



EFORE THE MADURAI BENCH OF MADRAS HIGH COURT
ORDERS RESERVED ON : 06.09.2018
ORDERS PRONOUNCED ON : 11.09.2018

CORAM

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CrIOP(MD)No.6238 of 2017
and
CrIIMP(MD)Nos.4200 and 5162 of 2017

T.Muthuramalingam ... Petitioner/Accused(Sole)
Vs

1.The Inspector of Police,
District Crime Branch,
Theni, Theni District.
[Crime No.32 of 2016] ... 1st Respondent/Complainant

2.Ponnusamy ... 2nd Respondent /defacto complainant

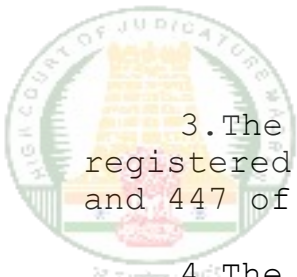
PRAYER:- Petition filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to Crime No.32 of 2016, on the file of the 1st respondent and quash the same as illegal.

For Petitioner	: Mr.ARL.Sundaresan, Senior Counsel, for Mr.S.Ravi
For Respondent No.1	: Ms.S.Bharathi, Government Advocate
For Respondent No.2	: Mr.G.Ravi kumar

ORDER

This petition has been filed to quash the FIR registered in Crime No.32 of 2016, pending investigation on the file of the first respondent Police.

2.The case of the prosecution is that the second respondent herein is the absolute owner of the property measuring about 1.25 acres situated at Survey No.58/4A2 of Uthamapalayam Village. The second respondent purchased the above said property from one Ganesan on 17.08.2012. The said Ganesan purchased the above said property from one Narayanasamy Iyer on 15.01.2009.The petitioner herein purchased another property of the said Narayanasamy Iyer in Survey No.72/2 measuring about 84 cents. The allegation against the petitioner was that the petitioner with an evil design, mentioned bogus boundaries in the registered sale deed dated 12.06.2013 and thereby grabbed about 80 cents of lands in survey Nos.58/4A2 out of 1.25 acres of land belonging to the second respondent.



3.The first respondent police based on the above facts has registered an FIR for the offence under Sections 420, 465, 468, 471 and 447 of IPC.

4.The learned Senior Counsel Mr.ARL.Sundaresan, appearing for the petitioner made the following submissions.

- Admittedly one Narayanasamy Iyer was the common owner for the property in both survey Nos.58/4A2 and survey No.72/2 and he had sold survey No.58/4A2 to one Ganesan by way of a registered sale deed dated 15.01.2009. Even though the extent of the property was shown as 1.25 Acres, curiously the boundaries were not shown in the sale deed. Similarly when Ganesan sold the said property to the second respondent by sale deed dated 17.08.2012, he also did not show the boundaries to the property.
- The petitioner had purchased 84 cents of land in Survey No.72/2 from the said Narayanasamy Iyer by virtue of sale deed dated 12.06.2013 and the sale deed of the petitioner specifically contained the boundaries. Therefore, the petitioner had nothing to do with Survey No.58/4A2 since he had purchased the lands only in Survey No.72/2.
- The second respondent filed a suit in OS No.297 of 2014 against the petitioner seeking a relief of declaration and permanent injunction with regard to survey No.58/4A2 for an extent of 1.25 Acres and the said suit was dismissed as not pressed by a judgment and decree dated 03.02.2015.
- Therefore, the second respondent for the reasons best known to him decided not to prosecute the civil suit.
- The second respondent thereafter gave a criminal complaint before the Deputy Superintendent of Police, Land Grabbing Special Cell, Theni against the petitioner on the ground that the petitioner has grabbed his lands. The Deputy Superintendent of Police, Land Grabbing Special Cell after conducting through enquiry, on 21.01.2016 closed the complaint as civil in nature, since the complaint did not attract any cognizable offence, warranting registration of an FIR.
- The second respondent again preferred a complaint before the Chief Minister's Cell and the same was again forwarded to the Deputy Superintendent of Police, Land Grabbing Special Cell, Theni. After enquiry, the second complaint was also closed on 30.06.2016.
- The second respondent suppressing the earlier two complaints, preferred the third complaint based on the very same facts before the Superintendent of Police, Theni District and thereafter filed CrIOP(MD)No.21304 of 2016 before this Court and got direction for the registration of the case in accordance with the law laid down by the Supreme Court in Lalitha Kumari Vs. Government of Uttar Pradesh reported in 2013 (6) CTC 353 and based on this direction the first respondent had registered an FIR in Crime No.32 of 2016.

- The learned Senior Counsel therefore submitted that the entire procedure that was followed by the second respondent amounts to

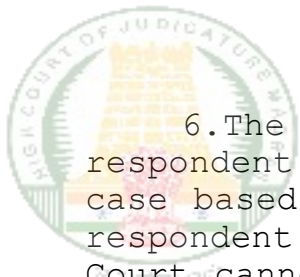


a clear abuse of process of law and after the closure report of the earlier two complaints, the present FIR on the very same set of facts is not maintainable and the same is liable to be quashed.

- A reading of the entire allegations made in the FIR do not constitute an offence under Section 420 of IPC, since there was no deception on the part of the petitioner and more particularly since it is not the case of the second respondent that there was a conspiracy between the original owner of the property namely Narayanasamy Iyer and the petitioner in grabbing the land belonging to the second respondent. Therefore, the learned Senior Counsel submitted that offence under Section 420 has not been made out.
- No offence under Sections 465, 468, 471 has been made out, since it is not the case of the second respondent that the document namely sale deed executed in favour of the petitioner was by way of an impersonation or by committing forgery and therefore, the sale deed dated 12.06.2013 cannot be called as a false document, in order to attract the above said provisions and therefore no offence has been made out.
- The learned Senior Counsel further submitted that the offence under Section 447 has also not been made out, since the petitioner cannot commit criminal trespass in his own property.
- In order to substantiate his arguments, the learned Senior Counsel relied upon the judgment in Mohammed Ibrahim and Others reported in 2009 3 SCC Cr1 P 929.

5. Per contra, the learned Counsel Mr. G. Ravikumar appearing for the second respondent would submit as follows:

- suppression of the earlier two complaints is not a ground to quash the present FIR.
- Only after a thorough investigation by the Police, the fact of 80 Cents out of 1.25 Acres that has been grabbed by the petitioner can be found out and the FIR should not be quashed at the threshold.
- The present petition was filed by the petitioner only after the summon was sent by the Police under Section 91 of CrPC to one Ramu to whom the property has been leased out by the petitioner.
- The petitioner has purchased the property only after the second respondent purchased the property on 17.08.2012. Therefore, the petitioner was aware about the extent of the land available and has intentionally added 80 cents into his property by showing fraudulent boundaries.
- The learned Counsel also relied upon the judgment in Dineshbhai Chandubhai Patel Vs. State of Gujarat and Others, reported in (2018) 3 SCC 104 and submitted that this Court cannot conduct a mini investigation and what has to be seen by this Court at this stage is only the contents of the FIR and this Court cannot probe into the factual aspects that has arisen in this case.



6.The learned Government Advocate representing the first respondent Police would submit that the police are investigating the case based on the documents that have been furnished by the second respondent. The learned Counsel would further submit that this Court cannot interfere with the FIR at the threshold stage and the first respondent Police must be permitted to continue with the investigation and the petitioner has to necessarily wait till the final report is filed by the first respondent.

7.This Court has carefully considered the submissions made on either side and has also bestowed its attention to the undisputed documents placed before this Court.

8.There is no dispute with regard to the following facts:

(a) Narayanasamy Iyer was the common owner of the lands in survey No.58/4A2 and survey No.72/2.

(b)Narayanasamy Iyer had sold 1.25 Acres in survey No.58/4A2 to one Ganesan by sale deed dated 15.01.2009 and the said Ganesan had sold the said property to the second respondent by way of sale deed dated 17.08.2012 and both the sale deeds do not contain boundaries.

(c)The petitioner purchased 84 cents from Narayanasamy Iyer in survey No.72/2 and in the sale deed, schedule of property and the boundaries are clearly mentioned.

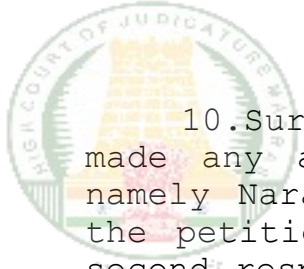
(d) The second respondent filed the suit in OS No.297 of 2014 for declaration of title and permanent injunction against the petitioner and for the reasons best known to him, he filed a memo to the effect that he did not want to pursue the suit and the suit came to be dismissed on 03.02.2015.

(e)The second respondent gave a complaint to the Land Grabbing Cell and after a detailed enquiry the complaint was closed, as civil in nature by the Deputy Superintendent of Police, Land Grabbing Cell on 21.01.2016.

(f)On the very same cause of auction, the second respondent gave one more complaint which was forwarded to the Land Grabbing Cell and the entire case was once again enquired and the Deputy Superintendent of Police, Land Grabbing Cell had once again closed the complaint as civil in nature on 30.06.2016.

(g)The second respondent concealed about the closure of the earlier two complaints after enquiry and gave a fresh complaint on the very same set of facts and got a direction from this Court, as a result of which, the present FIR has been registered by the first respondent.

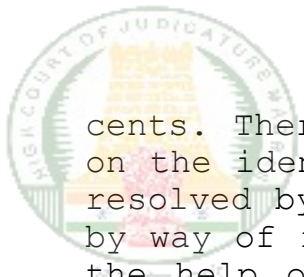
9.It is clear from all the above said facts that the second respondent had not acted fairly and had suppressed the earlier attempts made by him to question the right of the petitioner and had given a fresh complaint based on which the present FIR has been registered. In the considered view of this Court, this clearly amounts to abuse of process of law.



10. Surprisingly, in this case, the second respondent has not made any allegations against the original owner of the property namely Narayanasamy Iyer, who executed the sale deed in favour of the petitioner dated 12.06.2013. Even the allegations made by the second respondent is taken to be true, the document could not have been executed in favour of the petitioner without connivance of the original owner of the property viz., Narayanasamy Iyer. The fact that the petitioner did not make any allegations against Narayanasamy Iyer, clearly shows that the petitioner by himself could not have committed the offence alleged by the second respondent. In other words, the petitioner was merely a purchaser from Narayanasamy Iyer and it is not the case of the second respondent that Narayanasamy Iyer has been impersonated or his signature has been forged in the sale deed dated 12.06.2013. Therefore, the very basis of the complaint become questionable.

11. In this case, the petitioner has admittedly purchased the property in survey No.72/2 and the second respondent is not claiming any ownership in this survey number. The second respondent has admittedly purchased the lands in survey No.58/4A2. The only case of the second respondent is that the petitioner by showing wrong boundaries to his property has grabbed 80 cents out of 1.25 acres belonging to the second respondent. Such a stand taken by the second respondent flies against the very document based on which, the second respondent is claiming title over the property. Neither the sale deed executed in favour of Ganesan nor the sale deed executed by Ganesan in favour of the second respondent contains any boundaries. It is the settled principle of law that boundaries will prevail over the extent of land whenever there is controversy with regard to the extent of land. In this case, the sale deed of the petitioner clearly contains the boundaries and therefore, whatever is contained within the boundary is the extent to which the petitioner is entitled to. Whereas, the sale deed dated 17.08.2012 executed in favour of the second respondent does not even contain boundaries and therefore, the extent of 1.25 acres claimed by the second respondent can never be identified by the Police and it is an exercise, which can be done only before the competent Civil Court. However, the second respondent had chosen not to pursue with the civil suit for the reasons best known to him.

12. In this case, the reading of the FIR does not make out any offence under Section 420 of IPC, since the petitioner did not purchase the land in survey No.58/4A2 or the petitioner did not purchase the very same lands that were already purchased by the second respondent. The sale deed of the petitioner dated 12.06.2013 clearly reveals that the petitioner has purchased a land in different survey number in survey No.72/2. The only complaint by the second respondent is that the petitioner has shown wrong boundaries in the sale deed, as a result of which 80 cents of land belonging to the second respondent has been added into the property of the petitioner. This stand taken by the second respondent is improbable since the total extent purchased by the petitioner was only 84



cents. Therefore, it is clear that the second respondent has issues on the identity of the property. That is a dispute which cannot be resolved by giving police complaint and the same has to be resolved by way of filing a civil suit or by way of conducting a survey with the help of the Government Surveyor. In this case, the petitioner could not have played deception without there being any connivance with the original owner of the property namely Narayanasamy Iyer and surprisingly, the second respondent does not have any grievance against Narayanasamy Iyer. Therefore, the very basis of the complaint with regard to the offence under Section 420 IPC is not made out.

13. With regard to allegations of false documents, it will be useful to refer to the judgment of the Supreme Court of India in Mohammed Ibrahim and Others reported in 2009 3 SCC CrI P 929. The relevant portion of the judgment is extracted hereunder.

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

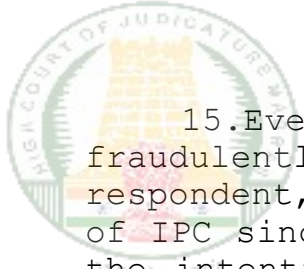


documents with the intention of taking possession of complainant's land (and that accused 2 to 5 as the purchaser, witness, scribe and stamp vendor colluded with first accused in execution and registration of the said sale deeds) would bring the case under the first category.

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.

14. The above said judgment squarely applies to this case. This is also a case which does not obviously fall under the second and third categories of "false documents". Therefore, the only thing which remains to be seen is whether showing false boundaries in the sale deed of the petitioner will amount to committing forgery of the document with an intention to take possession of the second respondent's property. Para 16 of the judgment of the Supreme Court extracted herein above is the direct answer for the said question.

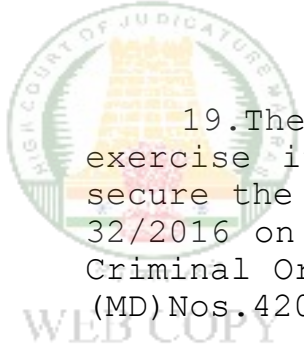


15. Even assuming that the petitioner is dishonestly or fraudulently claiming 80 cents of land belonging to the second respondent, the same will not satisfy the requirement of Section 464 of IPC since further requirement that it should have been made with the intention of causing it to be believed that 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, is not present in the case. Once Section 464 of IPC is not attracted, automatically, the offence under Sections 465, 468 and 471 will not be attracted. Therefore, even on a plain reading of the complaint given by the second respondent, no offence has been made out under Sections, 465, 468 and 471 of IPC.

16. Insofar offence under Section 447 is concerned, admittedly, the petitioner is the owner of the property in survey No.72/2 and it is the case of the second respondent that while showing boundaries, his property has been included in the property purchased by the petitioner. In order to constitute an offence punishable under Section 447 of IPC, ingredients of Section 441 of IPC must be satisfied. In order to attract the provision of Section 441, the entry into the property of the second respondent must be with an intent to commit an offence or to intimidate, insult or annoy the second respondent in possession of the property. None of these ingredients are available in the present FIR. In fact, the petitioner has been enjoying the property in survey No.72/2 and he cannot commit trespass in his own property. If it is the case of the second respondent that his property has been wrongly added into the property of the petitioner, then there is a dispute with regard to the identity of the property and therefore, by no stretch, it can be held that the petitioner has committed offence of criminal trespass.

17. There is no dispute with regard to the fact that this Court cannot conduct a mini investigation at the time of considering a petition to quash an FIR. This Court has not gone beyond the contents of FIR and documents that are relied in the FIR. This Court has only taken into consideration, the contents of the FIR, as it is, and also the contents of the documents relied in the FIR, as it is and without adding or substituting any facts, the findings have been given with the available materials.

18. This Court finds that the procedure adopted by the second respondent by giving one complaint after the other and concealing about the same, while giving the present complaint is clearly a abuse of process of law. This Court also finds that the entire matter is purely civil in nature and the second respondent has attempted to give the case a criminal colour. This Court also finds that none of the offences as stated in the FIR has been made out, even on a reading of the FIR and the documents relied therein.



19. Therefore, this is a fit case, where this Court has to exercise its jurisdiction under Section 482 of CrPC, in order to secure the ends of justice. Accordingly, the complaint in Crime No. 32/2016 on the file of the first respondent is hereby quashed. This Criminal Original Petition is allowed. Consequently, connected CrI MP (MD) Nos. 4200 and 5162 of 2017 are closed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar (CS-II)

To

1. The Inspector of Police,
District Crime Branch,
Theni, Theni District.

2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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The Record Keeper,
Criminal Records,
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+2CC to Mr. S. Ravi, Advocate, SR.No. 83448, 83891
+1CC to Mr. K. Muthumalai, Advocate, SR.No. 84031

CrI.O.P. (MD) No. 6238 of 2017
11.09.2018

DSK
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