



Crl.A.(MD)No.363 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 21.07.2023

Delivered On : 29.09.2023

CORAM

THE HONOURABLE MR. JUSTICE P. DHANABAL

Crl. A.(MD)No.363 of 2016

Stella Josephine Mary

.. Appellant

Vs.

Shanmuganathan

.. Respondent

Prayer : This Criminal Appeal is filed under Sections 378(4) of Cr.P.C., to set aside the judgment and acquittal order passed by the learned III Additional District and Sessions Judge, Thanjavur at Pattukottai dated 04.07.2015 in Crl.A.No.66 of 2014 by which reversing the judgment of conviction and sentence of imprisonment passed by the learned Judicial Magistrate, Pattukkottai in C.C.No.589 of 2010 dated 17.10.2014 and convict the respondent/accused.

For Appellant : Mr.D.Rameshkumar
For Respondent : Mr.M.Karunanidhi

JUDGMENT

This appeal has been filed by the appellant to set aside the judgment of acquittal passed in Crl.A.No.66 of 2014 dated 04.07.2015, on the file of the learned III Additional District and Sessions Judge, Thanjavur, Pattukkottai by reversing the



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judgment and conviction passed in C.C.No.589 of 2010 dated 17.10.2014, on the file of the learned Judicial Magistrate, Pattukkottai. The appellant herein is the complainant and he filed a private complaint as against the respondent herein and another wherein the trial Court has convicted the accused for the offence under Section 406 of IPC and sentenced him to undergo one year rigorous imprisonment and to pay fine of Rs.1,000/- in default to undergo three months simple imprisonment and for the offence under Section 420 of IPC, sentenced him to undergo two years rigorous imprisonment and to pay a fine of Rs.2,000/- in default to undergo three months simple imprisonment. Aggrieved by the said judgment, the appellant preferred an appeal in C.A.No.66 of 2014 and the appellate Court has set aside the conviction and judgment of the trial Court and acquitted the accused from all the charges. Aggrieved by the aforesaid judgment, the present Criminal Appeal is filed.

2.The prosecution case is that A1 purchased the property from A2 in the name of his minor son on 14.12.2006. Thereafter, the defacto complainant purchased the property from A1 on 29.11.2007. When the defacto complainant asked about the parental deeds, A1 stated that it was not with him and he will give it later. Since the first petitioner was working as Doctor, believing the words, the defacto complainant purchased the property. While so, 10 months back, Officers from LIC came to the



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property and told the defacto complainant that A2 obtained loan by depositing the title deed of the property and the debt amount has to be paid, otherwise the property would be brought into sale. When the same was questioned by the complainant, A1 evaded from answering and abused the complainant. Thereby, the complainant had given complaint before the Pattukottai town Police on 10.04.2010 and the police were enquired the matter. On enquiry, it revealed that prior to the purchase of A1, the property was mortgaged before the LIC and after deducting the amount of loan, A1 purchased the property. Further A1 assured to A2 that he would pay the remaining installments of loan. Thereafter, A1 paid installments from 2007 to January 2010. Thereafter, A1 issued advocate notice on 16.04.2010. In that notice, the accused had stated that he does not know about the complainant. Further he alleged in the notice that there was no any registration of the document between the accused and the complainant. Thereafter, the LIC Officers came to the house of the complainant and brought the property for auction. When the same was questioned by the complainant, A1 abused him and threatened him. Thereafter, the complainant gave a complaint before the Deputy Superintendent of Police, Thanjavur and thereafter, the complainant paid the aforesaid loan amount to LIC. A1 at the time of sale of property to the complainant, received entire amount and deceived the complainant about the pendency of loan and also abused filthy language and threatened with dire consequences. Thereby, the complaint was lodged for the offences under Sections



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406, 420, 294(b) and 506(i) of IPC as against A1 and under Section 406 r/w. 109 of IPC as against A2. The accused appeared before the trial Court and the trial Court framed charges for the offences Sections 406, 420, 294(b) and 506(i) of IPC as against A1 and under Section 406 r/w. 109 of IPC as against A2. After framing charges, the charges were read over and explained to the accused but the accused denied the charges.

3. On the side complainant, P.W.1 to P.W.5 were examined and marked Exs.P.1 to P.18. On the side of the accused, no one was examined and no document was marked. After examination of prosecution witnesses, the accused were examined under Section 313(1)(b) of Cr.P.C., and they denied the evidences.

4. Upon perusing the oral and documentary evidences, the trial Court found the respondent/A1 guilty for the offence punishable under Section 406 and 420 of IPC. The respondent/A1 was acquitted from the charges under Sections 294(b) and 506(i) of IPC. A2 was acquitted from the charges under Section 406 r/w. 109 of IPC. The respondent A1 was sentenced to undergo one years rigorous imprisonment and to pay a fine of Rs.1,000/- in default to undergo three months simple imprisonment under Section 406 of IPC and sentenced to undergo two years rigorous imprisonment and to pay a fine of Rs.2,000/- in default to undergo three months simple



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imprisonment under Section 420 of IPC, by a judgment, dated 17.10.2014.

Aggrieved by the same, the respondent preferred an appeal in Crl.A.No.66 of 2014 on the file of the learned III Additional District and Sessions Judge, Thanjavur District at Pattukkottai and the Appellate Court allowed the same and acquitted the respondent A1 from all the charges, by a judgment dated 04.07.2015.

5. Aggrieved by the said judgment, the appellant/complainant has preferred this present appeal on the following grounds:-

The judgment and acquitted passed by the appellate Court is contrary to law, weight of evidence and probabilities of the case. The appellate Court ought not to have acquitted without assigning any valid reasons. The appellate Court ought to have appreciated the Ex.A1 to Ex.A18 and ought to have confirmed the findings of the trial Court. The appellate Court has failed to appreciate the Ex.A1 Advocate notice and Ex.A2 reply notice given by the accused in a proper manner. The appellate Court has failed to appreciate the fact that the accused by suppressing the LIC loan, had sold the property and the same has been properly proved by the complainant by adducing oral and documentary evidence. The appellate Court has failed to appreciate the fact that the accused had not produced any documents and no oral evidence had let on by the accused to prove his innocence. The appellate Court ought not to have come to the conclusion that there were variations in the amount of



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sale consideration while depositing evidence by the complainant. The appellate Court ought not to have come to conclusion that Ex.A2 reply notice not given as per instruction by the accused person. The appellate Court has failed to appreciate the fact that admittedly LIC loan due was pending on the property at the time creating sale agreement, by the accused in favour of the complainant. The appellate Court has failed to appreciate the fact that LIC loan due has been duly settled by the complainant as per Ex.A13.

6.The learned counsel appearing for the appellant contended that the appellant filed private complaint before the trial Court and the case was taken on file under Sections 406, 420, 294(b) and 506(i) of IPC as against A1 and as against A2, under Sections 406 r/w. 109 of IPC. Thereby, the learned Magistrate has taken cognizance and charges were framed for the aforesaid offences. On the complainant side, P.W.1 to P.W.5 were examined and Ex.P1 to Ex.P18 were marked. P.W.1 categorically deposed about the case of the complainant and the accused have committed the offence under Sections 406, 420, 294(b) and 506(i) of IPC. The trial Court has convicted for the offence under Section 406 and 420 of IPC and acquitted A1 for the Sections 294(b) and 506(i) of IPC and for acquitted A2 for the offence under Sections 406 r/w. 109 of IPC. But the appellate Court failed to consider the evidence and wrongly acquitted the accused. Therefore, the judgment passed by the



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appellate Court is liable to be set aside by allowing this appeal and conviction passed by the trial Court is to be restored.

7.The learned counsel appearing for the respondent has contended that the trial Court wrongly convicted the accused for the offences under Section 406 and 420 of IPC and acquitted A1 for the Sections 294(b) and 506(i) of IPC and for acquitted A2 for the offence under Sections 406 r/w. 109 of IPC. Thereby, the accused preferred the appeal and thereby, the appellate Court has given reasons for acquitting the accused. The complainant side evidences are not cogent. In order to attract the offence under Section 420 of IPC, there should be dishonest intention and deceived the complainant by deleting the valuable security. Further there is no endorsement of the property to the accused and thereby, the offence under Sections 420 and 406 of IPC could not made out. The trial Court correctly acquitted the accused for the offences under Section 406 and 420 of IPC.

8.Upon hearing both sides and perusing the records, judgment and grounds, the points for determination in this appeal is whether the complainant has proved the charges against the appellant under Sections 406 and 420 of IPC beyond reasonable doubt.



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Point:-

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9.In this case, P.W.1 is the victim. In order to prove the case, the complainant has examined P.W.1 to P.W.5 and marked Ex.P1 to Ex.P18. P.W.1 is the victim and he deposed about the purchase of the property from the accused and demanded of loan by the LIC officers and payment to LIC officers.

10.P.W.1 in her evidence stated that she purchased the property from A1. At the time of sale, A1 handed over the original sale deed in the name of Venkata Raman who purchased the property from one Manorama but the original document which belongs to Manorama, was not obtained by her and the copy of the document alone was obtained by her. When she asked about the original document of the property, the accused told that he kept the original document elsewhere, after tracing out he would produce the document to her. Believing the words of the A1, the complainant purchased the property. Thereafter, she came to know that in the name of the Manorama, a loan for a sum of Rs.1,30,500/- was obtained by the second accused and the same was demanded by LIC Officers. Thereafter, she paid the aforesaid amount to the LIC. Therefore, from the evidence of P.W.1 reveals that she not even perused the original parallel documents prior to purchase of property. She know very well that on the date of purchase itself, the original document was not



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with the first accused.

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11. Further during the cross examination, she admitted that they entered into agreement and on the date of agreement itself entire amount was paid. There is no mention about the duration of period for completion of the sale in the agreement. Therefore, P.W.1 herself admitted that on the date of sale itself, she not even perused the original document and when she demanded the original document, the first accused stated that he kept it elsewhere and after traced out, he would hand over later. The aforesaid version of P.W.1 is unusual. When the property was purchased by P.W.1, she ought to have verified all the original records before entering into sale. In the case, P.W.1 stated that she not even seen the original document and thereby, she is bound by principle of “caveat emptor”. There is no evidence that the A1 has an intention to cheat P.W.1. Further there is no entrustment of property to A1 and the same was misappropriated by accused.

12. P.W.2 is husband of P.W.1 and he also deposed about the purchase of property and obtained loan from the LIC and demand of loan. He admitted that there is no encumbrance over the property at the time of purchase of the property and also admitted that sale by Manorama in favour of the minor son of A1 and the settlement deed executed in favour of A1 also not deposited before the LIC Office. Therefore,



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there is no intention to cheat the complainant since the documents in the name of the son of A1 and her son were produced by A1 at the time of sale. But the original sale deed in the name of Manorama was deposited into LIC that too by the Manorama, vendor of A1. Therefore, the offence under Sections 406 and 420 of IPC would not attract as against the accused. Further the trial Court has already acquitted the accused from the other offence.

13.P.W.3 is attesting witness of the sale deed in the name of the complainant and he deposed about the execution of sale deed by A1 and also he deposed about the issue of notice by the LIC and complaint given by the complainant.

14.P.W.4 was working in the LIC office, Trichy and he deposed that one Manorama obtained loan from the LIC and she paid installments till 17.12.2009 and thereafter, from 08.02.2010, she did not pay the amount. On 02.09.2010, by paying Rs.1,30,500/-, she closed the account. Thereafter, they issued receipt for the closure of aforesaid loan. Thereafter on 19.07.2010, received notice from the complainant stating that after receiving of the entire amount, the original document has to be sent to the complainant. After receipt of the amount, the LIC will sent the original document to the concerned party. Therefore, from the evidence of P.W.1 to P.W.4,



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the loan amount was paid by the complainant. But there is no evidence to show that

A1 had knowledge about the loan transaction and the deposit of title deeds by A2.

Further in the sale deed, there is recital that if any encumbrance over the property, the same can be settled through other properties of the accused. Therefore, if any loss caused to the complainant, she has to take remedy through civil Court for recovery of money and for damages if any, in accordance with law.

15.In order to attract provisions under Sections 406 and 420 of IPC, there is no evidence and the prosecution failed to prove the charges beyond reasonable doubt and the trial Court without properly analyzing the evidence wrongly convicted the accused and the lower Appellate Court has correctly discussed about the evidence and correctly acquitted the accused for the offence under Section 406 and 420 of IPC. The appellant Court in its judgment discussed about the exchange of notice between the parties and the amount paid by the complainant but after remitting the payment, no notice was sent to the accused but the reply notice sent by A1 was denied by him. While so, the complainant has to prove the case beyond reasonable doubt.

16.It was admitted that the said Manorama obtained loan and A1 gave an undertaking letter and the same was marked as Ex.P3 but the accused A1 denied the



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aforsaid notice, if so the complainant has to prove the aforsaid notice and contents of notice. There is no any evidence available to prove reply notice Ex.P3 said to be issued by A1. While so, there is no evidence as to who paid the installments to the LIC and the same has answered by the complainant. Further as per complaint, the second accused borrowed loan and she was also arrayed as second accused in the trial Court, but the trial Court acquitted the second accused and no appeal filed by the complainant as against the acquittal of A2. While so A1 alone cannot be convicted when the loan was obtained by A2 that too without evidence that the A1 had knowledge about the loan availed by A2. Moreover in order to attract the provisions of 420 and 406 of IPC, there is no evidence adduced by the complainant and thereby, the appellate Court i.e., learned Sessions Judge has correctly acquitted the accused and no any infirmity found on the judgment of Sessions Court and no warrant interference by this Court and hence, this appeal has no merits and deserves to be dismissed.

17. Therefore, as discussed above, this Criminal Appeal is dismissed and the judgment of acquittal passed in Crl.A.No.66 of 2014 dated 04.07.2015 on the file of the learned III Additional District and Sessions Judge, Thanjavur, Pattukkottai by



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reversing the judgment and conviction passed in C.C.No.589 of 2010 dated 17.10.2014, on the file of the learned Judicial Magistrate, Pattukkottai is confirmed.

29.09.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
Mrn

To

- 1.The III Additional District and Sessions Judge, Thanjavur at Pattukottai.
- 2.The Judicial Magistrate, Pattukkottai
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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P.DHANABAL, J.

Mrn

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