

Pushpavalli Vs. The Sub Registrar

Pushpavalli Vs. The Sub Registrar

SooperKanoon Citation : sooperkanoon.com/1234062

Court : Karnataka

Decided On : Jul-19-2022

Judge : Dr.H.B.Prabhakara Sastry

Appeal No. : CRL.RP 453/2013

Appellant : Pushpavalli

Respondent : The Sub Registrar

Judgement :

IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE 19TH DAY OF JULY 2022 BEFORE THE HONBLE Dr. JUSTICE H.B. PRABHAKARA SASTRY CRIMINAL REVISION PETITION No.453 OF 2013 BETWEEN: Pushpavalli Aged about 56 years, W/o H.Narayanaswamy, R/at No.111, 4th Stage, 4th Block, 8th Main, Vijayanagar North, Bangalore-560 040. .. Petitioner (By Dr.J.S.Halashetti, Amicus Curiae) AND: The Sub Registrar, Gandhinagar, Bangalore-560 009. .. Respondent (By Sri K.Nageshwarappa, HCGP) This Criminal Revision Petition is filed under Section 397 read with Section 401 of Cr.P.C. praying to set aside the judgment dated 19.10.2012 passed by learned IX A.C.M.M., Bangalore in C.C.No.28802/2005 and to kindly set aside the judgment passed in Crl.Appeal No.697/2012, passed by learned FTC-17, Bangalore City in the judgment dated 17.04.2013, in the interest of justice. This Criminal Revision Petition is coming on for Hearing through Physical Hearing/Video Conferencing Hearing, this day the Court made the following: Crl.R.P.No.453/2013 2

ORDER

The present petitioner was tried as accused by the Court of learned IX Addl.Chief Metropolitan Magistrate, Bengaluru, (hereinafter for brevity referred to as the `trial Court') in C.C.No.28802/2005, for the offence punishable under Section 82 of the Registration Act, 1908, (hereinafter for brevity referred to as the `Registration Act') and was convicted by its judgment of conviction and order on sentence dated 19.10.2012 and was sentenced accordingly. Aggrieved by the same, the accused preferred an appeal in Criminal Appeal No.697/2012, before the learned Presiding Officer, Fast Track Sessions Court XVII, Bengaluru City, (hereinafter for brevity referred to as the `Sessions Judges Court'), which after hearing both side, dismissed the appeal filed by the accused by its judgment dated 17.04.2013. Being aggrieved by the same, the accused has preferred the present revision petition. Crl.R.P.No.453/2013 3 2. The respondent herein was the complainant in C.C.No.28802/2005, which was filed under Section 200 of Code of Criminal Procedure, 1973 (hereinafter for brevity referred to as `Cr.P.C.'), as a private complaint. It was the summary of the allegations made in the complaint by the respondent that on 10.11.2003, the present petitioner (accused in the trial Court) presented a Sale Deed for its registration before him (the complainant) who was discharging his duty as the Sub-Registrar of the office of the Sub-Registrar, Gandhinagar, Bengaluru, requesting for its registration in accordance with law. The subject matter of the alleged Sale Deed was an immovable property i.e., a site measuring 60 ft. x 40 ft., in total 2,400 sq.ft., said to be located in RMV2d Stage, New BEL Road, Bengaluru. A recital in the document was shown to have been read as follows :

" Whereas the original sale deed vide document No.900/90-91 & possession certificate dated:

27. 06-1996, have been lost and misplaced by the Vendor during transit has lodged a complaint in respect thereof and no response having been secured inspite of the complaint. She has secured a set of Crl.R.P.No.453/2013 4 certified copies including duplicate possession certificate issued from the society mentioned aforesaid and is delivered to the purchaser. The Vendor hereby

assures the Purchaser that the aforesaid original documents have not been pledged or offered as collateral security to any Banks or any financial institutions. Simultaneously the Vendor assures that, if the documents are traced in future, the Vendor undertakes to deliver the said documents to the purchaser."

The said document was said to be registered as a document No.GAN-1-05997-2003-04 in CD No.GAND9 in Book No.1, with the office of the Sub-Registrar, Gandhingar, Bengaluru.

3. Subsequently, on 23.06.2003, one Sri S.Swatantra Rao filed a complaint under Section 82 of the Registration Act claiming that the averment made as above with respect to the alleged loss of original Sale Deed was a false statement and that the original documents have been deposited by the accused with him for securing a loan amount of `30 lakhs, out of which loan amount, a sum of `20 lakhs is still due to be paid to him. In that connection, CrI.R.P.No.453/2013 5 said Sri S.Swatantra Rao was also said to have filed civil suit in O.S.No.4528/2005, before the City Civil Court, at Bengaluru. It is with these contentions, the complainant is said to have claimed permission under Section 83 of the Registration Act to commence prosecution and had filed a private complaint in the trial Court, which subsequently was tried in C.C.No.28802/2005. The trial Court by its impugned judgment dated 19.10.2012, convicted the accused for the offence punishable under Section 82 of the Registration act and sentenced her to undergo simple imprisonment for a period of two years and to pay a fine of `5,000/- and in default of payment of fine, to further undergo simple imprisonment for a period of two months.

4. Challenging the said judgment of conviction and order on sentence, the accused preferred an appeal in Criminal Appeal No.697/2012, under Section 374 of Cr.P.C. before the Sessions Judge's Court, which Court also after hearing both side, by its impugned judgment dated 17.04.2013, dismissed the appeal and confirmed the impugned judgment passed by the trial Court in CrI.R.P.No.453/2013 6 C.C.No.28802/2005. Challenging the same, the accused in the trial court has preferred the present revision petition.

5. The respondent is being represented by learned High Court Government Pleader.
6. Records from the trial Court and Sessions Judges Court pertaining to the matter were called for and the same are placed before the Court.
7. In view of the fact that the learned counsel for the revision petitioner (accused) failed to appear before this Court on several dates of hearing, this Court by its reasoned order dated 09.06.2022, appointed learned counsel - Sri.J.S.Halashetti, as Amicus Curiae for the petitioner/accused to represent her in this case.
8. Heard the arguments of learned Amicus Curiae for the petitioner and learned High Court Government Pleader for the respondent. Perused the materials placed before this Court. Crl.R.P.No.453/2013 7 9. For the sake of convenience, the parties would be henceforth referred to as per their rankings before the trial Court.
10. The learned Amicus Curiae for the petitioner in his single point argument submitted that the Sub-Registrar had no jurisdiction to enquire as regards the truth or falsity of any recital made in a Deed which was presented before him for its registration. In substantiation of the said point of argument, learned Amicus Curiae further submitted that the role of Sub-Registrar is very limited to ascertain as to whether the document was executed by the alleged Executant before him and then to proceed with registration of the said document. He also submitted that even on the merits of the case also, the complainant has failed to prove that the alleged original documents were given to PW-2 as a security for the repayment of the alleged loan. However, the trial Court and the Sessions Judge's Court instead of placing the burden of proving the same upon the complainant, have expected the dischargal of the said Crl.R.P.No.453/2013 8 burden from the accused which was against the criminal law. In support of his contention that the Sub-Registrar had no power to invoke Section 82 of the Registration Act under the circumstances of the case, learned Amicus Curiae relied upon a judgment of Patna High Court in Mt.Gobindia and others -vs- King Emperor, reported in 1924 Patna 754.

11. The learned High Court Government Pleader in his argument submitted that it is not in dispute that the statement about the alleged loss of original title Deeds has been made by none else than the accused in the Sale Deed executed by her in favour of Sri Venkata Reddy, which was registered on 10.11.2003 in the office of the complainant. The evidence of PW-1 and PW-2 further shows that the original documents mentioned by the accused were not lost, but, they were available with PW-2, as such, the Executant of the Sale Deed since had made a false statement in the Sale Deed, the Sub-Registrar has rightly Crl.R.P.No.453/2013 9 invoked his power under Section 82 of the Registration Act and initiated the action.

12. In the light of the above, the points that arise for my consideration in this revision petition are: (i) Whether a recital made in a document submitted for registration, particularly in a Deed of Conveyance, be considered as a statement made before the Sub-Registrar in an enquiry or proceeding enabling exercise of power under Section 82 of the Registration Act, 1908?. (ii) Whether the concurrent finding recorded by the trial Court, as well as the Sessions Judges Court that the accused committed the alleged offence punishable under 82 of the Registration Act, 1908, warrants any interference at the hands of this Court?.

13. It is not in dispute that the alleged recital about alleged loss of the original title deeds has been made by the accused in the Sale Deed presented by her before the Sub-Registrar on 10.11.2003. To that effect, the evidence of PW-1 is on record, which is further corroborated by the copy of the alleged Sale Deed tendered for registration on Crl.R.P.No.453/2013 10 10.11.2003, which is marked as Ex.P-5. It is based upon the said recital in the said Sale Deed, PW-2 Sri S.Swatantra Rao, who claims himself to be a retired IAS Officer, has filed a complaint under Section 82 of the Registration Act before PW-1, which complaint is marked as Ex.P-2. According to PW-2, the alleged documents which accused has shown as lost in her Sale Deed at Ex.P-5, was a false statement and those original documents were given to his custody as a security towards loan of `30 lakhs said to have been given by him. However, after repayment of `10 lakhs by the father of the borrower, still, a balance of `20 lakhs is due to him, with respect to which, he has instituted a civil case in O.S.No.4528/2005 before the City Civil

Court, at Bengaluru.

14. Even after taking that a recital to the effect of alleged loss of the original title deeds is made in Ex.P-5 - the Sale Deed, still, the question that remains to be considered is whether the Sub-Registrar is entitled to Crl.R.P.No.453/2013 11 ascertain the truthfulness in the recitals made in Ex.P-5 tendered before him for its registration?.

15. Part-VI of the Registration Act speaks about "Of presenting documents for registration". Section 34 under the said Part in the said Act speaks about enquiry before registration by a Registering Officer, which reads as below:

34. Enquiry before registration by registering officer.-(1) Subject to the provisions contained in this Part and in Sections 41, 43, 45, 69, 75, 77, 88 and 89, no document shall be registered under this Act, unless the persons executing such document, or their representatives, assigns or agents authorised as aforesaid, appear before the registering officer within the time allowed for presentation under sections 23, 24, 25 and 26: Provided that, if owing to urgent necessity or unavoidable accident all such persons do not so appear, the Registrar, in cases where the delay in appearing does not exceed four months, may direct that on payment of a fine not exceeding ten times the amount of the proper registration fee, in addition to the fine, if any, payable under section 25, the document may be registered. Crl.R.P.No.453/2013 12 (2) Appearances under sub-section (1) may be simultaneous or at different times. (3) The registering officer shall thereupon - (a) enquire whether or not such document was executed by the person by whom it purports to have been executed; (b) satisfy himself as to the identity of the persons appearing before him and alleging that they have executed the document; and (c) in the case of any person appearing as a representative, assign or agent, satisfy himself of the right of such person so to appear. (4) Any application for a direction under the proviso to sub-section (1) may be lodged with a Sub- Registrar, who shall forthwith forward it to the Registrar to whom he is subordinate. (5) Nothing in this section applies to copies of decrees or orders."

Section 34 (3) of the Registration Act makes it very clear that the Registering Officer after presentation of the document before him for registration can enquire

whether Crl.R.P.No.453/2013 13 or not such document was executed by the persons by whom it purports to have been executed and satisfy himself as to the identity of the persons appearing before him and alleging that they have executed the document. In case, any person appearing as a representative, assignee or agent, then, the Registering Officer shall satisfy himself of the role of such person so to appear. Barring this, Section 34 of the Registration Act does not empower the Registering Officer to hold an enquiry about the correctness or truthfulness in the recitals made in the Deed presented before him for its registration.

16. Rule 73 of the Karnataka Registration Rules, 1965 (herein after for brevity referred to as `Registration Rules'), speaks about the duties of the Registering Officer in the following terms :

73. Duties of the Registering Officer.-. (i) It shall form no part of the Registering Officer's duty to enquire into the validity of a document brought to him for registration or to attend to any written or verbal protest against the registration of a document, provided execution is duly admitted; but in case of executants who are unable to read, the Crl.R.P.No.453/2013 14 document shall be read out and if necessary explained to them. If the document is in a language which they do not understand it must be interpreted to them. (ii) If registration is objected to by any person on any of the following grounds, viz., (a) that a person appearing or about to appear before the Registering Officer as an executant or claimant the person he professes to be, or that he is a minor, an idiot, or lunatic; (b) that the instrument is forged; (c) that the person appearing as a representative, assignee or agent has no right to appear in that capacity; (d) that the executing party is not really dead, as alleged by the party applying for registration. Such objections shall be duly weighed by the Registering Officer and if they are substantiated, registration shall be refused, but under sub-section (2) of Section 58, if execution be admitted, registration should take place even if the executant refuses to sign the Registering Officer's endorsement of admission.

17. A reading of Section 34 of the Registration Act with Rule 73 of the Registration Rules does not show that the Sub-Registrar has got any power to hold an elaborate Crl.R.P.No.453/2013 15 enquiry into the validity of a document brought

to him for registration. He is only expected to go through the contents of the same before registering the same and no more. Though a Sub-Registrar cannot act mechanically and proceed to register every document that is presented before him for registration, however, he has to satisfy that the document produced before him are lawful in nature and parties before him are the Executant or his representatives, assignee or an authorised person of the Executant and he admits the execution of the document and the other party admits the document in his favour. If the Sub-Registrar comes to know by a reading of the document presented before him for registration that the Executant of the document has no right or manner to execute the said document or prima facie it is convinced to him that Executant is neither the owner nor the Power of Attorney Holder of the owner nor even an agent or authorised representative of the owner of the property, which is the subject matter of the registration, then, he Crl.R.P.No.453/2013 16 may take further step of declining to register the said document.

18. Even though Rule 41 of the Registration Rules provides for examination of a document by the Registering Officer, but, the said examination is only to ensure that the requirements prescribed in the Act and in the Rules have been complied with. If there is any informality in presentation of a nature which can be remedied, the Registering Officer has authority to give the party such information as may be necessary and return the fees and the document with a view to the document being presented again in due form. However, Rule 41 of the Registration Rules also does not empower the Registering Officer to probe into truthfulness of the recital made in a Deed presented before him for its registration. The Sub-Registrar cannot exercise the power of a Civil Court and decide any matter on truthfulness and the truth or falsity in the recital made in a Deed and hold a trial in that regard. Crl.R.P.No.453/2013 17 19. In the judgment relied upon by the learned Amicus Curiae in Mt.Gobindia and others's case (supra), the Patna High Court has held that under Section 82 of the Registration Act, the Sub-Registrar cannot enquire into truth or falsity of recitals as false recital is no offence. It further observed that, making a false recital in a Deed is not an offence within Section 82(a) of the Registration Act. The Sub-Registrar has no jurisdiction to enquire as regards the truth or falsity of any recital in a Deed. The proceeding or enquiry in Section 82(a) of the Registration Act must be a proceeding or enquiry as prescribed by the Act.

20. Thus, to initiate an action under Section 82(a) of the Registration Act, there had to be necessarily : (i) a statement, (ii) the said statement should have been made intentionally, (iii) the statement proves to be a false one, (iv) the said statement should have been made before any officer acting in execution of the Act, (v) the said statement should have been made in any proceeding or enquiry under the Act. Crl.R.P.No.453/2013 18 In the instant case, admittedly the accused has not made any statement before the Sub-Registrar/ complainant, but, the alleged statement is only a recital in a Deed of Conveyance presented by the accused for its registration, which is at Ex.P-5. Therefore, it cannot be held that there was any statement made by the accused, much less, before any Officer under the Act. Even if it is assumed that the said recital was a false recital, it cannot be taken that it was a statement made before the Sub-Registrar in any enquiry or proceeding. If at all PW-2 Sri S.Swatntra Rao, the complainant before the Sub-Registrar, who filed his complaint as per Ex.P-2, was aggrieved by the recital made in Ex.P-5, then, it was open for him to initiate appropriate legal action against the present accused/petitioner in a manner known to law and in a competent Court by instituting either civil action or a criminal action. Admittedly, he has initiated a civil action against the present petitioner/accused by instituting a civil suit in O.S.No.4528/2005 before the City Civil Court at Bengaluru. Therefore, the suitable action for the alleged Crl.R.P.No.453/2013 19 false recital said to have been made in Ex.P-5 has already been initiated by the alleged aggrieved person by instituting O.S.No.4528/2005.

21. Learned Amicus Curiae for the petitioner also relied upon an order of High Court of Madras (Madurai Bench) in M.Mohan -vs- The Sub Registrar, Kuzhithural, reported in MANU/TN/6382/2019, wherein with respect to undervaluation of the property and initiation of action under Section 82 of the Registration Act, the Madras High Court relying upon Mt.Gobindia and others's case (supra), has observed in Para-8 of its order that, the Sub Registrar had no jurisdiction to enquire as regards truth or falsity of any recital in the Deed and enquire as contemplated under Section 82 of the Registration Act.

22. The Hon'ble Apex Court in Satya Pal Anand -vs- State of M.P., reported in 2016 (10) SCC767 was pleased to observe that, Registering Officer is only

expected to reassure himself that the document to be registered is accompanied by supporting documents. He is not CrI.R.P.No.453/2013 20 expected to evaluate the title or irregularity in the document as such. The examination to be done by him is incidental, to ascertain that, there is no violation of provisions of 1908 Act. The Registering Officer cannot decide as to whether a document presented for registration is executed by a person having title, as mentioned in the instrument.

23. In the instant case, as observed above, it is only after the present complainant received a complaint by PW-2 Sri S.Swatantra Rao as per Ex.P-2, he proceeded to secure permission from his higher authority under Section 83 of the Registration Act and proceeded to file a private complaint against the present petitioner (accused). However, since it is shown that the alleged falsity in the representation made by the accused was not in the form of any statement made before any Officer acting in execution of the Act or in any proceeding or enquiry initiated under the Act, but, it was only in a recital in a Deed of Conveyance, which recital also has not prima facie and on its face shown that it was false or unlawful or impossible, CrI.R.P.No.453/2013 21 then, Section 82(a) of the Registration Act ought not to have been invoked by the complainant. However, without noticing these aspects, both the trial Court and the Sessions Judge's Court have proceeded to record the evidence led before them and pronounced the judgment of conviction and the Sessions Judge's Court further confirmed it respectively. Thus, when the very complaint itself was not maintainable, the trial Court ought not to have proceeded further in the matter or at least framed a question to decide regarding the maintainability of the complaint for the alleged offence under Section 82(a) of the Registration Act.

24. In addition to the above, on the merits of the case also, when the evidence of PW-1 and PW-2 is seen, the evidence of PW-1 would only go to show that the accused has presented Ex.P-5 for its registration on 10.11.2003, however, the recital mentioned therein, which is extracted as above, later was objected to be not a true statement by PW-2, who filed his complaint before him (PW-1) under Section 82(a) of the Registration Act, as CrI.R.P.No.453/2013 22 such, the role of PW-1 is very very limited in instituting a proceeding against the accused.

25. PW-2 though has led a detailed evidence and relied upon several of the documents, however, the sum and substance of his evidence is that the originals of the documents were with him and that he was exercising a lien against those documents, as such, the recital made by the Executant in Ex.P-5 that those documents were lost, was a false statement. His alleged contention that the originals of those documents were with him and were entrusted to him as a security for the repayment of the alleged loan amount of `30 lakhs was beyond the scope of the enquiry or the proceeding either to be held by the registering authority or under any action initiated under Section 82(a) of the Registration Act. In the circumstances of the case, it was for him to establish the same through an appropriate legal action, in which direction, he has already instituted a civil suit against the present petitioner in O.S.No.4528/2005 before the City Civil Court, at Crl.R.P.No.453/2013 23 Bengaluru. This aspect, the trial Court did not consider in its proper perspective. On the other hand, the trial Court expected the accused before it to prove her innocence and also to disprove that the alleged original documents were not entrusted to PW-2 as a security. In that connection, an observation made by the trial Court in Para-26 of the impugned judgment is very clear, which reads as below :

26. It is true that in criminal jurisprudence, the burden of proof lies on the prosecution & that the accused person has right to silence & she need not disprove the allegations. But in the present case in order to show that the case set up by the PW1& 2 is false & that her statement in Ex.P.5 is true, the accused person ought to have produced the evidence or elicited material evidence from the PW1& 2 to disprove the allegations

26. Thus, as rightly submitted by the learned Amicus Curiae, the trial Court ignored the principle that generally in a criminal proceeding, the burden of proving the guilt of the accused is upon the prosecution, but, it has shifted the Crl.R.P.No.453/2013 24 said burden and expected the accused to prove her innocence and to disprove the allegation made against her. For the said reasons also, the impugned judgments do not sustain.

27. Accordingly, I proceed to pass the following:

ORDER

[i]. The Criminal Revision Petition stands allowed. [ii]. The impugned judgment of conviction and order on sentence dated 19.10.2012, passed by the learned IX Addl.Chief Metropolitan Magistrate, Bengaluru, in C.C.No.28802/2005, which was further confirmed by the judgment and order dated 17.04.2013, passed by the learned Presiding Officer, Fast Track Sessions Court XVII, Bengaluru City, in Criminal Appeal No.697/2012, are hereby set aside; Crl.R.P.No.453/2013 25 [iii]. The revision petitioner (accused) - Pushpavalli, wife of H.Narayanaswamy, residing at No.111, 4th Stage, 4th Block, 8th Main, Vijayanagar North, Bengaluru-560 040, stands acquitted of the offence punishable under Section 82 of the Registration Act, 1908. The Court, while acknowledging the services rendered by the learned Amicus Curiae for the revision petitioner - Dr.J.S.Halashetti, recommends an honorarium of a sum of not less than `5,000/- payable to him by the Registry. Registry to transmit a copy of this order to both the trial Court and also to the Sessions Judges Court along with their respective records immediately. Sd/- JUDGE bk/

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com