section 138 of the Negotiable Instruments Act. In respect of the Section 420 of IPC this Court finds that the Society has sold the property belong to the private complainant and also collected the amount from the purchaser and the same has to be repaid as agreed to the private complainant, however, the Society had issued a cheque knowing fully well that it has no sufficient funds in the account and hence, I find that element for 420 of IPC is also present in an indirect manner and it is for the Trial Court to appreciate the fact from the evidence and hence, the petition filed by the private complainant stands allowed and directs the Trial Court to frame additional charge under Section 420 of IPC and thereafter, to proceed further with the case.

17.The observation made by this Court in preceding paragraphs viz., the charge should be under Section 420 of IPC is only for the purpose of determination of this case. The Trial Court is required not to be influenced by these observations while determining the case of the private complainant during the final disposal and the same shall be made



depending upon the evidence placed before the Court. This Court finds that there is sufficient material to presume that the accused has committed the offence under Section 420 of IPC, for framing as additional charge.

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18. Accordingly, this Criminal Revision Case stands partly allowed to the limited extent as indicated above and the order passed in CMP.No.5929 of 2017, by the learned Judicial Magistrate No.III, Salem, dated 22.11.2017 is hereby set aside. Consequently connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar(CS V)

True Copy

Sub-Assistant Registrar

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To:

1.The Judicial Magistrate III, Salem.

2.Do Through The Chief Judicial Magistrate, Salem

+1 CC to Mr.R.Chandrasekaran, Advocate sr 53050.

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and Cr1.M.P.No.3939 of 2018

RGN(CO)
SP(01/11/2021)