



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.03.2022

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C(MD)No.909 of 2021
and
Crl.M.P(MD)No.10898 of 2021

N.M.Sukumaran ... Petitioner/Petitioner/Accused
Vs.

M/s.Shifa Property Developers,
Through Power Agent,
M.Abdul Kareem. ... Respondent/Respondent/
Complainant

PRAYER: Criminal Revision Case filed under Section 397 & 401 of the Code of Criminal Procedure, to call for the records relating to the order passed by the learned I Additional District and Sessions Judge, Tirunelveli in Crl.M.P.No.657 of 2018 in C.A.No.43 of 2017, dated 26.10.2021, by dismissing the petition filed under Section 391 of Cr.P.C and set aside the same by permitting the petitioner to mark the alleged agreement by adducing additional evidence.

For Petitioner : Mr.K.P.Narayana Kumar

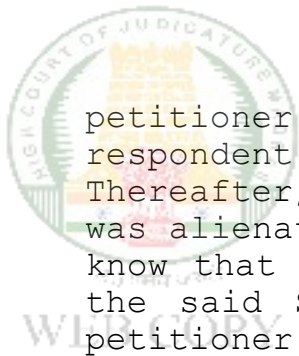
For Respondent : Mr.T.Selvam

ORDER

This revision has been filed as against the order passed in Crl.M.P.No.657 of 2018 in C.A.No.43 of 2017, dated 26.10.2021, on the file of the learned I Additional District and Sessions Judge, Tirunelveli, thereby dismissing the petition filed under Section 391 of Cr.P.C to receive the document as additional evidence.

2.The petitioner is an accused and the respondent lodged a complaint for the offence punishable under Section 138 of the Negotiable Instruments Act.

3.The case of the respondent is that the petitioner entered into an agreement for sale for the land to an extent of 38.16 acres and received a sum of Rs.58,75,000/- from the respondent as an advance. The said sale agreement was entered on 19.02.2008 between the respondent and the officer bearers of the Society. The



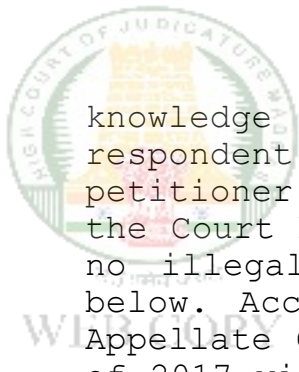
petitioner is being an Advocate by profession and as such, the respondent believed his words regarding the validity of the title. Thereafter, the respondent came to understand that the said property was alienated and had further become defunct. The respondent came to know that the petitioner had cheated him by making to believe that the said Society had rights over the property. Thereafter, the petitioner assured that he will get back the entire amount in the presence of witnesses on 19.02.2008. Accordingly, a portion of amount was received and there was balance of Rs.27,75,000/-. In order to return the said amount, the petitioner issued cheque and the same was presented for collection and the same was returned with an endorsement 'funds insufficient'. After causing statutory notice, the respondent lodged the complaint punishable for the offence under Section 138 of the Negotiable Instrument Act.

4. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent and perused the materials available on record.

5. The trial Court found that the petitioner is guilty and convicted him and sentenced to undergo six months simple imprisonment and to pay a sum of Rs.5,000/- in default to undergo one month simple imprisonment in S.T.C.No.2918 of 2009 by Judgment, dated 29.06.2017. Aggrieved by the same, the petitioner preferred an appeal in Crl.A.No.43 of 2017 before the learned I Additional District and Sessions Judge, Tirunelveli. While pending the appeal, the petitioner filed an application to receive the document as additional evidence.

6. According to the petitioner, the agreement was not entered between the petitioner and the respondent herein, but it was entered into between the respondent and the office bearers of the Society on 19.02.2008 for the sale of the land admeasuring 38.16 acres of land and the office bearers of the Society received a sum of Rs.10,00,000/- as an advance and the same was registered one. The petitioner came to know about the said agreement only recently and as such, he wants to mark the said agreement as additional evidence.

7. On a perusal of the records revealed that the said agreement, dated 19.02.2008 was categorically admitted by the respondent and in fact, in the complaint itself he has stated that the respondent entered into an agreement for sale with the office bearers of the Society on 19.02.2008. Only on the assurance given by the petitioner, the payment of Rs.58,75,000/- was made. Therefore, marking of the said document for sale as additional evidence is not going to anyway helpful to the petitioner herein to disprove the case of the respondent herein. In fact, while cross-examining P.W.1 before the trial Court, the petitioner suggested P.W.1 that agreement for sale dated 19.02.2008 executed between the office bearers of the said Society and the respondent P.W.1. Therefore, the petitioner had very well



knowledge about the execution of the sale agreement between the respondent and the office bearers of the said Society. Moreover, the petitioner is not a party to the said agreement for sale. Therefore, the Court below rightly dismissed the petition and this Court finds no illegality or irregularity in the order passed by the Court below. Accordingly, this Criminal Revision Case is dismissed. The Appellate Court is directed to dispose of the Appeal in Crl.A.No.43 of 2017 within a period of three months from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

The I Additional District and Sessions Judge,
Tirunelveli.

+1 CC to M/s.K.P.NARAYANAKUMAR, Advocate (SR-13040[F] dated 18/03/2022)

Order made in
Crl.R.C(MD)No.909 of 2021
16.03.2022

PS

MS/30.03.2022/3P.3C