
(2008) 02 BOM CK 0022

In the Bombay High Court

Case No : Criminal Revision Application No. 459 of 2007

Balkrishnan Thirumalai Nadar

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 13-02-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 420, 465, 471, 567, 568

Citation : (2008) CriLJ 2125

Hon'ble Judges : D.G. Karnik, J

Bench : Single Bench

Advocate : Uday Warunjikar, for the Appellant; S.S. Pednekar, APP, for the Respondent

Final Decision : Dismissed

Judgement

D.G. Karnik, J.—By this Criminal Revision Application, the applicant challenges his conviction u/s 465, 467, 468 and 471 of Indian Penal Code and as also the sentence of rigorous imprisonment and fine imposed on him by the learned Judicial Magistrate, First Class, Pimpri and confirmed by the Sessions Court, Pune.

2. The prosecution case in brief is as under- Applicant is the brother-in-law (sister's husband) of Anusaya Thomas, the original complainant. By a sale-deed dated 17th November 1989 registered in the office of Sub-Registrar Haveli, district Pune the complainant purchased the land bearing Survey No. 51/1/58 (hereinafter referred to as the "said land") from Mr. Vaman Gangurde and another for Rs.40,000/-. After the purchase, name of the complainant was recorded as an owner in the record of rights, maintained by the Talathi. By a sale deed dated 10-7-198 registered in the office of sub-registrar Haveli, entered at Sr. No. 4888, purportedly executed by the complainant, said land was transferred in favour of the applicant. In pursuance of the said sale deed, the applicant got the said property transferred in his name in the record of rights by virtue of mutation entry No. 8503.

3. According to the complainant, she had not executed any sale-deed in favour of the applicant. The sale deed dated 10th of July 1998 did not bear her signature and signature thereon was forged. The complainant alleged that the applicant used the said forged sale-deed as genuine to get the said land transferred in his name in the record of rights. Hence, the complainant had been to the office of Talathi 7-12 extract for the purpose of getting a loan on the said property and he came to know of the fraud and forgery. The complainant therefore, lodged First Information Report with Pimpri Police Station on 16th of May 1999. The Police-Sub-Inspector Laxman Pawar carried out the investigation. He seized the original sale-deed from the applicant. He also obtained the specimen signatures and thumb impression of the complainant as well as the applicant and obtained opinion of a hand writing expert. As per the opinion of the hand writing expert, signature on the sale deed dated 10th of July 1998 is not of the complainant. He opined that signature purported to be of the complainant appearing on the sale deed was forged. Accordingly, the police filed a charge-sheet against the applicant.

4. The applicant was tried by the Judicial Magistrate First Class, Pimpri. The complainant examined herself as PW 1 and the investigating officer was examined as PW 2. The complainant deposed before the learned Magistrate that she had not executed sale-deed in favour of the applicant. She further stated that the signature purporting to be hers appearing on the original sale-deed was not of her and the same was forged and fabricated by the applicant. PSI proved the seizure of original sale-deed from the custody of the applicant. Statement of the applicant was recorded u/s 313 Cr.P.C. In reply to question No. 3, the applicant admitted that the original sale-deed was in his possession and seized from him by the PSI in presence of two panch witnesses. Considering the evidence adduced before him, the learned Magistrate came to the conclusion that the applicant was guilty of the offences punishable u/s 465, 467, 468, 471 and 420 of Indian Penal Code and accordingly convicted and sentenced the applicant to imprisonment and fine, as mentioned above.

5. Aggrieved by the decision of conviction and sentence imposed upon him by the Magistrate, the applicant filed an appeal in the Session Court, Pune. The Session Judge held that offence punishable u/s 420 of the Indian Penal Code was not made out. He however, confirmed the conviction of the applicant under Sections 465, 467, 468, 471 of the I.P.C./ as well as the sentence. Being aggrieved by the decision of the Session Court, the applicant has approached this Court in Revision.

6. The learned Counsel for the applicant took me through the evidence of PW 1 and PW 2 and also statement of the applicant recorded u/s 313 Cr.P.C. He invited my attention to the sale deed dated 17th December 1989 under which the complainant had purchased the said land as also the sale-deed 10th July 1998 under which the complainant allegedly sold the said land to the applicant. The sale deed dated 17th of November 1989 under which the complainant purchased

the said land was proved by her in her deposition. Learned Counsel for the applicant did not dispute correctness of the sale-deed dated 17th November 1989 in favour of the complainant. He further contended that the sale-deed dated 10th of July 1998 (Exh.22) by which the complainant transferred the land in favour of the applicant also was genuine document and bore signature of the complainant. The complainant in her deposition before the Magistrate has stated on oath that the sale-deed (Exh.22) does not bear her signature and she had never executed sale-deed in favour of applicant at any time. She has further stated that she had never gone to the office of Sub-registrar and never executed the sale-deed (exh.22). The trial Court as well as lower appellate Court have believed the said evidence. I see no reason to take different view in the matter in exercise of revisional jurisdiction. The finding recorded by the two courts below that the sale-deed dated 10th of July 1998 (Exh.22) does not bear signature of the complainant in the absence of any perversity was to be accepted as correct.

7. The learned Counsel for the applicant strenuously submitted that even if it is held that sale-deed (Exh.22) does not bear signature of the complainant, it cannot therefrom be assumed that the applicant has forged the signature of complainant. The prosecution was required to prove that signature on the sale-deed (Exh.22) was forged by the applicant and nobody else. The prosecution has not proved that the signature of the complainant on sale-deed (Exh.22) had been forged by the applicant and therefore, the prosecution has not proved the necessary ingredients of forgery by the applicant. He therefore, submitted that the applicant was entitled to the benefit of doubt, as the signature of the complainant on sale-deed (Exh.22) could have been forged by anybody and not necessarily by applicant. I am unable to agree. Admittedly applicant is the beneficiary under the sale-deed dated 10th July 1998. There is no reason for anybody else to get execute the sale-deed in favour of the applicant. The original sale-deed was recovered from the possession of the applicant. If the sale-deed was not got executed at the instance of the applicant, then it was necessary for him to explain the possession of the sale-deed. In the cross-examination of the complainant by the applicant, it was suggested to her that complainant had gone to the sub-registrar's office but she stood outside the office and sent another lady to sign on her behalf. The applicant did not say that he was not present before the Sub-registrar when the sale-deed was executed. The suggestion in the cross-examination that complainant herself stood outside the sub-registrar offices and sent another lady to sign on her behalf, itself show that applicant was aware that the sale-deed does not bear signature of the complainant. Yet he used the said sale-deed as genuine for the purpose of claiming title to the property and got the property transferred in his name in the record of rights. This clearly shows that the applicant was present who got the forged sale-deed executed in his favour, knowing fully well that the sale-deed did not bear signature of the complainant. Learned Counsel for the applicant submitted that complainant ought to have examined independent witnesses to show that the sale deed do not bear her signature. Once the complainant examined herself on

oath and stated that it was not her signature, in my view it was not necessary to examine any other witness to prove and state that it was not her signature.

8. I see no merit in this revision application, which is hereby dismissed.