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Crl.A.No.734 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2024

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

Crl.A.No.734 of 2022

Kumaravelu

... Appellant

Vs.

1.Ilanchezhiyan

2.State Rep. by

The Deputy Superintendent of Police,
Sethiyathope Sub Division,
Cuddalore District.
(Kumaratchi Police Station
Crime No.59 of 2010)

... Respondents

Prayer: Criminal Appeal filed u/s.372 of the Code of Criminal Procedure, seeking to call for the records relating to the judgment dated 29.08.2019 made in S.C.No.238 of 2010 passed by the learned Principal District and Sessions Court, Cuddalore and set aside the same and convict the accused for the charges framed against him.

For Appellant : Mr.G.Pugazhenth

For Respondents : Mr.K.Gandhikumar [R1]

Mrs.G.V.Kasthuri

Additional Public Prosecutor [R2]



JUDGEMENT

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This Criminal Appeal has been filed seeking to set aside the judgment dated 29.08.2019 passed by the learned Principal District and Sessions Court, Cuddalore in S.C.No.238 of 2010.

2. The case of the appellant is that he belongs to depressed community and he was cultivating 4.80 acres of the lands belonging to one Shanmugam Pillai/A1. Whiles, the appellant decided to purchase 0.66 cents of land from A1, who also agreed for the same and received a sum of Rs.16,5000/- and entered into a sale agreement with the wife of the appellant. The 1st respondent herein/A2 represented to the appellant that he is the power agent of A1 and promised to sell another 4 acres and 14 cents and on 19.12.2001, 1st respondent/A2, in the capacity of power agent of A1 received a sum of Rs.1,00,000/- and gave a hand receipt to the said amount.

3. It is the further case that 1st respondent/A2 received Rs.30,000/- in three instalments and totally A2 had received Rs.1,30,000/- and A1 had received Rs.16,500/-. A1 and A2 with an intention to cheat the *de-facto* complainant and knowing the fact that the



appellant is a depressed community, all the accused had entered into a criminal conspiracy to cheat the appellant and A1 and A2 had executed a sale deed in favour of A3 and A4 for a sum of Rs.1,46,500/-. Hence, A1 and 1st respondent/A2 committed the offence u/s 420 r/w 34 of IPC and Section 3(1)(v) of SC/ST Act, 1989 and A3 and A4 had committed the offence u/s 420 r/w 109 of IPC.

4. Therefore, he filed a private complaint before the Judicial Magistrate No.II, Chidambaram u/s 200 of Cr.P.C. for the offences u/s 120(B), 420 and 109 of IPC and Section 3(2)(v) and 3(2)(ii) of SC/ST Act, 1989 and the learned Judicial Magistrate referred the same to P.W.9/Sub Inspector of Police, Kumaratchi P.S. for investigation and P.W.9 registered an F.I.R. in Crime No.59 of 2010 for the offences u/s 120(B), 420 and 109 of IPC and Section 3(2)(v) and 3(2)(ii) of SC/ST Act on 20.04.2010 and transferred the investigation to P.W.10/Deputy Superintendent of Police, Sethiathope as he was the competent officer under the Special Act to investigate into the same. P.W.10 took up the case for investigation and recorded the statements of P.W.1 to P.W.7 and marked Ex.P.1 to Ex.P.11. Upon investigation, he has filed a final report before the learned Judicial Magistrate No.II, Chidambaram on



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20.04.2010 for the offences u/s 420 r/w 34 and 109 of IPC and Section 3(1)(v) of SC/ST Act, 1989. Thereafter, the case was taken on file as S.C.No.238 of 2010 on the file of the Principal District and Sessions Judge, Cuddalore. During the pendency of the case, A1 filed Crl.O.P.No.20260 of 2010 and A3 and A4 filed Crl.O.P.No.19348 of 2010 before this court and this court, by its order, dated 11.10.2017 quashed the case against A3 and A4 and the criminal proceedings against A1 stood abated, since he died during the pendency of Crl.O.P. Thereafter, the trial was proceeded and the case ended in acquittal in respect of the 1st respondent herein/A2 vide order dated 29.08.2019. Challenging the same, the present appeal has been filed before this court.

5. Learned counsel appearing for the appellant submitted that P.W.5 turned hostile, however, the other witnesses in their cross examination clearly deposed before the trial court with regard to offence committed by the 1st respondent/A2 along with other accused persons. He further submitted that A1 entered a sale agreement with the appellant for the land possessed by him, in which the appellant was a lessee and subsequently, A1 entered sale a agreement with the 1st respondent/A2, who in turn alienated the property in favour of A3 and A4, which is a



clear case of cheating, in which, the trial court had failed to convict the 1st respondent/A2 and arrived at a conclusion that it is purely a civil dispute in between the parties and thereby, ended in acquittal and there is enormous delay in filing the complaint, for which, there is no plausible explanation on the side of the appellant. On the above said grounds, the trial court had acquitted the 1st respondent/A2, which is wholly unsustainable. Accordingly, he prays for allowing the appeal.

6. Per contra, learned counsel appearing for the 1st respondent submitted that the appellant claims that he entered into sale agreement with A1 twice for an extent of 0.66 cents of land initially and for an extent of 4.14 acres thereafter. However, the sale agreement is not a registered one and it is an unregistered sale agreement and either it is an registered or unregistered sale agreement, the appellant has to workout his remedy before the competent civil court by filing civil suit for specific performance, in which the appellant can claim that all the accused by calling the name of the appellant's community, trespassed into the property, which was possessed by the appellant. However, A3 and A4 belongs to the very same community of the appellant and they are enjoying the property by way of the sale agreement from A1 and A2. The



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said facts were elaborately considered by this court in the above said criminal original petitions and quashed the case against A3 and A4 and subsequently, A1 also passed away and only A2 was available. He further submitted that there is no evidence available to implicate the respondent/A2, who has only acted as power agent of A1 and the trial court had clearly rendered the finding that it is purely a civil dispute, which was converted into criminal, which is wholly unsustainable. Accordingly, he prays for dismissal of the appeal.

7. Heard the learned counsel for the parties and perused the materials available on record.

8. It is seen from the records that a civil dispute has been converted into criminal offence. There is enormous delay in filing the complaint before the law enforcing agency, for which, the appellant has not given any proper explanation. There is no sale agreement executed by the respondent/A2 in favour of the wife of the appellant and the appellant has not established that he had paid the balance amount to the respondent. Further, none of the witnesses had stated in their statements before the law enforcing agency that the respondent abused the appellant



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by calling his caste name. Moreover, in the complaint, the appellant had averred that A1 alone received Rs.1,00,000/- from him, however, contrary to the same, the appellant had averred that the respondent/A2 received Rs.1,00,000/- from him in the statement recorded before the law enforcing agency. Thereby, the appellant had failed to establish that who had received the money from him. Further, there is no proof available before the trial court as if all the accused entered the appellant property and committed offence u/s 3(2)(v) of the SC/ST Act. In the absence of any material evidence, section 3(2)(v) of the SC/ST Act will not attract. By considering all the above aspects, the trial court had rightly acquitted the respondent/A2, which cannot be interfered with. Hence, the appeal is liable to be dismissed.

9. Accordingly, the Criminal Appeal is dismissed.

26.04.2024

Index : Yes / No
Speaking order / Non-speaking order
NCC : Yes / No
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M.DHANDAPANI, J.

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To

- 1.The Principal District and Sessions Court, Cuddalore.
- 2.The Public Prosecutor, Madras High Court, Chennai.

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