



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Order	Date of Pronouncing the Order
07.09.2018	12/09/18

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THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.R.C(MD)No.378 of 2018

Asan Aliyar ... Petitioner/Appellant/Accused No.2

Vs.

State through
The Inspector of Police,
District Crime Branch,
Ramanathapuram,
Ramanathapuram District
(Crime No.05 of 2008) Respondent/Respondent/Complainant

PRAYER: Criminal Revision Case is filed under Section 397 read with Section 401 of the Code of Criminal Procedure, against the judgment dated 06.07.2017 in C.A.No.13 of 2016 on the file of the Principal District and Sessions Court, Ramanathapuram confirming the conviction and sentence imposed upon the petitioner in C.C.No.99 of 2012 on the file of the learned Judicial Magistrate No.II, Ramanathapuram, dated 30.08.2016 and acquit the petitioner.

For Petitioner : Mr.N.Anantha Padmanaban

For Respondent : Mr.A.Robinson
Government Advocate (Crl.Side)

ORDER

This Criminal Revision Petition has been filed to set aside the judgment dated 06.07.2017 in C.A.No.13 of 2016 on the file of the learned Principal District and Sessions Judge, Ramanathapuram confirming the conviction and sentence imposed upon the petitioner in C.C.No.99 of 2012 on the file of the learned Judicial Magistrate No.II, Ramanathapuram, dated 30.08.2016

2. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl.Side) for the respondent.

3. This revision petitioner is directed against the Judgment made in C.A.No.13 of 2016 on the file of the learned Principal District Judge, Ramanathapuram confirming the Judgment of the Trial Court passed in C.C.No.99 of 2012 dated 30.08.2016 holding the (Asan Aliyar) petitioner herein guilty for offence under Section 471 of IPC, imposing fine of Rs.5,000/-. In default 3 months Simple Imprisonment.



4. Thajma beebi is the Defacto complainant. Her father Kammarudeen executed Inam settlement in her favour 77 cents of land in Sankarankottai kurup Vani Village, Survey No.436/3A under deed No.1391/1977. Noor Mohamed(A4) along with Thaslin and others, though knowing fully well that the property belongs to Thajmabeebi, conspired to grab it by impersonation and fabrication of documents. To wit, on 26.02.2002 they created sale deed in favour of Gajendiran a friend of Noor Mohamed by impersonating and forging Thajmabeebi. Not stopping with the act of forgery and impersonation. Noor Mohammed (A4) created document of sale deed, showing Thaslin (A1) the owner of the property and Asan Aliyar (A2) the purchaser. The said sale deed was registered as Document No.711 of 2003 and patta was transferred in the name of the second accused. After so creating a sham and nominal document of title in the name of second accused, the fourth accused created document as if the second accused sold the property to one Gajini Mohammed who is none else than son of fourth accused. This sale deed was registered as Document No.4838 of 2006. Patta was also got transferred in the name of Gajani Mohammed. Later, Gajini Mohammed sold the property to Panjaraj (A3) binami to fourth accused, under Document No.5318 of 2007 and got the patta transferred in the name of Panjaraj.

5. A suit was by filed by Panjaraj against Thajmabeebi in O.S.No.109 of 2008 at District Munsif Court, Ramanathapuram based on above said forged document got registered as genuine in order to cheat the defacto complainant Thajmabeebi. Meanwhile, the defacto complainant has alienated the property for valuable consideration to one Rama Subramaniam under sale deed Document No.2394 of 2008 he was shown as one of the defendant in the above suit. When she attempt to give complaint on coming to know about the fabrication of documents and fraudulent act of the accused persons, Noor Mohammed, his Son Gajini Mohammed and Panjaraj came to her house on 15.06.2008 at 8.00 a.m. and threatened her to kill. They wielded arrival and caused intimidation to cause death. Hence case against them was registered and tried.

6. Pending trial, Gajini Mohamed (A-3), Gulan Thasthagir (A-8) and Kamarudeen (A9) died. The ranking of the accused persons were rearranged.

7. The remaining accused were tried for the following charges :-

A-1 (Thasleen) and A-2 (Asan Aliyar) were tried for offences under Sections 120(b) r/w 420, 465, 468, 471 r/w 34 IPC. A-3 (Panjaraj) was tried for offence under Sections 120(b) r/w. 420, 419, 465, 468, 506(ii) r/w. 34 IPC. A-4 (Noor Mohamed) was tried for offence under Sections 120(b) r/w with 419, 420, 465, 471, 506(ii) IPC, 120(b) r/w 109, 34 IPC and A-5 (Sekaran) for offences under Sections 120(b) r/w 420, 419, 465, 468 r/w 34 IPC.

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8. Before the trial Court, prosecution examined 11 witnesses,



12 exhibits were marked on the side of the prosecution. On the side of the defence 7 exhibits were marked and one witness Noor Mohammed (A-4) was examined as D.W.1.

9. The specific case of the prosecution is that, the property settled in favour of P.W.1 by her father in year 1977 through Ex.P.2, was fraudulently transferred in favour of Gajendiran by impersonation pursuant to the conspiracy hatched by other accused at the behest of Noor Mohammed (A-4). Gajendiran who was shown as an accused in the FIR, found innocent during the course of investigation. His statement under Section 164 Cr.P.C was recorded before the Magistrate and marked as Ex.P.3. Gajendiran was examined as P.W.5. The trial Court has held that prosecution has not proved any conspiracy between the accused persons in respect of the sale deed dated 07.01.2002 alleged to have executed by Gajendiran (P.W.5) infavour of Noor Mohammed (A-4). Further the trial Court has also held that from Ex.P.4 Encumbrance certificate it is clearly seen that no further transaction has taken place based on Ex.P.9. Therefore held the conspiracy charge against the Accused Nos.1 to 6 nor proved.

10. From the report of the finger print expert P.W.7, the trial Court has concluded that Ex.P.9 the sale deed dated 26.02.2002 executed in the name of Thajmabeebi in favour of Gajendiran is not executed by Thajmabeebi. The finger prints in Ex.P.9 does not tally with the admitted finger prints of Thajmabeebi (P.W.1) and Gajendiran (P.W.5). Therefore the fifth and sixth Accused who have falsely identified the parties to the document Ex.P.9 as Thajmabeebi and Gajendiran were held guilty of offence under Sections 419 and 465 IPC. The trial Court has held that, the property in Survey No.436/3A in patta No.997 is owned by P.W.1. Al her brother though knowing fully well that the property belongs to her sister P.W.1, by false representation that it belongs to him, had sold it to A.2 through the sale deed is Ex.P.5. The patta for the property Ex.P.13 still stood in the name of P.W.1, Ex.A.2 being a real estate broker might have known the patta still in the name of P.W.1 despite that, he has knowingly purchased the property of P.W.1 from Accused No.1 who was not the real title holder. Also the trial Court has further sold the property to Gajini Mohammed (deceased). Gajini Mohammed in turn has sold to Panjaraj (A-3).

11. The trial Court has disbelieves the prosecution case that, when 2nd Accused came to know that the title to his sale deed Ex.P.5 is defective and there are other claimants to the 77 cents of land, 4th Accused offered his 58 cents of land in exchange of this 77 cents disputed land and got the sale deed registered in favour of his son Gajini Mohammed (deceased - Accused). Therefore while holding A .2 that he purchased the property from Accused No.1 with knowledge about the fabrication of the deed and has in turn sold it to Gajini Mohammed under Ex.P.6 on 04.06.2006, the trial Court exonerated A1 (Noor Mohammed) for offence under Section 471 IPC but held Accused No.2 (Asan Aliyar), Gajini Mohammed (deceased) and

Panjaraj (A-3) as guilty of offence under Section 471 IPC.

12. The trial Court has also recorded that Thajma Beevi (PW1) has sold her property to P.W.4 Ramasubramanian before she lodged the complaint Ex.P.1. She admits when she sold the property the patta was in the name of A.3 (Panjaraj). In the suit filed by Panjaraj against her and P.W.4 Ramasubramanian, Panjaraj has executed a release deed dated 03.03.2017 in her favour. Panjaraj has pleaded that he purchased the property without knowledge of defect in title. Therefore the court has held A2 to 6 not guilty of offence under Section 420 IPC.

13. The Courts below held that, being the brother of P.W.1. He had knowledge his father Kamarudeen (deceased - Accused) had settled the property to P.W.1 under Ex.P.2. In spite of the knowledge, he has sold the property to 2nd Accused as if he is the title holder of the property. Therefore trial Court held A1 guilty of offence under Section 417 IPC though no charge was framed against 1st Accused for this offence.

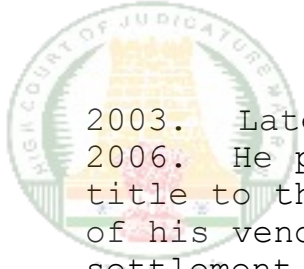
14. As far as the allegation that on 15.06.2008 the accused persons wielding aruval and threatened dire consequences from the charge under Section 506(ii) of IPC the trial Court disbelieve it and acquitted all the accused since P.W.1 evidence was totally contradict to other prosecution witnesses P.W.2 and P.W.3 in this regard.

15. Considering the defence documents and the testimony of D.W.1 (4th Accused) the trial Court acquitted A-4 from all charges accepting his plea that P.W.1 has falsely roped him in this case due to previous enmity and misunderstanding in money transaction.

16. The lower appellate Court on appeal had reiterated the finding of the trial Court and confirmed it by dismissing C.A.No.11 of 2016 filed by Panjaraj (A-3) Sekaran (A-4) and Murugan (A-6) and C.A.No.13 of 2016 filed by Asan Aliyar (A-2).

17. The contention of the revision petitioner (Asan Aliyar - A2) is that, according to the prosecution Noor Mohammed (A-4) was the perpetrator of the conspiracy of impersonation, cheating and forging, but he was not found guilty by both Courts. The charge of conspiracy impersonation and cheating found not proved against this revision petitioner. The reason stated in the judgment to hold this revision petitioner for offence under Section 471 IPC is that he being a real estate broker he must know that patta for the property stands in the name of P.W.1, despite the knowledge he had purchased the property from A1 and later sold in Gajini Mohammed (deceased), so as to make it appear as if the transactions are genuine. These finding based on surmise and conjectures, hence perverse.

18. According to the revision petitioner, he purchased the property from Thaslin (A-1) s/o. Kamarudeen vide Ex.P.5 in the year



2003. Later he sold it to Gajini Mohammed vide Ex.P.6 in the year 2006. He purchased the property from Thaslin (A-1) bonafidely. The title to the property is traced through Kamarudeen who is the father of his vendor. The defacto complainant also trace her title through settlement deed executed by her father Kamarudeen in the year 1977. She has lodged complaint alleging conspiracy, forgery, impersonation and cheating belatedly long after the revision petitioner sold the property to Gajini Mohammed. The Court having held that Noor Mohammed (A-4) had no role in this case, as a corollary ought to have held that Ex.P.5 and Ex.P.6 are bonafide transaction. Having held the charge under Section 420 IPC not proved against the Accused, the Court below ought to have held the transaction under Ex.P.5 and Ex.P.6 are bonafide transaction believing that 1st Accused had title over the property, the revision petitioner has purchased the property from 1st Accused under Ex.P.5 and sold it to Gajini Mohammed vide sale deed Ex.P.6. Without any *mens rea* to commit offences alleged.

19. The evidence of P.W.1 is tainted with motive and contradiction, her complaint focused on Noor Mohammed (A-4) alleging conspiracy and forgery held to be false. While so the other allegations attributed to the revision petitioner falls to ground since the case of the prosecution against this revision petitioner is that he accommodated and aided Noor Mohammed (A-4) to fabricate documents and to use it as genuine. When the said charge is found not proved, charge under Section 471 IPC independently against the revision petitioner has no legs to stand.

20. Heard the learned Counsel for the revision petitioner. The impugned judgments perused in the light of the records.

21. 77 cents of land in Survey No.436/3A, Old Patta No.1153, New Patta No.997 at Chakkarkottai, Kurupvani Village initially owned by Kamarudeen, who is none other than father of the defacto complainant Thajmabeebi (P.W.1) and Thaslim (A-1). The claim of P.W.1 is that her father settled the said property in the year 1977 vide document No.1391 of 1977 (Ex.P.2). This fact is not disputed. The prosecution further case is that, Noor Mohammed (A-4) with the aid and assistant of Gajendiran (P.W.5) fabricated a sale deed by impersonation wherein the said property was sold by P.W.1 to P.W.5 vide document No.1341 of 2000 on 20.04.2000. In the said sale deed A5 and A6 has signed as witnesses seeing the execution. Based on the finger print expert report Ex.P.10, the Court has held that the finger prints found in the said sale deed does not tally with the P.W.1 and P.W.5, the alleged sale deed document No.39 of 2002, purported to have executed by P.W.5 to Noor Mohammed (A-4) not produced. Therefore A4 and Gajendiran are not guilty. A5 and A6 who are the signatories to the sale deed document No.1341 of 2000 as witnesses identified the execution and claimant were alone found guilty under Section 465 IPC.

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22. It is to be noted that the revision petitioner is no way



connected with the above said transaction. His role in the scheme of alleged crime comes into picture on 04.03.2003 when he purchased the property from 1st Accused Thaslim under sale deed Ex.P.5. When the Courts below have accepted the plea of 1st Accused that he bonafidely believed that he is entitled to a share in his father's Kamarudeen property and sold it to second accused, the Court cannot presume 2nd Accused knowingly purchased the property from 1st Accused just because 2nd Accused is a real estate broker by profession. First of all, the element of *mens rea* in case of this nature is essential.

23. The Courts below on appreciation of facts has ruled out conspiracy and intention of cheating. Also held that 1st Accused has bonafidely believed that he has share in his father's property and sold it to 2nd Accused. To attract offence under Section 471 IPC the following ingredients should be proved.

- 1) The document must be a forged document
- 2) It must have been made to use dishonestly or fraudulently as genuine
- 3) The person who use the said document must have reasons to believe or knowledge that the said document is a forged document.

24. A condition precedent for the offence under section 471 is forgery. A precedent for forgery is making false documents. As far as Ex.P5 and Exp.6 are two documents which are claimed to be documents intended to commit fraud with dishonest or fraudulent intention. The allegation of the prosecution in this regard lacks evidence. While the trial court as well as the appellate Court acquitted the accused/revision petitioner for offences under section 468 of IPC, then the ingredients for offence under Section 471 of IPC namely reason to believe or knowledge to believe the documents Ex.P.5 and Ex.P.6 are forged documents fails to sustain. The knowledge or reason to believe the documents as valid cannot be drawn on presumption based on the fact that the revision petitioner doing real estate business so he made have knowledge that his sale deed Ex.P.5 is a forged document, since patta for the said property is not in the name of his seller.

25. This petitioner has purchased the property from A1 who had traced the property from his father Kamrudeen(initially arrayed as A9). The defacto complainant has also traced the property only through A9. It is an admitted fact by the defacto complainant that the patta of the land can be transferred and stood in the name of Panckaraj(A3) when she sold the property to Ramasubramanian (PW 4). It is also admitted fact of the defacto complainant that the regarding title, suit was filed and parties have entered into compromise. Pankraj had relinquished his right in the property in favour of Ramasubramanian, purchaser from PW.1.

26. On cumulative assessment of the fact, this Court holds in the absence of any proof that Ex.P.5 and 6 were made dishonestly with the intention of cheating and the same was used as genuine



document with the knowledge that they are forged documents, the Court below ought not to have held that the revision petitioner was guilty of offence under Section 471 of IPC.

27. As pointed out earlier when material evidence placed before the Court does not disclose the fact that the revision petitioner had knowledge about the title of his vendor or he had reason to believe that the sale deed executed by his vendor was not a valid document. In the absence of proven *mens rea*, the trial court ought not have convicted the revision petitioner under section 471 of IPC. Moreso, when the trial court had categorically held that this petitioner is not involved in any conspiracy to cheat or fabricate false documents.

28. For the above stated reasons, the revision petition is allowed. For the infirmity and illegality found in the judgements of the courts below, they are liable to be set aside. In the result, the Criminal Revision Petition is allowed and the judgment of the trial court in C.C No.99 of 2012 confirmed by the trial court in C.A.No. 13 of 2016 is hereby set aside. The revision petitioner/accused is acquitted. Bail bond if any executed by him, shall stand cancelled and fine amount, if any, paid by him is ordered to be refunded forthwith.

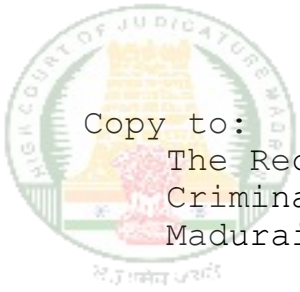
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