

/ A1: K.P.Puttaswami Aged 75 Years vs State Of Karnataka on 19 December, 2015

IN THE COURT OF LXV ADDL CITY CIVIL AND
SESSIONS JUDGE; BANGALORE CITY
(CCH.NO 66)

PRESENT

SRI.N.R.CHENNAKESHA B.A.,LL.B.,
LXV ADDL CITY CIVIL & SESSIONS JUDGE,
BANGALORE

Dated this the 19th day of December, 2015

CRL.APPEAL.NO.s.301/2013, 312/2013 & 321/2013

Appellant / A1: K.P.Puttaswami Aged 75 years,
(in Crl.A.No.301/13) Former Secretary of Kuvempu
Nuthan Madari Gruha Niramana
Sahakara Sangha, Bengaluru.

(By Sri Prakash.M.G, Adv)

RESPONDENTS/
complainant: V/s
1. State of Karnataka,
Reptd by: Police Inspector
Vijayanagara Police Station
(Learned Public Prosecutor)

Appellant/A3
(inCrl.A.No.312/2013) 2) Sathyanarayana .
(Respondent No.2 is the
complainant in C.C.No.6794/04,
who is party in person)
B.V.Kumar PA Holder & Director
of Kuvempu Nuthana Madari
Gruha Niramana Sahakara
Sangha, Bengaluru

(By K.J.Gopi, Adv)

RESPONDENTS/
complainant: V/s
1) Sathyanarayan S/o Late
M.P.Menon, No.6, II Main,
B Cross, Katriguppe Main
road, BSK III Stage,
Bengaluru.
2) State of Karnataka,
Reptd by: Police Inspector
Vijayanagara Police
Station,
(Learned Public Prosecutor)

Appellant/
Complainant
(in Crl.A.No.321/2013

S.Sathyanarayanan, R/at No.18,
Ganesh (New NO.32), 60 feet
road, 2nd Cross, Shivajinagara,
Rajajiagar, Bengaluru.

V/s

Respondent/A1 & A3

1) K.Puttaswamy R/at No.924,
3rd Main, 4th Cross, Hosahalli
Extension, Vijayanagar,
Bengaluru.

(Reptd by Sri Prakash.M.G Adv)

2) B.V.Kumar PA holder and
director of Kuvempu Nuthana
Madari Gruha Niramana
Shakakara Sangha,
Bengaluru.

(Reptd by P.J.Gopi Adv)

3) State of Karnataka, Police
Inspector, Vijayanagara
Police Station.

(Reptd by Learned Public
Prosecutor)

COMMON JUDGMENT

These Criminal Appeals preferred u/Sec.374 Cr.P.C,
by the above Appellants respectively, as against common
judgment delivered by learned IX ACMM, Bengaluru in
C.C.No.6794/04 and C.C.No.8031/99 dt.15.5.2013.
Therefore, I incline to pronounce common judgment in
these criminal Appeals.

Appellant in Crl.No.301/13 and 312/13 are A1 and
A3 respectively in C.C.No.6794/04. Appellant in

Crl.A.No.312/13 is the accused in C.C.No.8031/99.

Appellant No.321/13 is the complainant in

C.C.No.6794/04 before the trial court. Hence, I would like to refer the status of parties in these Appeals, with

reference to ranks, which they held in the trial court.

Being aggrieved by the impugned judgment, Appellant in Cr.301/2013 and Crl.A.No.312/2013, prayed this court to set aside the impugned common judgment of conviction and sentence passed against them and to acquit them.

Appellant in Crl.A.No.321/2013 being the complainant in C.C.No.6794/2004, prayed this court to enhance the sentence of imprisonment and fine imposed on A1 and A3 and also enhance the award of compensation to him as well as PW3 Hiriyanna Rao, by allowing the Appeal.

3. Trial court records secured.

4. PSI Vijayanagara police station has filed charge sheet against A1 to A3, of the offences p/u/Sec.406 & 420 of IPC. Accordingly C.C.No.8031/99 registered against A1 to A3 of the said offence on the file of learned IV ACMM, Bengaluru.

Complainant Satyanarayanan has filed private

complaint u/Sec.200 of Cr.P.C. as against A1 & A2, which has been registered in P.C.R.No.14602/03 on the file of learned IV ACMM, Bengaluru, of the offences p/u/Sec.409, 420 and 120-B of IPC. Learned Magistrate after taking cognizance of the offences and by following prescribed procedure, has ordered to register the case against A1 to A3 of the said offences and also ordered to issue process against them. In the meanwhile Sr.A.P.P. filed Application u/Sec.210(2) of Cr.P.C. praying the court to pass an order to club the case in C.C.No.8031/99 along with C.C.No.6794/04, for common trial and disposal. Accordingly, on 5.7.2004 learned IV ACMM, has ordered to club C.C.No.8031/99 with C.C.No.6794/04 and after that both cases were transferred to the court of learned IX ACMM, Bengaluru, for trial and disposal.

Brief facts in C.C.No.8031/99 are as follows:

5. B.V.Kumar being the accused in C.C.No.6704/04, had promised CW1 S.Sathyanarayanan/first informant, to allot a site at Sy.No.42/90 of Mariyappanapalya village, Bengaluru, through Kuvempu Nuthana Madari Gruha Nirmana Sahakara Sangha and in this regard accused received a sum of Rs.98,000/- from CW1. However accused without keeping his words, has misappropriated the said sum. That apart, accused by promising CW2 M.R.Hiriyanna Rao, to sell the house site bearing No.103, situated at

Sy.No.47/48 of Shettihalli village, has received a sum of Rs.30,350/- from CW2. However, accused has not allotted house site to CW1 and CW2 and thereby accused has committed breach of trust and that apart, he has also not executed Registered Sale Deeds in favour of CW1 and CW2 and thereby accused committed the offences p/u/Sec.406 and 420 of IPC.

Brief facts in C.C.No.6794/04 are as follows:

6. Complainant Sathayanarayanan was the member of Kuvempu Nuthana Madari Gruha Nirmana Sahakara Sangha. A1 is the Secretary, A2 is the president and A3 is the Director of the said society. That apart, A3 is the Power of Attorney holder of the said society. Complainant had paid Rs.1,18,000/- to the accused, towards purchase of house site from the said housing cooperative society. In this regard, A3 being PA holder of the society, entered into Sale Agreement dt. 31.10.1996, as per the direction of the officer bearers of the said society. However, A1 to A3 being the Secretary, President and Director of the said society, respectively, in collusion with each other, even though issued receipts and Site Allotment Letter to the complainant, have not executed Registered Sale Deed in respect of the house site in his favour and thereby committed criminal breach of trust. A1 to A3 have induced the complainant to deliver the said amount by assuring to allot a site, have cheated him and also committed criminal conspiracy and thereby

committed the offences p/u/Sec.409, 420 and 120-B of IPC.

5. Trial Court took cognizance of the said offences. A1 to A3 were secured before the trial court and they were served with copy of prosecution papers. Trial court framed the charges against A3 in C.C.No.8031/99 and also framed charges against A1 to A3 in C.C.No.6794/04 of the said offences. However, they pleaded not guilty of the charges leveled against them and they claim to be tried. Hence, case was posted for trial.

6. Before the trial court, in C.C.No.8031/99, prosecution in all examined 8 witnesses as PW1 to PW8 and got exhibited 6 documents as Ex.P1 to Ex.P.6 and concluded evidence form its side. In C.C.No.6794/04 complainant in all examined 6 witnesses as PW1 to PW6 and got exhibited Ex.P.6 to Ex.P.29 document. After conclusion of evidence, accused have been examined u/Sec.313 Cr.P.C. However, they denied the incriminating evidence on record. A1 also led defence evidence. A1 himself examined as DW1 and got exhibited 2 documents as Ex.D1 and Ex.D2. A3 has not adduced any defence evidence. In the meanwhile A2 reported to be dead. Hence, case against A2 abated.

7. After conclusion of defence evidence and after

hearing both side, trial court by pronouncing judgment,
has convicted A1 and A3 of the offences p/u/Sec.406,
409, 420 and 120-B of IPC and sentenced them.

1. To undergo SI for 2 years and to pay fine of
RS.50,000/- each in default to undergo SI for 4
months of the offence p/u/Sec.406 of IPC.
2. To undergo SI for 3 years and to pay fine of
Rs.75,000/- each, in default undergo SI for 4
months of the offence p/u/Sec.409 of IPC.
3. to undergo SI for 3 yeas and to pay fine of
Rs.75,000/- each in default undergo SI for 6
months of the offence p/u/Sec.420 of IPC.
4. To undergo SI for 3 months of the offence and to
pay fine of Rs.5,000/- each in default undergo SI for
2 months of the offence p/u/Sec.120-B of IPC.

Trial court further ordered that sentence of
imprisonment, shall run concurrently and by acting
u/Sec.357(3) Cr.P.C., has ordered to pay
compensation of Rs.3,00,000/- to PW1
Sathyanarayanan and Rs.75,000/- to PW3
Hiriyannarao or his legal heirs, out of fine amount
recovered from A1 and A3.

8. Being aggrieved by the impugned judgment of
conviction and sentence, A1 preferred CrI.A.No.301/2013,

by setting out the grounds of Appeal, contending that order of conviction and sentence passed, is not maintainable either in law and facts and the same is liable to be set aside. Trial court based on presumptions and assumptions, has come to the conclusion that prosecution has proved the guilt of the accused. Trial court failed to appreciate the evidence on record. However, it has come to a wrong conclusion, in holding that prosecution has proved the guilt of accused, which is illegal and against to natural justice. Further he contends that complainant Satyanarayana is an Advocate. Hence learned Magistrate much believing the evidence of PW1, has come to a wrong conclusion in holding that accused has committed the offences alleged and convicted him on moral grounds and not on any evidence on record. A1 contends that he was a former Secretary of the Society and A3 is not a member of the Society and hence question of he was a Director, would not arise at all. Society had not at all given any GPA to A3 to alienate the house sites belonging to the Society and that apart complainant has not at all produced the so called GPA before the court below. A1 contends that himself and A2 never executed Sale Agreement at Ex.P.2 dt.31.20.1996 in favour of complainant, however, Ex.P.2 was executed by some one else and complainant has not taken any signature of the office bearers of the Society, while entering into Sale Agreement and the very fact has not been considered by the trial court. He contends that total

consideration of the Sale Agreement in respect of site was valued at Rs.1,42,800/- and duration was mentioned for 3 months and if the same was not registered within the stipulated time, it ought to have been forfeited. A1 further contends that complainant has produced only one receipt dt 4.6.1997 towards the membership of Society and he was not being a member of the Society at the time of executing a sale deed with A3. However, trial court has not at all considered the same while appreciating the evidence on record. Trial court has come to the conclusion that complainant has issued cheque for Rs.35,000/- dt.26.3.1997, which was paid to the Society through cheque which was not a sale consideration amount for the house site, as per Agreement Ex.P.2. A1 contends that he has not issued any direction to complainant to make payment of sale consideration for the house site. However, trial court has not all considered this aspect. Offences alleged are civil in nature. Hence, trial court ought to have acquitted him. A1 further contended that trial court has grossly erred and that apart no independent witnesses examined and inspite of it, trial court by relying evidence of PW1 to PW3, has convicted him. Therefore, A1 prayed this court to set aside the impugned judgment, by allowing the Appeal and acquit him.

A3 in CrI.A.No.312/2013 contends that impugned

order of conviction is not in accordance with law and hence, same is liable to be set aside. Learned Magistrate has only considered the portion of evidence, which speaks in the examination in chief and discarded the evidence that emerged in the cross examination, which dismantles the entire prosecution case. Learned Magistrate has erred in coming to the conclusion in holding that accused is guilty of the alleged offences without the support of any independent witnesses, even though they were available, no independent witnesses examined and cited as witnesses and as such learned Magistrate ought not to have convicted him, which resulted miscarriage of justice. Learned Magistrate while passing judgment failed to observe that initially A3 was charge sheeted and during the course of cross examination, on the basis of admissions of witness, private complaint was filed against A1 and this case was clubbed and hence no weightage is given to other evidence elicited in the earlier case, which is erroneous and has resulted in grave miscarriage of justice. Learned Magistrate relied upon the evidence of PW1 and did not give any consideration to the defence evidence adduced by A1 and there is lot of discrepancies and the oral evidence is not corroborated with any documentary evidence. Learned Magistrate has taken harsh view and imposed fine exorbitantly and in default to under go imprisonment of three months. Hence, on these grounds

A1 prayed this Court to allow the Appeal.

Complainant Sathyanarayanan by preferring

Crl.A.No.321/13, contends that the impugned judgment and order is correct and just to the society at large. However learned ACMM has not taken into consideration that the case was registered during the year 1998 and there is considerable delay in pronouncing judgment.

During the year 1996 he entered into Agreement to purchase the house site from the said Society and now the market value of the house site reached to Rs.50,00,000/-. Hence, he suffered much monetary loss and that apart money was also not returned by the accused till date. Hence, on these grounds it is prayed to enhance the sentence for the offences P/U/Sec.406, 409, 420 and 120B of IPC, to the maximum and to award more compensation to him.

9. Per contra, learned PP supports the impugned judgment and prays this Court to confirm the impugned judgment of conviction and sentence.

10. Heard arguments. I have perused the impugned judgment and evidence on record.

11. Now the points that arise for my consideration are:

Crl.A.No.301/2013

1. Whether the impugned judgment of conviction and sentence passed by the trial court, in C.C.No.6794/04 and 8031/99 dated 15.5.2015, is illegal, arbitrary and hence calls for interference by this court?

2. What order?

Crl.A.No.312/2013

1. Whether the impugned judgment of conviction and sentence passed by the trial court, in C.C.No.6794/04 and 8031/99 dated 15.5.2015, is illegal, arbitrary and hence calls for interference by this court?

2. What order?

Crl.A.No.321/2013

1. Whether the sentence imposed on A1 & A3 & compensation passed by the trial court, in C.C.No.6794/04 and 8031/99 dated 15.5.2015, is very meager and hence, same is liable to be enhanced by modifying the impugned judgment.?

2. What Order?

12. My findings on the above points are :

Point No.1 In Crl.A.301/2013, 312/2013 and 321/2013: NEGATIVE

Point No.2 In Crl.A.301/2013, 312/2013 and 321/2013: as per final order

For the following :

REASONS

13. Point No.1 In Crl.A.301/2013, 312/2013 and 321/2013:

It is the case of prosecution and complainant that

A1 K.Puttaswamy was the Secretary, deceased A2 Puttaiah, was the President and A3 B.V.Kumar was the Director and PA holder of Kuvempu Nuthana Madari

Gruha Nirmana Sahakara Sangha, Bengaluru and complainant was the member of said Society. It is contended that on 31.10.1996 accused by executing Sale Agreement in favour of complainant, have agreed to sell a house site to him and in this regard, he paid a sum of Rs.1,18,000/- to the accused and by receiving the said sum, they issued Allotment Letter to him. However, accused have not executed any Registered Sale Deed in respect of the house site in his favour and thereby accused have committed criminal breach of trust and also cheated him by making false promise to execute Sale Agreement in respect of house site and more so, A1 to A3 by conspiring with each other, have committed criminal conspiracy. It is also the case of prosecution as well as complainant that the accused have also agreed to execute Registered Sale Deed in respect of house site in favour of PW3 Hiriyanra Rao and in this regard, accused have also collected a sum of Rs.30,350/-from him. It is the specific case of prosecution and complainant that accused have agreed to execute sale deed in respect of house site situated at Sy.No.47/38at site No.103, situated at Shettyhalli Village, Bengaluru South Taluk, through Kuvempu Nuthana Madari Gruha Nirmana Sahakara Sangha, Bengaluru. That apart, A1 and A3 have also agreed to allot house site in favour of PW3 Hiriyanra Rao in respect of site No.103, at Sy.No.47/30 at Shetti Halli Village. However, they have not executed sale deed in favour of complainant and PW3 Hiriyanra Rao.

Trial court after conducting trial and by appreciating evidence on record, has come to the conclusion that A1 and A3 have committed the offences alleged. It is relevant note that during the fag end of trial, A2 reported to be dead. Hence, case against A3 is abated.

A1 and A3 by preferring separate Appeal, contends that prosecution has failed to prove their guilt beyond all reasonable doubt and in spite of it trial court has come to the wrong conclusion in convicting them, without appreciating evidence on record. A1 & A3 also contends that PW1 Satyanarayana is an Advocate and learned ACMM, believing the evidence of PW1, has come to the wrong conclusion in holding that A1 & A3 have committed the offences alleged. A more so trial court has convicted them on moral grounds not on any evidence on record. A1 contends that he was a former Secretary of the Society and A3 is not a member of the Society and hence question of Director would not arise at all and that apart said Society had not at all given any GPA to A3, for alienating the house sites belonging to it and more so PW1 has not at all produced the alleged GPA before the court below. A1 contends that himself and A2 never executed Sale Agreement at Ex.P.2 dt.31.20.1996, in favour of PW1. However, Ex.P.2 was executed by some

one else and PW1 has not taken any signature of the office bearers of the society while entering into Sale Agreement and the very fact has not been considered by the trial court. He contends that total consideration of the Sale Agreement in respect of house site was valued at Rs.1,42,800/- and duration was 3 months and if the same was not Registered within the stipulated time, it ought to be forfeited. A1 also contends that PW1 produced only one receipt dt 4.6.1997, towards the membership of Society and he was not being a member of the Society at the time of executing sale deed with A3. However, trial court has not at all considered the same while appreciating the evidence on record. A1 also contends that trial court has come to the conclusion that complainant has issued cheque for Rs.35,000/- dt.26.3.1997 which was paid to the Society through cheque, however it was not the sale consideration for the site as per Ex.P.2 Agreement. A1 contends that he has not issued any direction to complainant to make payment of the sale consideration for the house site. However, trial court has not all considered this aspect. He contends that offences alleged are civil in nature. Hence, trial court ought to have acquitted him. A1 further contends that trial court has grossly erred in not appreciating the fact that no independent witness has been examined. However, trial court by relying evidence of PW1 to PW3 has convicted him. Therefore, A1 prayed this court to set

aside the impugned judgment and to allow the Appeal, by acquitting him.

A3 has also set out similar grounds in his Appeal memorandum and prayed this court to acquit him, by allowing the Appeal.

14. In order to connect the guilt of A1 and A3, prosecution as well as complainant have to prove the existence of Kuvempu Nuthana Madari Gruha Nirmana Sahakara Sangha, Bengaluru. That apart, prosecution has to prove that A1, A3 & deceased A2 were the office bears of the society and that apart A3 was the PA holder of said society, who was authorized to alienate the house sites to the members of said society. Prosecution has to further prove that PW1 Sathyanarayana has entered into Sale Agreement at Ex.P.1 with accused and they promised to allot of house site to him and in this regard he paid full sale consideration of Rs.1,18,000/- and the same has been received by the accused. That apart prosecution has to prove that the accused have agreed to execute registered sale deed in respect of house site in favour of PW3 Hiriyanna Rao and in turn they received Rs.30,350/- from him and inspite of it they have not executed registered sale deed in favour of PW1 as well as PW3 and thereby A1 and A3 have committed the offences alleged. In order to connect the guilt of A1 and A3 prosecution has relied upon oral as well as documentary evidence.

PW1 S.Satyanayarana being the complainant in both cases, has reiterated the allegations made in Ex.P.1 and Ex.P.22, i.e. first information in C.C.No.8031/99 and private complaint in C.C.No.6794/04. PW1 categorically deposes that A3 was introduced to him by one Janardhan. PW1 further deposes that A3 himself introduced that he was one of the Director and GPA holder of Kuvempu Nuthana Madari Gruha Nirmana Sahakara Sangha, Bengaluru. PW1 further deposes that be believing the words of A3 in good faith, he visited the said Society and verified the statements of A3 and hence he entered into an Agreement of Sale with A3 and paid earnest sum of Rs.20,000/- in cash, to A3. He deposes that later A3 demanded the payment of balance sale consideration and hence, accordingly he paid the entire sale consideration of Rs.1,18,000/- to A3, towards purchase of house site and in this regard on 04.06.1997, said society issued receipt for Rs.115/- and Rs.35,000/- respectively, in his favour. However, accused have not issued any receipt for balance consideration, inspite of repeated requests. PW1 also deposes that he was issued letter of Allotment at Ex.P.3 pertains to house site No.1009, instead of allotting site No.681, as agreed upon. However, he consented for the said changes and later A3 endorsed Agreement at Ex.P.2 that he received full sale consideration towards the said house site and the same

has been attested by one Vijaya Kumar and Jaganath.

PW1 deposes that many times he requested A3 to execute registered sale deed in his favour. However, A3 postponed the same for one or the other grounds, stating that layout is not yet formed. PW1 deposes that on enquiry during the month of Oct 1997, he came to know that A3 is not doing any duty in the said Society and he has not deposited the money to the Society, which was collected from the members of Society. PW1 further deposes that he also enquired with A1 and A2, who told him that A3 is no away connected to their Society. PW1 deposes that he requested A1 and A2 to allot site in his favour. However, they have not come forward to execute the sale deed in his favour. Hence, he lodged complaint at Ex.P.1. PW1 also got exhibited cash receipts issued by the society at Ex.P.4 and Ex.P.5 for Rs.115/- and Rs.30350/- respectively. PW1 categorically deposes that believing the words of A3, he paid the entire sale consideration to A3, by way of cash and cheque. That apart, A1 and A2 by falsely assuring, have cheated him. PW1 in his cross examination deposes that A3 by showing Power of Attorney executed by housing cooperative society, has represented that he was authorized to disburse the house sites of the Society. PW1 deposes that since the document shown to him is original document, he believed the words of A3. PW1 also deposes that initially he was promised to to allot site

No.681. However, finally Allotment Letter was issued in respect of site no.1009. PW1 specifically deposes that A3 has issued Allotment Letter at Ex.P.3 and then he visited the house site, along with him. PW1 deposes that he was convinced by A3 that some house sites were allotted to particular Directors of the Society and on the basis of Power of Attorney shown by A3, he paid the amount to A3. PW1 in his cross examination denies the suggestion since he did not paid balance sale consideration, the Society has not come forward to execute sale deed in his favour. Therefore, in view of very suggestion, it is very clear that accused have admitted that PW1 was the member of the said Society and he paid the installment amount to the said Society in getting the house site.

-----PW1 in C.C.No.6794/04 deposes similar like of evidence adduced by him in C.C.No.8031/99. PW1 specifically deposes that accused being office bears of the said housing cooperative society have not conducted any meetings during the year 1998, which was informed to him that no more sites are available for registration in his name. In the cross examination of PW1 it is suggested to him that he has committed theft of allotment letter at Ex.P.3 from the society. However, A1 being secretary and director of the society has been examined as PW1 in C.C.No.8031/99, wherein PW5 categorically deposes that A3 by accompanying complainant registered him as a member

of the said housing cooperative society. That apart, PW5 deposes that a sum of Rs.35,000/- was deposited for allotting site and subsequently A3 came to their society and asked them to cancel the membership of PW1 and to refund the amount to A3. More so, PW5 deposes that about 3 - 4 back he came to know that PW1 During the course of evidence PW5 identified Ex.P.3 allotment letter and his signature found in the Ex.P3(b). Added to this, PW5 identified receipts as per Ex.P.4 issued in favour of PW1. Suffice it to say that PW5 deposes that later he came to know that A3 collected a Rs.98,000/- from PW1 and Rs.30,000/- from PW3 respectively. Evidence of PW5 discloses that there was about 1400/- of members in the housing cooperative society and PW1 was approved to be the member of their society. Added to this, PW5 admits the suggestion that allotment letter Ex.P.3 was issued to PW1 after passing resolution by the committee of society. However, PW5 deposes that after passing very resolution of membership of PW1 was cancelled. To support the very version of PW5 that membership of PW1 was cancelled, has not produced any documents to evidence that membership of PW1 was cancelled and entire amount was refunded to PW1. In my view, very evidence of PW3, which clearly disclose that himself, A3 and deceased A2 have conspired with each other in cheating PW1 and PW3.

PW4 Jagadish is one of the attestor to Ex.P.2 sale agreement entered between PW1 and PW3. PW4 categorically deposes about executing of Ex.P.2. That apart, evidence of PW4 discloses that A3 represented that he was one of the directors of said housing cooperative society and very house site in question is situated at Mallathahalli and its measuring 36 x 50 ft. PW4 further depose that at the material point of time PW2 paid Rs.20,000/- as advance to A3 and he also came to know that totatlly of Rs.1,18,000/- was paid to A3 by PW1. PW4 deposes that he came to know through PW1 that A3 neither executed sale deed nor refunded amount to him. In the cross examination of PW4 nothing much contrary elicited to disprove his evidence.

PW6 Vijayakumar K.N. is also witness to the transaction took place between PW1 and A3. Evidence of PW6 disclose that he accompanied PW1 to the office of said housing cooperative society and in his presence, PW1 was paid a sum of Rs.20,000/- to A3 who being one of the director of the said society and at that point of time, PW1 was issued with receipt with regard to membership of PW1 in the said society. According to PW6, at the material point of time, A3 was assured to PW1 to allot the site baring No.1009. Added to this, PW6 deposes that a sum of Rs.1,18,000/- was paid by PW1 to A3. More so, PW6 deposes that A1 and A3 have claimed that they are in a possession of the site property

proposed to be allotted to PW1.

Upon careful scrutiny of PW1, PW4, PW5 and PW6 it clearly discloses that PW1 being the member of Kuvempu Nuthana Madari Gruha Nirmana Sahakara Sangha and as per the promise and assurance of A3 by entering into an agreement with A3, has paid entire sum of RS.1,18,000/- to the A3 for purchasing a site at Mallathahalli.

It is also case of prosecution that PW3 Hiriyanrao is also one of the victim and accused also assured PW3 to allot site No.103, at Sy.No.47/38, at Shattihalli Village, Bengaluru. PW3 Hiriyanrao examined as PW3 in both case. He also deposes that A3 introduced by his father in law and at that juncture A3 has promised him to allot a site at Shettyahalli layout and accordingly, on 19.9.97 he paid sum of Rs.30,350/- to A3 and in this regard, A3 also issued receipt for having received said sum. PW3 deposes that inspite of pursued of A3, to execute sale deed or refund the said sum, he could not succeed in his venture. That apart, PW3 deposes that in law PW2 M.N. Narahari Rao lodged complaint before the police against A3 about cheating. PW3 also deposes that A3 had promised to allot site No.103, in Sy.No.47/38 of Shettyahalli village. In the cross examination, PW3 deposes that he was not get any document regarding allotment of site No.103 either by A3 or housing society.

PW2 Narahari Rao, also deposes during the year 1995 A3 himself introduced to him and represented them that he was forming layout at Shetty Halli Village and at that time A3 by showing previous title deeds induced him and PW3 to pay Rs.30,350/- in respect of house site. PW2 categorically deposes that accused failed to execute sale deed or repay the amount to them. Upon careful scrutiny of evidence of PW2 and PW3, it discloses that they were also cheated by A3.

In C.C.No.6794/04, prosecution examined PW4 Satish Kumar, PW5 Achytha Rao and PW6 B.T.Naik. PW4 identified the cheque dt.13.12.97 wherein name of complainant is found. However, PW1 Satyanarayana dispute signature found in Ex.P.6. Therefore, trial court by examining dispute signature with admitted signature of PW1, has come to conclusion that signature found on the overleaf at Ex.P.6, has been forged. , PW5 Achyuthkumar has deposes about statement pertains to complainant maintained at SBI, S.P.B.Branch. PW6 B.T.Naik has produced certificate at ex.P.16 to show that a sum of Rs.5,000/-, Rs.15,000/- and Rs.35,000/- was paid to A3 from the account of complainant maintained at State Bank of Hyderabad, Rajajinagar Branch. Copies of cheques pertain to said transaction was marked at Ex.P.19 to Ex.P.21 respectively. Trial court by

appreciating the evidence of PW4 to 6 has come to the conclusion that no amount has been refunded to PW1 though a sum of Rs.1,18,000/- was paid to A3 by PW1. Trial court by appreciating the evidence also come to the conclusion that A3 has failed to place rebuttal evidence to prove that why PW1 has paid said sum of Rs.1,18,000/- to him. Hence, trial court ha rightly held that there was transaction between A1 to A3 and PW1 in respect of hosue site and accordingly, A1, A3 and deceased A2 by cheating PW1, has misappropriated the amount belongs to PW1.

In this case, PW7 Govindaiah who being IO in this case deposes with regard to registering of case as well partly conducting of investigation. PW8 Channaveeraiah deposes with regard to drawing up mahazar at Ex.P.6. Trial court further come to the conclusion that though CW12 being the I.O. in this case, is discarded, since very evidence of PW7 and PW8 is sufficient to connect these accused and therefore non examination of CW12 is not fatal to the case of prosecution as well as complainant in both cases, since prosecution as well as complainant have placed enough evidence to establish the guilt of A1 and A3 in both cases.

Trial court by appreciating sale agreement at Ex.P.24 dt.31.10.96 held that A3 has promised to sell site NO.681 situated at Mallathahalli Village in Sy.NO.42/90 in favour of PW1 for a sum of Rs.1,42,800/- . It is also

recited that a sum of Rs.20,0000/- was paid in cash to A3 as advance deposit by PW1. Ex.P.2 also discloses with endorsement dt.16.10.97, which is marked as Ex.P.2(b) wherein he admits that he received Rs.98,000/0 from PW1 towards full value of site No.681 through cheques from PW1.

In order to prove the membership of PW1 in the said housing cooperative society, prosecution has produced membership receipt issued by the said society in favour of PW1 at Ex.P.4 and Ex.P.26. Contents of Ex.P.4 discloses that he paid Rs.115/- towards entry fee and share fee amount respectively on behalf of cooperative society. Suffice it to say, that to prove payment of money to the said housing cooperative society/A1 to A3, prosecution has relied of statement of account at Ex.P.14 and Ex.P.17, which are all statement of SBI, S.P.B.Brnach, and statement of State bank of Hyderabad, respectively. Added to this, prosecution has also got exhibited Ex.P.19 to Ex.P.21 which are copies of chques of Rs.35,000/- in favour of said cooperative society, Rs.50,000/- in favour of A3 by PW1 and cheque for Rs.15,000/- drawn by A3 by the account of complainant.

Prosecution got exhibited Ex.P.18, evidencing that said housing cooperative society has acknowledged sum received from PW1 and proceeded to allot site in favour

of PW1 has got executed allotment at Ex.P.3 issued by said housing cooperative society, which bears signature of the president and secretary of the said society, wherein they proposed to allot house site bearing No.1009 in favour of PW1.

Suffice it to say, in order to prove the criminal act of A1 and A3, prosecution got exhibited certified copy of award copy of deputy registrar of Co-operative society, which is marked at Ex.P.8. Certified copy of order passed by the joint Registrar of Cooperative Societies at Ex.P.10. certified copy of award passed by I Addl. District and Consumer Forum, Sheshadripuram at Ex.P.11, certified copy of order passed by High Court of Karnataka in Crl.A.No.744/03 at Ex.P.12. Certified copy of order passed in D.R.B.I/MD/5/2010-11 in favour of PW1 by the deputy Registrar of Cooperative Societies, Bengaluru urban district at Ex.P.13. Trial court by relying Ex.P.8 to Ex.P.13 has come to the conclusion that observations made in the said documents strengthen the allegations made by PW1 as against accused. Trial court by appreciating defence evidence adduced by DW1 and the documents Ex.D1 and Ex.D2 has come to the conclusion that it is no consequences very evidence of DW1 discloses that accused are not at all interested to execute the sale deed in favour PW1 and PW3 or to refund the money. Hence, trial court has rightly come to the conclusion that evidence placed by the complainant as

well as prosecution establishes that A1 and A3 along with deceased A3 by conspiring with each other have cheated

PW1 and PW3 also other members of the said housing cooperatives society in general. Prosecution as well as complainant have proved the guilt of A1 and A3 beyond all reasonable doubt of the offences p/u/Sec.406, 420 and 120B of IPC.

POINT NO.3:

Complainant S.Sathyanarayana by preferring CrI.A.No.321/2013 prayed this court to enhance the sentenced imposed on A1 and A3 and enhance imposed fine on A1 and A3, since trial court has not imposed sentence proportionately. That apart, trial court by misusing the powers u/Sec.357(3) has awarded meager amount. Therefore, impugned judgment of sentence imposed on A1 and A3 is to be enhanced. Complainant would submit that during the year 1996 itself he paid Rs.1,18,000/- to the A3 towards purchase of house site from the said housing cooperative society. That apart, PW3 Hiriyanna Rao has also paid Rs.30,350/- during the year 1997. However, A1 and A3 have collecting the said amount neither executed sale deed in their favour as agreed to sale nor repaid the said sum. He further submits that market value of the said house site which was agreed to sold to them by A1 and A3 is now fetching more than Rs.50,00,000/-. Hence, he submits that trial

court ought to have imposed the compensation amount proportionately, but the trial court awarded a very meager. Therefore, compensation amount it to be enhanced. He vehemently argued that trial court has not proportionately imposed the sentence of imprisonment on A1 and A3. Therefore, this court is to be imposed maximum punishment of sentence on A1 and A3 as well fine. During the course of argument, complainant has drawn the attention of this court to the following judgments:

- 1) 2012 CrL.L.J. (N0c) 339 (Bom), Vitthal Pandurang Pawar & ors V/s state of Maharashtra.
- 2) 2008 CrL.L.J. 3147 (Madras) P.Jebac Angle Martin and etc V/s State.
- 3) (2012) 3 SCC (Cri) 979, Sadhupati Nageswara Rao V/s state of Andhra Pradesh.
- 4) 2012(3) Crimes 80 (SC) R.Mohan V/s A.K.Vijaya Kumar.

Per contra learned counsel for A1 and A3 would submit that question of enhancing the sentence as well as compensation imposed on A1 and A3 does not arise at all, since A1 and A3 are to be acquitted, in view of strong grounds urged in their respective Appeal memorandum. Therefore, learned counsel for A1 and A3 prayed this court to dismiss the appeal preferred by the complainant. Hence, Appeal preferred by the complainant does not survive of consideration.

I have carefully gone through the ratio laid down in the above judgments. In my view, certainly, trial court has not committed any error. In my view, impugned judgment of conviction and sentenced imposed by the trial court is in consonance, ratio laid down in the aforesaid judgments, since trial court while convicting and sentencing the accused awarding compensation is followed all the mandatory requirements and that apart based on the facts and circumstances of the case, as well as evidence on record, has imposed proportionate sentence on A1 and A3 as well awarded compensation. Therefore, I am of the considered view that question of enhancing the sentence of imprisonment on A1 and A2 and awarding higher compensation of sentence u/Sec.357(3) Cr.P.C. could not arise for consideration. On going through the sentence imposed on A1 and A3 by the trial court, it clearly disclose that, trial court has imposed sentence on A1 and A3 proportionately. That trial court has also awarded reasonable compensation to complainant. That apart, while imposing sentence on imprisonment of fine awarding one A1 and A2 and awarding compensation to accused. Learned Magistrate has assigned sound reasons. Therefore, I hold that certainly trial court has not committed any error in imposing sentence and fine. Therefore, I hold that certainly the sentence of imprisonment and fine imposed

on A1 and A3 and compensation awarded to complainant, which cannot be interfered by this court, since trial court has proportionately imposed sentence of imprisonment and fine on A1 and A3 as well as compensation awarded to complainant and PW3. Hence, I am of the considered view that impugned order of sentence by the trial court which cannot be held its illegal. Award of compensation to complainant and PW3 awarded by the trial court, which clearly discloses that trial court has awarded the double the amount which was paid the complainant as well as PW3 Hiriyanna Rao to A1 and A3 to purchase of house site from the said housing cooperative society. Under the such circumstances, which cannot be held that impugned judgment of conviction and sentence passed by the trial court is legal and in accordance with law. For the forgoing reasons I answer above point in the Negative.

I have carefully gone through the evidence placed by the prosecution as well as complainant and defence and the impugned judgment. In my view, certainly prosecution as well as complainant have placed enough evidence on record to hold that A1 and A3 have committed the offences p/u/Sec.406, 409, 420 and 120-B of IPC. Therefore I am of the considered view that certainly, trial court in convicting A1 and A3 has assigned sound reasons. Therefore, I am of the considered view that at any stretch of imagination, conclusion arrived by the trial court in convicting and sentencing the accused,

which cannot be interfered with by this court. Therefore,
for the foregoing reasons, I answer point No.1 to 3 in
"Negative."

17. POINT NO.4:

In view of my findings to point No.1 to 3, I proceed
to pass the following:-

ORDER

Appeals preferred by Appellant/A1 in Crl.A.No.301/13, A3 in Crl.A.No.312/13 and Complainant in Crl.A.No.321/13, is dismissed.

Consequently Judgment of conviction and sentence passed by learned IX ACMM, Bangalore, in C.C.Nos.6794/04 and 8031/99, dated 15.5.2013, is confirmed.

Refund Fine amount of Rs.2,05,000/- to PW1, which has been already deposited by A1, before the trial court.

Re-transmit the Trial Court Records with a copy of this Judgment, forthwith.

(Dictated to the Stenographer, transcribed by her, corrected and then pronounced by me in the Open Court on this 19th day of December 2015) (N.R.CHENNAKESHA) LXV Addl.City Civil and Sessions Judge, (CCH-66), BANGALORE.

Called out

R1 absent

To address

arguments on behalf of R1.

K/B

Again called at

4.35pm

R1 and his counsel

are absent. Hence,

Arguments on behalf of R1, is taken as heard, since sufficient opportunity already provided to counsel for R1 to address arguments, Heard Sri. S.S.N, Adv, for Appellant & learned PP on behalf of R3, on merits. Judgment by 05.12.2015 LXV ACC&SJ Called out Judgment not ready Hence, deferred.

To hear further K/B LXV ACC&SJ Again called at .345pm Appellant present, Heard further.

No representation on behalf of Respt.No.1 & 2.

Hence, further arguments on behalf of Respt No.1 & 2, is taken as heard.

Judgment by 19.12.2015.

LXV ACC&SJ Dt.19.12.2015 Appellant: S.S.N R1: P.M.S R3: P.P Judgment.

Judgment pronounced in the open court, vide separately ORDER Appeal preferred by respective Appellant in Crl.A.No.301/13, Crl.A.No.312/13 and Crl.A.No.321/13, are dismissed.

Consequently Judgment of conviction and sentence passed by learned IX ACMM, Bangalore, in C.C.Nos.6794/04 and 8031/99, dated 15.5.2013, is confirmed.

Refund amount of Rs.2,05,000/- to Appellant Sathyanarayanan.S in Crl.A.No.321/2013, which has been already deposited by Appellant/A1 in Crl.A.No.301/13, before the trial court.

Re-transmit the Trial Court Records with a copy of this Judgment, forthwith.

NOTE: Office is hereby directed to keep the original judgment in Crl.A.No.301/13 and its' copy shall be kept in Crl.A.No.312/13 and Crl.A.No.321/13, respectively.

(N.R.CHENNAKESHA) LXV Addl.City Civil and Sessions Judge, (CCH-66), BANGALORE.