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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated: 28/11/2022

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The Hon'ble Mr.Justice **G.ILANGOVAN**

Cr1.RC(MD)No.51 of 2020

K.V.Murugan : Petitioner/Appellant/
De-facto Complainant

Vs.

1.State rep.
By the Inspector of Police,
District Crime Branch,
Dindigul District.
(Crime No.10 of 2011) : R1/R1/Complainant

2.D.Kothaiselvan : R2/R2/Accused

PRAYER:- This Criminal Revision has been filed under section 397 r/w 401 of the Criminal Procedure Code, to call for the records in CA No.20 of 2014, dated 12/07/2017 on the file of the Sessions Judge, Mahila Court, Dindigul, confirming the order, dated 23/04/2014 passed by the Judicial Magistrate No.2, Dindigul, in CC No.47 of 2012 and set aside the same.

For Petitioner : Mr.A.John Vincent

For 1st Respondent : Mr.S.Manikandan
Government Advocate
(Criminal side)

For 2nd Respondent : Mr.E.K.Kumaresan

**ORDER**

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This Criminal Revision has been filed seeking in order to set aside the order passed by the appellate court, confirming the order of the trial court.

2. The facts in brief:-

The de-facto complainant was working as driver in the school called 'Shri Maharish Vidya Mandir', Seelapadi, Dindigul, which is owned by the accused. He borrowed Rs.2,00,000/- as loan from the accused. As security for the repayment of the above said amount, believing the words of the accused and his family members, he executed a sale deed, on 23/09/2005. It was agreed that at the time of repayment of the above said loan amount, the accused must reconvey the property to the de-facto complainant. For which, he also executed a document in a letter pad. After repayment of the entire amount, he demanded to reconvey the property. At that time, the accused told him that already he sold the property to some other person. This, according to the de-facto complainant, amounts to offence punishable under sections 406 and 420 IPC.



3. On the basis of the complaint given by the de-facto complainant, the case was registered. At the conclusion of the investigation, final report was also filed for the offences under sections 294(b), 406, 420 and 506(ii) IPC and it was taken as CC No.47 of 2012 by the trial court.

4. On the side of the prosecution, five witnesses were examined and seven documents were marked. No oral and documentary was adduced on the side of the accused.

5. At the conclusion of the trial process, the trial court came to the conclusion that the offences under section 294(b), 406, 420 and 506(ii) IPC were not proved beyond reasonable doubt against the accused.

6. Challenging the above said acquittal, the de-facto complainant preferred appeal before the Sessions Judge, Mahila Court, Dindigul, which was heard in Criminal Appeal No.20 of 2014 and the appellate court has also concurred with the view taken by the trial court and accordingly, it was also confirmed the judgment of acquittal.



7.Challenging the concurrent findings of the both the courts below, this criminal revision has been filed by the de-facto complainant stating that the documents, which are produced by the de-facto complainant and the prosecution before the trial court were not properly scrutinized and discussed, which ended in failure of justice.

8.Per contra, the learned counsel appearing for the 2nd respondent/accused would submit that the suit for recovery possession, which was filed by the de-facto complainant was also allowed and PW2 and PW3, who were examined on the side of the prosecution have not supported the case of the prosecution.

9.Now the point for consideration is whether the concurrent findings recorded by the trial court and the appellate court are legally valid or not.

10.As mentioned above, the execution of the sale deed by the de-facto complainant in favour of the accused on 23/09/2007, which is a registered document is not denied. What has been stated that it was executed only



as a security for repayment of the loan amount. In the affidavit, it has been stated that the accused person executed an undertaking under Ex.P2 to reconvey the property. It has been further stated in the complaint that after the repayment of the loan amount, he demanded back the property. That was refused.

11.During his evidence, the petitioner has stated that the accused filed a suit for recovery of possession. But that was dismissed for default. But no particulars are available. The execution of Ex.P2 is denied by the accused stating that believing and trusting the de-facto complainant, he signed in the letter pad for the purpose of utilizing the same in the RTO office and bank transaction.

12.Per contra, PW2 during his evidence has stated that the above said Ex.P2 was executed by the father of the accused. Why the above said document was executed on behalf of the accused was not stated by the prosecution.

13.During the course of evidence, PW2 stated that he was known PW1 and after the transaction was over, he



was informed that PW1 along with other persons went to the accused house and demanded to reconvey the property. So because of the above said demand only, the father of the accused executed an undertaking under Ex.P2 and he signed in the above said document. But this court is not in a position to understand the reason for the father of the accused to execute the above said document. When there was a transaction between the accused and PW1, only the accused ought to have executed the document of reconveyance, why it was obtained from the father of accused is not clearly stated in the prosecution case.

14.More-over, it is also seen that it is entirely a civil dispute. In the facts and circumstances of the case, the offences under sections 406 and 420 are not at all attracted. The civil suit that was filed by the accused was also dismissed for non prosecution. When there is a registered document with regard to the transaction, it ought to have been proceeded on its own. Even the finding of the trial court that only the person in whose favour the document was executed by the accused is the real aggrieved party. But he has not chosen to file any complaint.



15. Now a civil issue has been converted and given a colour of criminal act. Absolutely, I find no reason to interfere into the judgment of acquittal that has been passed by the trial court, which was confirmed by the appellate court.

16. In the result, this criminal revision is **dismissed.**

28/11/2022

Index: Yes/No
Internet: Yes/No

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To,

1. The Sessions Judge,
Mahila Court,
Dindigul district.
2. The Judicial Magistrate No.2,
Dindigul.
3. The Inspector of Police,
District Crime Branch,
Dindigul District.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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