**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

Reserved on : 14.03.2018

Pronounced on : 24.05.2018

CORAM:

THE HONOURABLE MR.JUSTICE **P.RAJAMANICKAM**

**CRL.OP.(MD)No.21789 of 2016**
**and**
**CRL.MP.(MD)Nos.11068 & 11209/2016 & 11166/2017**

1. David John D.Morris
2. Franklin D Morris
3. Shereen Victo Morris
4. Mary Morris
5. B.Ragoesh Lazer
6. P. Ravi Dhos ...Petitioners/A1 to A5

versus

1. State rep. By
The Inspector of Police,
Kottar Police Station,
Kanyakumari District.
(Cr.No.543/2016) ... 1st Respondent/Complainant

2.Florence ...2nd Respondent/Defacto Complainant

**Prayer:** Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code to call for the records pertaining to the First Information Report in Cr.No.543/2016 dated 29.07.2016 under Sections 420, 465, 468 and 109 of IPC on the file of the respondent No.1 and quash the same as illegal.

For Petitioners : Mr.T. Lajapathi Roy

For Respondents : Mr.A.P.G.Ohm Chairma Prabhu for R1
Government Advocate (Crl.Side)
Mr. K.P.S.Palanivel Rajan for R2

**O R D E R**

This petition has been filed by the accused Nos.1 to 6 to quash the FIR in Cr.No.543 of 2016 on the file of the first respondent.



2. Learned counsel for the petitioners has submitted that the

second respondent herein has lodged a complaint dated 29.07.2016 stating that the petitioners herein had fabricated a settlement deed dated 07.09.2011 and thereby encroached 10 feet public pathway in SR.Nos.1/47 and 1/57 of Nagercoil village, Kanyakumari District and tried to grab the said pathway. Based on the said complaint, the second respondent herein has registered a case against the petitioners herein in Cr.No.543 of 2016 u/s.420, 465, 468 and 109 of IPC. He further submitted that the property which is in dispute is the family property of the petitioners and the same was allotted to the first petitioner. He further submitted that the first petitioner executed a settlement deed on 07.09.2011 in favour of the fourth petitioner herein. He further submitted that since the second respondent tried to encroach the said property, the petitioners have already filed a suit in O.S.No.472 of 2011 on the file of the I Additional District Munsif Court, Nagercoil and also filed an application in I.A.No.937 of 2011 seeking interim injunction wherein Status Quo has been ordered. He further submitted that already one FIR was registered in Cr.No.98 of 2011 based on the complaint given by the second respondent. He further submitted that in respect of the same facts, the second respondent gave another complaint on 29.07.2016 and based on the said complaint, the second FIR was registered in Cr.No.543 of 2016 and as such, the second FIR is not maintainable in law. He further submitted that the dispute is civil in nature and on that ground also, the FIR in Cr.No.543 of 2016 dated 29.07.2016 has to be quashed. In support of the said contention, he relied upon the decision in **Mohammed Ibrahim and Others Vs. State of Bihar and Another (2009) 8 SCC 751**

3.The learned Government Advocate (Crl.Side) appearing for the first respondent has submitted that the earlier FIR in Cr.No.98 of 2011 is in no way connected with the facts mentioned in the FIR in Cr.No.543 of 2016. He further submitted that in FIR No.98 of 2011, it was stated that the accused persons waylaid the defacto complainant and caused obstructions for putting up construction and also assaulted her and also criminally intimidated her and hence the said FIR was registered under Sections 341, 342 ,323 and 506(ii) of IPC whereas FIR in Cr.No.543 of 2016 has been registered under Sections 420, 465, 468 and 109 of IPC in respect of the execution of the settlement deed dated 07.09.2011 and thereby grabbing the pathway which is meant for usage of the second respondent. He further submitted that since the petitioners have no right over the said pathway, they should not have executed settlement deed. He further submitted that the said settlement deed has been executed with an intention to prevent the second respondent from using the pathway and hence, the second FIR is maintainable and therefore, he prayed to dismiss the above petition.



4. The learned counsel for the second respondent has submitted

that the property in dispute originally belonged to one A.Augustin S/o.Alexander and the said A.Augustin had executed a settlement deed on 28.11.2002 in favour of the petitioners 1,2 and 4 and one Christopher Morris. He further submitted that the said Christopher Morris has executed a registered power of attorney dated 06.08.2008 in favour of one Baburaj and the said Baburaj has executed a registered sale deed dated 14.08.2008 in favour of the second respondent. He further submitted that in the said sale deed, the second respondent was given the right to use pathway, but now the petitioners, with a view to prevent the second respondent from using the said pathway, have created a false document viz., settlement deed dated 07.09.2011 and hence, the second respondent has lodged a complaint and based on the said complaint, the first respondent has registered a case in Cr.No.543 of 2016 u/s.420, 465, 468 and 109 of IPC. He further submitted that the case is at investigation stage and this court has to allow the first respondent to complete the investigation and therefore he prayed to dismiss the above petition.

5. The typed set of papers produced by the second respondent would show that the property in dispute originally belonged to one A.Augustin S/o.Alexander, who is paternal grandfather of the petitioners 1 to 3 and father-in-law of the petitioner No.4. The said Augustin had executed four settlement deeds on 28.11.2002, out of which three were executed in favour of the petitioners 1,2, and 4. The fourth settlement deed was executed in favour of one Christopher Morris, who is another son of the fourth petitioner herein. The said Christopher Morris has executed a registered power of attorney dated 06.08.2008 in favour of one Baburaj and based on the said power of attorney, the said Baburaj has executed a sale deed in favour of second respondent herein on 04.08.2008. In the said sale deed, a right to use pathway is also given. According to the second respondent, since already the original owner viz., Augustin had disposed of all the properties through settlement deeds, nothing left for disposal and as such, the petitioners 1 to 3, 5 and 6 have no right to execute a settlement deed dated 07.09.2011 in favour of the fourth petitioner.

6. It is to be pointed out that the petitioners 1 to 4 have filed a suit in O.S.No.472 of 2011 on the file of the I Additional District Munsif, Nagercoil, for the relief of declaration, mandatory injunction and prohibitory injunction stating that the second respondent herein has tried to encroach the suit property. In the said suit, they have not disputed the right of pathway given to the second respondent herein. On the contrary, they have admitted in paragraph No.5 of the plaint that the second respondent herein is adjacent owner of a portion of the property situated in SR.No.1/57 purchased from the brother of the first petitioner herein with specific measurement on all sides. It is also admitted that the second respondent herein can use only the

pathway area available on the eastern side of the property purchased by her. So, it appears that the petitioners 1 to 4 have admitted the second respondent's right to use pathway. If the second respondent is disputing the right of the petitioners 1 to 3, 5 and 6 for executing the settlement deed dated 09.07.2011 in favour of the fourth petitioner, that plea can be taken in the suit in O.S.No.472 of 2011 which is already pending.

7. In **Mohammed Ibrahim and Others Vs. State of Bihar and Another (supra)**, the Hon'ble Supreme Court in paragraph Nos.14 to 17 has held as follows:

> “**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.* "

8. In this case, the petitioners 1 to 3, 5 & 6 have executed the settlement deed dated 07.09.2011 in favour of fourth petitioner claiming that the property mentioned in the said document was not disposed of by their grandfather Augustin and hence they have executed the said settlement deed in favour of the fourth petitioner. Therefore, in view of the decision of the Hon'ble Supreme Court, execution of the settlement deed dated 07.09.2011 is not execution of a false document as defined u/s.464 of IPC. Since the said document is not a false document, the question of forgery does not arise. So Section 465 of IPC is not attracted. Consequently, Section 468 of IPC is also not attracted.

9. The next question is as to whether Section 420 of IPC will attract. To constitute the offence u/s.420 of IPC, the Hon'ble Supreme Court in the aforesaid decision itself in paragraph Nos.19 to 22 has observed as follows:

"**19.** *To constitute an offence under Section 420, there should not only be cheating, but as a consequence of such cheating, the accused should have dishonestly induced the person deceived*

*(i) to deliver any property to any person, or*
*(ii) to make, alter or destroy wholly or in part a valuable security (or anything signed or sealed and which is capable of being converted into a valuable security).*



**20.** *When a sale deed is executed conveying a property claiming ownership thereto, it may be possible for the purchaser under such sale deed, to allege that the vendor has cheated him by making a false representation of ownership and fraudulently induced him to part with the sale consideration. But in this case the complaint is not by the purchaser. On the other hand, the purchaser is made a co-accused.*

**21.** *It is not the case of the complainant that any of the accused tried to deceive him either by making a false or misleading representation or by any other action or omission, nor is it his case that they offered him any fraudulent or dishonest inducement to deliver any property or to consent to the retention thereof by any person or to intentionally induce him to do or omit to do anything which he would not do or omit if he were not so deceived. Nor did the complainant allege that the first appellant pretended to be the complainant while executing the sale deeds. Therefore, it cannot be said that the first accused by the act of executing sale deeds in favour of the second accused or the second accused by reason of being the purchaser, or the third, fourth and fifth accused, by reason of being the witness, scribe and stamp vendor in regard to the sale deeds, deceived the complainant in any manner.*

**22.** *As the ingredients of cheating as stated in Section 415 are not found, it cannot be said that there was an offence punishable under sections 417, 418, 419 or 420 of the Code.* "

10. In this case also, it is not the case of the second respondent that the petitioners tried to deceive her either by making a false or misleading representation or by any other action or omission, nor is it her case that they offered her any fraudulent or dishonest inducement to deliver any property or to consent to the retention thereof by any person or to intentionally induce her to do or omit to do anything which she would not do or omit if she were not so deceived. Hence, Section 420 of IPC also will not attract. Therefore, the FIR in Cr.No.453 of 2016 which is pending on the file of the first respondent police has to be quashed.



11. In the result, this petition is allowed. The FIR in Cr.No.543 of 2016 which is pending on the file of the first

respondent is quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To

1. The Inspector of Police,
   Kottar Police Station,
   Kanyakumari District.

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

Gv/vs
AE/SKN RSK/SAR1/26.06.2018/7P/3C

**Order made in**
**CRL.OP.(MD)No.21789 of 2016**
**and**
**CRL.MP.(MD)Nos.11068 &**
**11209/2016 & 11166/2017**
**24.05.2018**