

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.10.2018

CORAM

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

Cr1.O.P.No.31768 of 2012
and
MP.No.1 of 2012

1.C.Rangan
2.K.Harikrishnan ... Petitioners/Accused 7&8

Vs.

1.state Respresented by
The Inspector of Police,
Central Crime Branch
Team-XVII, Egmore, Chennai.
(Crime No.472 of 2012) ...Respondent/Complainant

2.M.Chakravarthi
... Respondent/Defacto/Complaiant

Prayer : This Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records in Cr.No.472 of 2012 on the file of the 1st respondent and quash the same.

For Petitioners : Mr.S.Sharath Chandran

For for R1: Mr.T.Shunmugarajeswaran,
Government Advocate
(Criminal Side)

For for R2: Mr.S.Thagavel

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O R D E R

This Criminal Original Petition has been filed by the accused Nos. 7 and 8 to quash the FIR registered against them in Crime No.472 of 2012 on the file of the first respondent.

2.The learned counsel for the petitioners has submitted that the second respondent herein has lodged a complaint before the first respondent stating that the accused

no.1 had executed a settlement deed in respect of second respondent's property in favour of his children (A2 to A6) and in the said settlement deed, the petitioners herein signed as witnesses. He further submitted that in the said complaint it is also stated that after such a settlement deed, a partition deed was executed between the other accused persons. He further submitted that based on the said complaint, the first respondent has registered a case in Crime No.472 of 2012 under Sections 406, 420 and 120B IPC. He further submitted that the petitioners being attessor's of the settlement deed, Sections 406, 420 IPC will not be attracted and therefore he prayed to quash the FIR against the petitioners herein.

3.The learned Government Advocate (Criminal Side) who is appearing for the first respondent has submitted that the second respondent had purchased two acres of agricultural land in the year 1973 and thereafter he permitted the accused no.1 who is his brother to cultivate a portion of the land and taking advantage of the same, the first accused has executed a settlement deed on 16.09.2011 in favour of his children(A2 to A6). He further submitted that after knowing the said fact, the second respondent has lodged a complaint and based on the said complaint, the first respondent has registered a case in Crime No.472 of 2012 under Sections 406,420 and 120B IPC against eight persons. He further submitted that the first petitioner is the local councillor and second petitioner is the son-in-law of the accused no.1 and hence they knew that the accused No.1 is not having any right over the said properties for executing a settlement deed and after knowing fully well they have signed in the said document as witnesses. The investigation reveals that these petitioners also actively participated in executing the said settlement deed. He further submitted that the investigation is over and draft charge sheet has been prepared and submitted to the Assistant Public Prosecutor for approval and after getting approval from the Assistant Public Prosecutor, the charge sheet will be filed within a short period and therefore, he prayed to dismiss the petition.

4.The learned counsel for the second respondent has adopted the arguments advanced by the learned Government Advocate (Criminal Side). Further, he also submitted that the first accused is not at all having any right over the properties purchased by the second respondent. He further submitted that in the settlement deed dated 16.09.2011, the first accused has stated that in the oral partition which took place in the year 1995, the property covered under the said document was allotted to his share, but in the suit which was filed by the accused no.1 to 6 in O.S.No.42 of 2012 on the file of the Additional District Munsif, Alandur, it is stated that the oral partition took place in the year 1973 and therefore the alleged oral

partition is not true. He further submitted that the first petitioner is the local councillor and the second petitioner is son-in-law of the first accused and they knew that the first accused is not having any right to execute the settlement deed, but with a view to cheat the second respondent, the accused have conspired together and created the settlement deed dated 16.09.2011. He further submitted that the FIR, prima facie, disclosed that the petitioners herein have committed offences and therefore he prayed to dismiss the petition.

5. It is an admitted fact that the petitioners herein stood as witnesses in the settlement deed dated 16.09.2011 executed by the first accused in favour of Accused Nos. 2 to 5 and the FIR has been registered under Sections 406, 420 and 120B IPC against them.

6. Cheating is defined under Section 415 IPC which reads thus:

"Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat"."

For attracting Section 415/IPC there must be an inducement and in pursuance of the said inducement the property should be delivered. In this case, it is not the case of the second respondent that the petitioners herein have made any inducement with him and in pursuance of the said inducement, he delivered the property. The case of the second respondent is that he has already entrusted the property with the accused no.1 and therefore the aforesaid section will not be attracted against the petitioners.

7. Section 406 IPC is the penal provision for Criminal breach of trust. Section 405 IPC is the definition Section for the Criminal breach of trust which reads thus:

"Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of

law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust"."

8.A bare reading of the above said Section would show that for Criminal breach of trust the entrustment of the property is one of the essential ingredients. In this case, as already pointed out, the petitioners herein are only at testing witnesses to the said settlement deed. It is not the case of the second respondent that he has entrusted his property with the petitioners herein. According to him, he entrusted the property only with his brother (accused no.1).

9.According to the second respondent, he has permitted his brother(accused no.1) only to cultivate the land, but taking advantage of the same, the accused no.1 misappropriated the property and executed the settlement deed dated 16.09.2011 in favour of his children (accused no. 2 to 6), where as the accused no.1 has stated in the said settlement deed that the entire property was purchased in the name of his elder brother (Second respondent herein) from and out of the joint family funds and subsequently in the oral partition took place in the year 1985, the properties mentioned in the said document were allotted to his share. So, the real dispute is only between the second respondent and his brother (accused no.1). The petitioners herein are only attestors to the said settlement deed. So, there will not be any justification to prosecute them under Sections 406, 420 and 120-B IPC. Hence, registering the FIR against the petitioners herein is a clear abuse of process of law. Therefore, the said FIR has to be quashed insofar as the petitioners herein are concerned.

10.In the result, this Criminal Original Petition is allowed. The FIR in Crime No.472 of 2012 on the file of the first respondent is quashed in so far as the petitioners herein are concerned. It is open to the first respondent to proceed against other accused persons in accordance with law. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

stm/kyl

To

1.The Inspector of Police,
Central Crime Branch
Team-XVII, Egmore, Chennai.

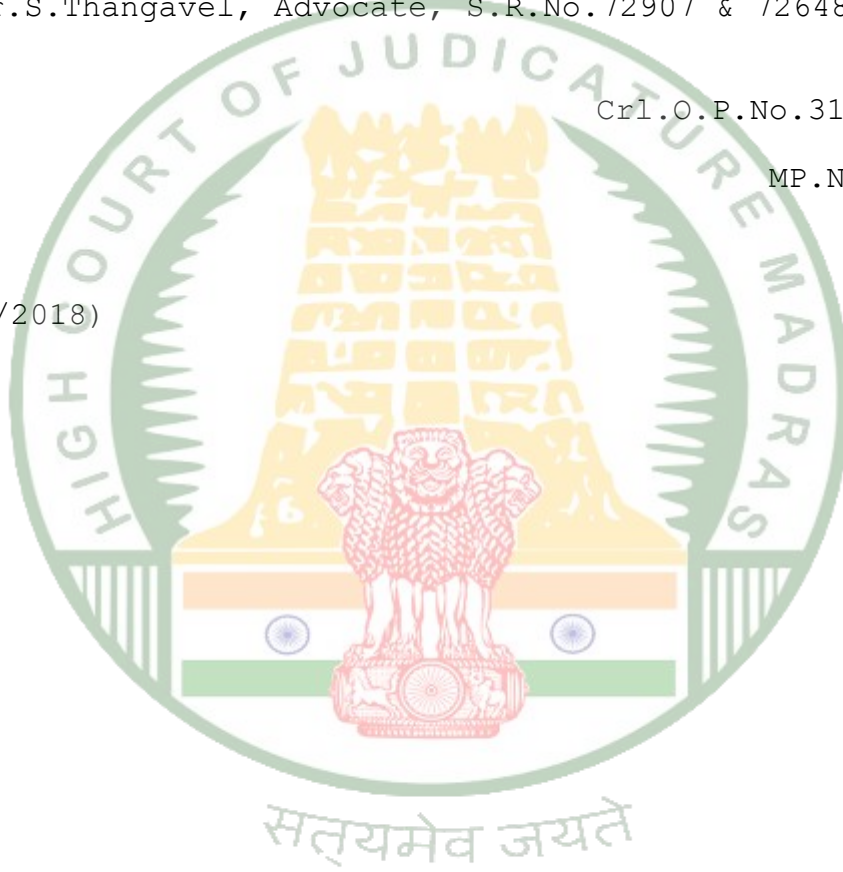
2.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.Govindchandrasekhar, Advocate, S.R.No.72920

+2cc to Mr.S.Thangavel, Advocate, S.R.No.72907 & 72648

Cr1.O.P.No.31768 of 2012
and
MP.No.1 of 2012

RJI (CO)
GSP (17/12/2018)



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