

Rameshchandra J. Thakkar

Vs

Assandas Parmanand Jhaveri, State of Maharashtra

Criminal Appeal No. 88 of 1972

(H. R. Khanna, Y. V. Chandrachud JJ)

13.10.1972

JUDGMENT

KHANNA, J. -

1. This appeal by special leave is directed against the judgment of Bombay High Court whereby that court set aside an order of acquittal made against the appellant in two cases and directed the trial magistrate to proceed with those cases in accordance with law.

2. Parmanand Jhaveri respondent No. 1 filed two complaints before the court of the Presidency Magistrate Girgaum against Ramesh Chandra, J. Thakkar appellant and B. K. Shah on the allegation that the two accused persons had committed offences under Section 420, Indian Penal Code and Section 13 of the Maharashtra Ownership of Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (Act 45 of 1963) (hereinafter referred to as the Maharashtra Act). In one of the complaints it was stated that the accused had agreed to sell two flats to the complainant, while in the second complaint there was a similar allegation regarding agreement on the part of the accused to transfer a third plot. The agreement, it was stated, had been entered into on February 11, 1967 and the possession of the flats was to be delivered to the complainant on December 31, 1967. According further to the complainant, the accused persons in spite of having received Rs. 28,000 from him had not delivered possession of the flats to the complainant. B. K. Shah accused could not be traced and the two complaint cases proceeded only against the appellant. The following charges were framed against the appellant on April 2, 1970 :

"I,..... do hereby charge you.

#.....##

as follows :

- (1) Failed to make full and true disclosure of the nature of his title to the land on which he intended to construct the flats.
- (2) Failed to get the written agreements in respect of flats registered under the Indian Registration Act.
- (3) That you induced the complainant to part with Rs. 28,000/- on false and dishonest representation that you would construct flats at Malad and give him three flats of certain area in his possession; and thereby committed an offence punishable under

Sections 3 and 4 read with Sections 13 and 14 Maharashtra Ownership Flats Act and Section 420 of the Indian Penal Code and within my cognisance."

On April 30, 1970 after some evidence had been recorded, the trial magistrate passed the following order :

"The parties at this stage put in an agreement whereby the accused undertakes to do certain things within a certain period and on such undertaking the complainant does not wish to proceed with the trial. The accused agrees to the agreement and the case is compounded and accused acquitted."

3. On August 17, 1970 respondent No. 1 filed an application before the trial magistrate stating that though the appellant had undertaken to deliver possession of the flats by a certain date or to pay back the amount in cash, the said undertaking had not been fulfilled. Prayer was made that action be taken against the appellant for contempt of court. The trial magistrate passed an order on January 25, 1971 wherein it was stated that the appellant had gone back on his undertaking given to the court and as such was guilty of contempt of court. The magistrate accordingly directed that papers be sent to the High Court for appropriate action against the appellant.

4. When the matter came up before the High Court, the learned judges constituting the Division Bench took the view that it was not a fit case in which action under the Contempt of Courts Act was called for against the appellant. As the same time, the learned judges took the view that it was a fit case in which the order of acquittal made against the appellant should be set aside. Before that, on an earlier date of hearing, notice had been given to the appellant to show cause why the order of acquittal should not be set aside. The High Court consequently set aside the order of acquittal and directed the trial magistrate to proceed with the trial in both the complaint cases from the stage at which respondent No. 1 had been persuaded not to press the complaints.

5. After hearing Mr. Bhandare on behalf of the appellant, Mr. Hingorani on behalf of respondent No. 1 and Mr. Sharma on behalf of the State of Maharashtra, we have come to the conclusion that the present appeal is bereft of any merit. It would appear from the resume of facts given above that the complaints against the appellant related to two kinds of offences, viz., Section 420, Indian Penal Code and Section 13 of the Maharashtra Act. So far as the offence under Section 420, Indian Penal Code is concerned, it is compoundable with the permission of the court. The offence under Section 13 of the Maharashtra Act is, however, not compoundable either with or without the permission of the court. According to sub-section (7) of Section 345 of the Code of Criminal Procedure, no offence shall be compounded except as provided by this section. The word "offence" has been defined in clause (c) of Section 4(1) of the Code to mean any act or omission made punishable by any law for the time being in force. Clause (c) of Section 2 of the Maharashtra Act gives the definition of the word "promoter" as under :

"(c) 'promoter' means a person who constructs or causes to be constructed a block or building of flats for the purpose of selling some or all of them to other persons, or to a company, co-operative society or other association of persons, and includes his assignees; and where the person who builds and the person who sells are different person, the term includes both."

Clause (a) of sub-section (2) of Section 3 of the Maharashtra Act provides that a promoter who constructs or intends to construct a block of building of flats shall make full and true disclosure of

the nature of his title to the land on which the flats are constructed, or are to be constructed; such title to the land as aforesaid having been duly certified by an Attorney-at-law, or by an Advocate of not less than three years standing. Section 4 of the above mentioned Act reads as under :

"Notwithstanding anything contained in any other law, a promoter who intends to construct or constructs a block or building of flats, all or some of which are to be taken or are taken on ownership basis, shall, before he accepts any sum of money as advance payment or deposit, which shall not be more than 20 per cent. of the sale price enter into a written agreement for sale with each of such persons who are to take or have taken such flats, and the agreement shall be registered under the Indian Registration Act, 1906 and such agreement shall contain the prescribed particulars; and to such agreement there shall be attached, such documents or copies thereof, in respect of such matters, as may be prescribed."

Section 13 of the Maharashtra Act which deals with offences by promoters is in the following words :

"13. Any promoter who, without reasonable excuse, fails to comply with or contravenes any provision of this Act or of any rule made thereunder shall, where no other penalty is expressly provided for, on conviction, be punished with imprisonment for a term which may extend to one year or with fine which may extend to two thousand rupees, or which both; and a promoter who commits criminal breach of trust of any amount advanced or deposited with him for the purposes mentioned in Section 5 shall, on conviction, be punished with imprisonment for a term which may extend to four years, or with fine, or with both."

It would follow from the perusal of the above mentioned provisions that a promoter who without reasonable excuse fails to comply with or contravenes the provisions of sub-section (2)(a) of Section 3 or Section 4 of the Maharashtra Act would be guilty of an offence under Section 13 of that Act and be liable to be punished accordingly. The allegations against the appellant were that he was guilty of the offence under Section 13 of the Maharashtra Act because of the contravention of Section 4 and sub-section (2)(a) of Section 3 of the said Act. As the said offence was not compoundable with or without the permission of the court, the order of the trial magistrate, in our view, in acquitting the accused because of the composition of the offences cannot be said to be in accordance with law.

6. In the case of *K. Chinnaswamy Reddy v. State of Andhra Pradesh* ([1963] 3 SCR 412 : AIR 1962 SC 1788 : (1963) 1 Cr LJ 8) this Court mentioned the circumstances under which an order of acquittal can be set aside in revision by the High Court and observed in his context :

"We may however indicate some cases of this kind, which would in our opinion justify the High Court in interfering with a finding of acquittal in revision. These cases may be : where the trial court has no jurisdiction to try the case but has still acquitted the accused, or where the trial court has wrongly shut out evidence which the prosecution wished to produce, or where the appeal court has wrongly held evidence which was admitted by the trial court to be inadmissible, or where material evidence has been overlooked either by the trial court or by the appeal court, or where the acquittal is based on a compounding of the offence, which is invalid under the law. These and other cases of similar nature can properly be held to be cases of

exceptional nature, where the High Court can justifiably interfere with an order of acquittal; and in such a case it is obvious that it cannot be said that the High Court was doing indirectly what it could not do directly in view of the provisions of Section 439(4)."

It would follow from the above that where an acquittal is based on the compounding of an offence and the compounding is invalid under the law, the acquittal would be liable to be set aside by the High Court in exercise of its revisional powers. As the acquittal of the appellant by the trial court in the present case was based upon the compounding of an offence which was not compoundable, the High Court in our view rightly set aside the acquittal of the appellant.

7. It is no doubt true that the High Court acted suo motu in setting aside the acquittal of the appellant, but that fact would not show that there was any irregularity in the procedure adopted by the High Court. The opening words of Section 439 of the Code of Criminal Procedure, viz, "in the case of any proceedings the record of which has been called for by itself or which has been reported for orders or which otherwise comes to its knowledge", as observed by this Court in the case of *The State of Kerala v. Narayani Amma Kamala Devi* ([1962] Supp 3 SCR 943 : AIR 1962 SC 1530 : (1962) 2 Cr LJ 506) produce the result that revisional jurisdiction can be exercised by the High Court by being moved either by the convicted person himself or by any other person or suo motu on the basis of its own knowledge derived from any source whatsoever without being moved by any person at all. All that is necessary to bring the High Court's powers of revision into operation is such information as makes the High Court think that an order made by a Subordinate Court is fit for the exercise of its powers of revision.

8. Mr. Bhandare has argued that even if the acquittal of the appellant for the offence under Section 13 of the Maharashtra Act could be set aside by the High Court on the ground that the said offence could not be legally compounded, the High Court should not have interfered with the acquittal in so far as it related to an offence under Section 420, Indian Penal Code. In this respect we find that an offence under Section 420, Indian Penal Code can be compounded only with the permission of the court. No order granting such permission has been brought to our notice. Even if we were to assume that such permission was granted, as submitted by Mr. Bhandare, we do not know the precise language in which the order granting permission was couched. In the absence of the copy of that order, it is difficult to predicate as to whether the magistrate would have granted the permission to compound the offence under Section 420, Indian Penal Code if he was aware that the offence under Section 13 of the Maharashtra Act was not compoundable and the case in any event would have to be proceeded with so far as the latter offence was concerned. All the same it appears that the said permission was one indivisible permission for the offences under Section 420, Indian Penal Code and Section 13 of the Maharashtra Act. As no valid permission could be granted for the compounding of an offence under Section 13 of the Maharashtra Act, the permission would have to be held to be invalid in its entirety. It is no permissible in such an event to sever the permission into two parts and to uphold it so far as the offence under Section 420, Indian Penal Code is concerned and hold it to be invalid in respect of the offence under Section 13 of the Maharashtra Act.

9. The appeal consequently fails and is dismissed.

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