IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.11.2016

CORAM:

THE HON'BLE MR.JUSTICE C.T. SELVAM

Crl.R.C.No.1256 of 2016

E.K.Palanisamy .. Petitioner

vs.

State represented by
The Inspector of Police
District Crime Branch, Erode .. Respondent

Criminal Revision filed under Sections 397 and 401 Cr.P.C. praying to set aside the order of learned Chief Judicial Magistrate, Erode, passed in Crl.M.P.No.628 of 2016 in C.C.No.506 of 2013 on 07.09.2016.

For Petitioner : Mr.A.Ramesh,Senior Counsel
for
Mr.V.Vijayakumar

For Respondent : Mr.K.Madhan,
Govt.Advocate (Crl.side)

O R D E R

This revision challenges the order of the learned Chief Judicial Magistrate, Erode passed in Crl.M.P.No.628 of 2016 on 07.09.2016.

2. Petitioner/A1 and five others were charged of offences u/s. 120(B), 463, 464, 468, 471, 477 and 420 IPC. A charge sheet has been filed informing that A1 and five others have fabricated a will dated 22.12.1986 in respect of land measuring an extent of 85 cents in S.F.No.1369 corresponding to R.S.No.90 as if executed by one Vinayathammal. Similarly on 28.01.1987 a power of attorney has also been fabricated as if it was executed by Vinayathammal in favour of A1 and the same was registered by impersonating the said Vinayathammal. Based on the power of attorney, A1, with the help of one Rangaraman, the then Tahsildar, Erode and Mr. Ponnusamy, the then Surveyor has obtained patta for 35 out of 85 cents of land. It is informed that Vinayathammal died on 07.11.1994. However, on false

representation of her having passed away earlier, an application dated 08.04.1994 was presented before the revenue department and Patta was granted to the petitioner on 25.07.1994. After receipt of patta, the petitioner has created a mortgage on 08.12.1994 in favour of one Balasubramaniam, Son of Arumugam. On 28.04.1995, the petitioner has executed a sale deed in favour of Balachandran, son of Chinnasamy. Therefore, it was complained that the petitioner along with other accused has entered into a criminal conspiracy, fabricated documents and had them registered them under impersonation and thereby deprived complainant right over the property in question.

3. The respondent, on completion of investigation, filed report informing commission of offencs u/s. 467, 468, 471 r/w. 109 I.P.C which was taken on file as C.C. No. 506 of 2013 on the file of the learned Chief Judicial Magistrate, Erode. Pending trial, the petitioner has filed petition for discharge in Crl.MP No. 628 of 2016 which was dismissed on 07.09.2016. In dismissing the Petition for discharge, the trial court reasoned that there was documentary evidence the admissibility or reliability whereof could be gone into only at the trial. Against such finding, the present Criminal Revision Case stands filed.

4. Heard the learned Senior counsel for the petitioner as well as the learned Government Advocate (Crl.side).

5. In respect of allegations in the charge sheet relating to falsification of documents of title and obtaining of patta wrongfully in the name of this petitioner on 25.07.1994, petitioner/A-1 has already run the rigour of trial and has sufferred conviction in C.C.No.592 of 2007 on the file of the learned II Judicial Magistrate, Erode. As against the same, the petitioner has filed Criminal Appeal No. 90 of 2012 before the learned Principal Sessions Judge, Erode. The prosecution has also filed CRP No. 16 of 2012 before the very same Court seeking enhancement of sentence. Learned Principal Sessions Judge, Erode, by order dated 21.08.2012, while acquitting petitioner/A-1, dismissed the CRP No. 16 of 2012 filed by the prosecution for enhancement of sentence. Obviously, therefore, petitioner cannot be required to run the rigour of trial in respect of transaction culminating in his allegedly having obtained false patta as they were already dealt with in earlier criminal proceedings mentioned supra. Thus, the Court below would have to restrict itself to the further allegations in the chargesheet viz.,

(1) the petitioner executed a power of attorney in respect of the property falsely informing the same as belonging to him.

(2) the agent of this petitioner has executed a sale deed in respect of such property in favour of the accused 3 and 4 in the case.

(3) the sale deed executed by the agent of the petitioner

has been attested by the accused 5 and 6 in the case.

Towards informing that the three acts above enumerated would not attract offence u/s. 467,468 and 471 I.P.C, this Court merely would reproduce that which is relevant from the decision of the Apex Court in Mohammed Ibrahim and Others vs. State of Bihar and Central Bureau of Investigation, (2009) 15 SCC 643, wherein it has been held as follows:

> "9. Let us first consider whether the complaint averments even assuming to be true make out the ingredients of the offences punishable either under section 467 or section 471 of Penal Code.
>
> 10. Section 467 (in so far as it is relevant to this case) provides that whoever forges a document which purports to be a valuable security, shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine. Section 471, relevant to our purpose, provides that whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document, shall be punished in the same manner as if he had forged such document.
>
> 11. Section 470 defines a forged document as a false document made by forgery. The term "forgery" used in these two sections is defined in section 463. Whoever makes any false documents with intent to cause damage or injury to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into express or implied contract, or with intent to commit fraud or that the fraud may be committed, commits forgery.
>
> 12. Section 464 defining "making a false document" is extracted below :
>
> "464. Making a false document.--A person is said to make a false document or false electronic record---
>
> First.--Who dishonestly or fraudulently -
>
> (a) makes, signs, seals or executes

a document or part of a document;

(b) makes or transmits any electronic record or part of any electronic record;

(c) affixes any digital signature on any electronic record;

(d) makes any mark denoting the execution of a document or the authenticity of the digital signature, with the intention of causing it to be believed that such document or a part of document, electronic record or digital signature was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or

Secondly.--Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with digital signature either by himself or by any other person, whether such person be living or dead at the time of such alternation; or

Thirdly.--Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his digital signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration.

Explanation 1 - A man's signature of his own name may amount to forgery.

Explanation 2 - The making of a false document in the name of a fictitious person, intending it to be believed that the document was made by a real person, or in the name of a deceased person, intending it to be believed that the document was made by the person in his lifetime, may amount to forgery.

[Note: The words `digital signature'

wherever it occurs were substituted by the words `electronic signature' by Amendment Act 10 of 2009]."

13. The condition precedent for an offence under sections 467 and 471 is forgery. The condition precedent for forgery is making a false document (or false electronic record or part thereof). This case does not relate to any false electronic record. Therefore, the question is whether the first accused, in executing and registering the two sale deeds purporting to sell a property (even if it is assumed that it did not belong to him), can be said to have made and executed false documents, in collusion with the other accused.

14. An analysis of section 464 of Penal Code shows that it divides false documents into three categories:

1. The first is where a person dishonestly or fraudulently makes or executes a document with the intention of causing it to be believed that such document was made or executed by some other person, or by the authority of some other person, by whom or by whose authority he knows it was not made or executed.

2. The second is where a person dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part, without lawful authority, after it has been made or executed by either himself or any other person.

3. The third is where a person dishonestly or fraudulently causes any person to sign, execute or alter a document knowing that such person could not by reason of (a) unsoundness of mind; or (b) intoxication; or (c) deception practised upon him, know the contents of the document or the nature of the alteration.

In short, a person is said to have made a `false document', if (i) he made or executed a document claiming to be someone else or authorised by someone else; or (ii) he altered or tampered a document; or (iii) he obtained a document by practicing deception, or from a person not in control of his senses.

15. The sale deeds executed by first appellant, clearly and obviously do not fall under the second and third categories of `false documents'. It therefore remains to be seen whether the claim of the complainant that the execution of sale deeds by the first accused, who was in no way connected with the land, amounted to committing forgery of the documents with the intention of taking possession of complainant's land (and that accused 2 to 5 as the purchaser, witness, scribe and stamp vendor colluded with first accused in execution and registration of the said sale deeds) would bring the case under the first category.

16.There is a fundamental difference between a person executing a sale deed claiming that the property conveyed is his property, and a person executing a sale deed by impersonating the owner or falsely claiming to be authorised or empowered by the owner, to execute the deed on owner's behalf. When a person executes a document conveying a property describing it as his, there are two possibilities. The first is that he bonafide believes that the property actually belongs to him. The second is that he may be dishonestly or fraudulently claiming it to be his even though he knows that it is not his property. But to fall under first category of `false documents', it is not sufficient that a document has been made or executed dishonestly or fraudulently. There is a further requirement that it should have been made with the intention of causing it to be believed that such document was made or executed by, or by the authority of a person, by whom or by whose authority he knows that it was not made or executed.

> 17. When a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is authorised by someone else. Therefore, execution of such document (purporting to convey some property of which he is not the owner) is not execution of a false document as defined under section 464 of the Code. If what is executed is not a false document, there is no forgery. If there is no forgery, then neither section 467 nor section 471 of the Code are attracted."

The Criminal revision shall stand allowed. The proceedings in C.C.No.506 of 2013 on the file of Chief Judicial Magistrate, Erode shall stand quashed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

1.The learned Chief Judicial Magistrate,
Erode.

2.The Inspector of Police
District Crime Branch, Erode

3. The Public Prosecutor
High Court, Madras

+1cc to Mr.V.Vijaya Kumar, Advocate SR.No.69725

Crl.R.C.No.1256 of 2016

CP(CO)
GN(07/11/2017)