



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.04.2018

CORAM

THE HONOURABLE MR. JUSTICE G.R.SWAMINATHAN

Cr1.O.P.(MD)No.18507 of 2013

and

M.P.(MD)No.1 of 2013

M.N.V.Sudhakar,
S/o.Sathya Narayanan,
Vice President,
M/s.Ind-Bharath Power (Garwar) Limited,
Saminatham Village,
Ottapidaram Taluk,
Tuticorin District.

... Petitioner

Vs.

G.Senthilkumar

... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.181 of 2013 on the file of the Judicial Magistrate Court No.I, Tuticorin, and quash the same.

For Petitioner : Mr.N.Ananthapadmanabhan

For Respondent : Mr.S.Siva Thilagar

ORDER

The petitioner is figuring as Accused No.8 in C.C.No.181 of 2013 on the file of the Judicial Magistrate Court No.I, Tuticorin.

2.The case of the prosecution is that the property in question is the ancestral property of the de-facto complainant's family.

3.The petitioner herein representing the Company, viz., M/s.Ind-Bharath Power (Garwar) Limited purchased the property from A7, who acted as Power Agent for Accused Nos.4 to 6. The said purchase was made on 03.11.2009. It was by way of registered sale deed. The petitioner's vendors had in turn purchased the property in the year 1997. The petitioner would trace his title independently of the de-facto complainant. If the de-facto complainant is aggrieved by the unlawful transactions that had taken place in respect of his land, it is for him to file appropriate Civil Suit for declaration and recovery of possession or injunction.

<https://hcservices.ecourts.gov.in/hcservices/>
The petitioner herein has now been charged with the offences of cheating as well as forgery.



4. The Hon'ble Supreme Court in the decision reported in 2009 (8) SCC 751 [Ibrahim and others Vs. State of Bihar and another] had set out the ingredients of cheating and forgery. Paragraph Nos.19 to 21 of the said decision read as under:

''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.''

5. In the present case also, the ingredients of cheating are wholly absent.

6. As regards the commission of the offence of forgery, in the abovesaid decision at Paragraph No.23, the Hon'ble Supreme Court has held as follows:-

''23. When we say that execution of a sale deed by a person, purporting to convey a property which is not his, as his property, is not making a false document and therefore not forgery, we should not be understood as holding that such an act can never be a criminal offence. If a person sells a property knowing that it does not belong to him, and thereby defrauds, that is the purchaser, may complain that the vendor committed the fraudulent act of cheating. But a third



party who is not the purchaser under the deed may not be able to make such complaint.''

7. In the present case also, the de-facto complainant being a third party cannot lodge any complaint. More than anything else, the petitioner herein is a *bona fide* purchaser for valuable consideration. Therefore, no penal liability can be fastened on him. The continuance of the impugned prosecution against the petitioner if permitted, would result in gross miscarriage of justice. Therefore, the impugned prosecution is quashed insofar as the petitioner is concerned. Accordingly, this Criminal Original Petition is allowed. Consequently, connected Miscellaneous Petition is closed.

Sd/
Assistant Registrar (CS-III)

/True copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate No. I,
Tuticorin.

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

+1cc to Mr. S. Sivathilakar, Advocate, SR.No. 61133

Cr1.O.P. (MD) No. 18507 of 2013
11.04.2018

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