BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	28/11/2022
Date of Pronouncement	28/02/2023

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.RC(MD)No.296 of 2020

Udhayakumar : Petitioner/Appellant/ De-facto Complainant

Vs.

1.Savaridoss : R1/R1/Accused
2.The State represented by Public Prosecutor, Dindigul District. : R2/Respondent

Prayer: Criminal Revision is filed under Section 397 r/w 401(1) of the Criminal Procedure Code, to set aside the order passed in Crl.A No.88 of 2018, dated 12/12/2019 on the file of the Principal Sessions Judge, Dindigul, confirming the order passed in CC No.331 of 2011 on the file of the Judicial Magistrate No.1, Dindigul.

For Petitioner : Mr.S.C.Herold Singh

For 1st Respondent : Mr.K.Arunraj

For 2nd Respondent : Mr.SS.Madhavan Government Advocate (Criminal side)

O R D E R

This criminal revision has been filed seeking in order to set aside the order passed in Crl.A No.88 of 2018, dated 12/12/2019 on the file of the Principal Sessions Judge, Dindigul, confirming the order passed in CC No.331 of 2011 on the file of the Judicial Magistrate No.1, Dindigul.

2.The case of the prosecution is that the de-facto complainant lodged a complaint stating that one Kalainithi as power of agent for the first accused namely Savaridoss sold the property, on 19/06/2008 to him for valid consideration. After that, he applied for encumbrance certificate. At that time, it was found that the above said property was again sold by A1, on 18/11/2008 to A2 namely Palanisamy. When that was enquired, A1 pleaded guilty and admitted his mistake. Later, they obtained the power as well as revive the document stating that they will sell the property for higher price. Later, there was no response. When that was enquired, they dragged on the matter. On the basis of the complaint given by the de-facto complainant, the case was registered in Crime No.191 of 2011 for the offences punishable under sections 406 and 420 IPC and after formalities of investigation, final report was filed before the Judicial Magistrate No.1, Dindigul and it was taken cognizance in CC No.331 of 2011.

3.During the trial process, on the side of the prosecution, 6 witnesses were examined and 6 documents marked, on the side of the accused no oral and documentary evidence was adduced.

4.At the conclusion of the trial, trial court, after full trial holding that the offences under sections 406 and 420 IPC were not proved beyond reasonable doubt and acquitted the accused from the charges levelled against him, by order, dated 04/10/2018 made in CC No.331 of 2011. Challenging the above said acquittal, appeal was preferred in Crl.A No.88 of 2018 before the Principal District and Sessions Court, Dindigul and that was also dismissed, on 12/12/2019.

5.Now this revision has been preferred by the petitioner challenging the above said concurrent findings of the trial court as well as the first appellate court.

6.Heard both sides.

7.Now it is the case of the petitioner/de-facto complainant that against the order of acquittal by the trial court as well as the first appellate court, unless the petitioner is able to convince the court that both the courts below erred in not appreciating the facts in a proper perspective, because of misreading or non reading of evidence, the revisional court cannot interfere into the judgment of acquittal. In this regard, no authority may be cited making this order lengthy.

8.Now the learned counsel appearing for the petitioner would submit that the factual circumstances clearly shows that there was a clear case of cheating on the part of A1, already the property was sold to him and again that was sold by A1 to A2. This, according to him, will amount to cheating.

9.Section 420 IPC reads as under:-

> "420.Cheating and dishonestly inducing delivery of property:- *Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."*

10.The ingredients of section 417 IPC must be clearly made out. Not only the prosecution must establish the fact that the de-facto complainant by the above said process.

11.As rightly pointed out by the trial court, if at all because of the above said resale, that was made by A1, the affected person is only A2 herein.

12.So during the course of investigation, it was found that A2 purchased the property in a *bona fide* manner without notice. So he was deleted from the final report. Only the respondent herein was made as an accused. Because of the second sale that was made by A2, the right and title of the de-facto complainant was not affected.

13.As mentioned above, if at all only A2 is the affected party. But he has not preferred any complaint against A1 and the de-facto complainant can simply ignore the sale secondly made by A1 and there is no allegation to the effect that A1 and A2 joined together, entered into a criminal conspiracy and in order to grab the property or cheat the de-facto complainant, the above said second sale agreement was entered into. So in the absence of any such averment, pleadings, so far as the de-facto complainant is concerned, he cannot be construed as an affected party. So the finding of the trial court on this aspect is perfectly legal and requires no interference.

14.In so far the offence under section 406 IPC is concerned, section 405 IPC reads as follows:-

*"**405.Criminal breach of trust.**— Whoever, being in any manner entrusted with*

property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".

15.The ingredients of this section also not made out. There was no entrustment of any property or following the property in the custody of the de-facto complainant.

16.As mentioned earlier, the de-facto complainant is the owner of the property and that property was not handed over to them for entrustment.

17.In the complaint, it has been stated that in his absence, the accused received the revival power of attorney document and the sale deed from his mother and that was not later returned, in spite of repeated request. So according to him, it will not amount to misappropriation. But however, the trial court has found that he has not given any finding with regard to the entrustment of the valuable securities namely the original power of attorney document as well as the original sale deed.

18.During the course of investigation, it was not found that the above said two documents have been taken by A1 by giving false promise.

19.The Investigating Officer was examined as PW6 and has not stated anything about the documents, that they were recovered from the custody of A1. But he has stated that he perused the document that was executed by A1 in favour of A2.

20.What happened to the original documents have not found out during the course of investigation and the statement of A1 was also not recorded. He would admit that no witness has spoken about the custody of the above said document. So it is seen that this allegation was also not clearly established during the course of trial also.

21.Now let us go the evidence of PW1 on this aspect. A1 has also given a complaint stating that he was cheated by him in a financial transaction and further details are not available. It was suggested that as a counter blast only, the present complaint was given. For which, he would admit that the possession of the property is in his hands, so also the original sale document and only the parent document was registered by the accused. Since, it is further admitted by PW1 in respect of the above said sale deed, a case has been filed before the District Munsif Court, Trichy for cancellation and it is also pending, further details are not available.

22.With regard to the above said sale transactions, several defences have been raised by the accused before the trial court during the course of cross examination. But since the suit has also been filed before the competent civil court, I am not able to convince that the above said document is valid or not and further facts and under what circumstance, the above said document was executed by the accused in favour of PW2 upon the power of holder and the sale deed in favour of the de-facto complainant. PW2, who is the power of attorney holder of the accused has stated that he was conferred the power of sale by the accused. Whether the parent document was handed over to the de-facto complainant and that was received by the accused from PW5, can also be a matter for consideration by the competent civil court, on the basis of the above said facts and circumstances. The further details with regard to the suit are not available. So even the offence under section 406 IPC was not clearly established by the prosecution before the trial court and even though, the trial court finding on this specific issue is not proper and considering the overall circumstances of the real factum that will not affect the legitimate conclusion that was reached by the trial court as confirmed by the first appellate court. In the above said circumstances, I am of the considered view that no illegality or irregularity has been committed by both the courts below.

23.In the result, this criminal revision fails and the same is **dismissed.**

28/02/2023

Index:Yes/No
Internet:Yes/No
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G.ILANGOVAN, J

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