BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Reserved on : 21.08.2018
Pronounced on : 04.09.2018
CORAM:
THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN
Crl.O.P.(MD).No.5776 of 2011
and
M.P(MD).No.2 of 2011

S.S.Janagarajan ..Petitioner

Vs.

1. The State of Tamil Nadu
rep. by the Inspector of Police,
District Crime Branch,
Tirunelveli District
Crime No.12 of 2007

2.P.Dhanraj ..Respondents

PRAYER: This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, to call for the records in C.C.No.541 of 2010 pending before Judicial Magistrate No.1, Tirunelveli and quash the same in so far as the petitioner is concerned.

For Petitioner :Mr.M.Ravi
For Respondents :Mr.V.Neelakandan, APP for R1
Mr.T.Antony Arulraj for R2

O R D E R

This quash petition is filed to quash the criminal proceedings in C.C.No.541 of 2010 pending on the file of the learned Judicial Magistrate No.1, Tirunelveli.

2.The second respondent lodged a complaint alleging that he is the absolute owner of the property in S.No.405/1 admeasuring 8 acres and 2 cents and in S.No.404/2 admeasuring 22.30 acres. He claims that he had purchased the same by the sale deed dated 01.07.1994 registered as Document No.909/94 from one Rahim and Pitchaikani, who have purchased the said property from two sale deeds registered as Document No.239/93 dated 31.03.1993 and Document No.425/1993 dated 24.02.1993. Insofar as the property comprised in S.No.402/2 is concerned is made against A1, who has executed the sale deed in Document No.945/1997 on 24.09.1997 in favour of A2, A16 and A17. Those sale deeds are fabricated by committing forgery and impersonation. Further, he alleged that A1 has no right or title over the property to make unlawful gain, he executed sale deed in favour of A2, A16 and A17. Thereafter, A6 posed himself as the son of the defacto complainant and impersonating him, executed a power deed and registered Document No.89/2004 dated 03.05.2004, in respect of the property comprised in S.No.405/1 admeasuring 08.03 acres as his ancestral property in favour of A7 to deal with the property. In turn, A7 executed the sale deed dated 14.05.2004 in favour of A11 and registered the sale deed as Document No.592/2004. A11 is a broker, who used to sale properties to M/s.Sarjan Realities (P) Limited. A6, A7 and A11 have all acted in collusion with a view to get money from M/s.Sarjan Realities (P) Limited. In turn, the said M/s.Sarjan Realities (P) Limited, through their power of attorney viz., Narendra Savalia, who is arraigned as A10 sold out the property comprised in S.No.405/1 admeasuring 2 acres situated at Palabathiraramapuram village, Uthumalai Taluk, Tirunelveli District to the petitioner herein, who is arraigned as A15. Further, he alleged that the said M/s.Sarjan Realities (P) Limited is the sister concern of M/s.Suzlon Energy Limited, which is dealing with supply and erection of Wind Electricity Generators. Thereafter, without any title or rights over the property, the entire property has been sold out with the intention to cheat the complainant and grab the entire land. They also jointly conspired together forged and fabricated various deeds by impersonating the complainant. Hence, the complainant.

3.There are totally 18 accused, in which, the petitioner is arraigned as A15. On receipt of the complaint, the first respondent registered the case in crime No.12 of 2007 for the offence under Sections 465, 467, 468, 471, 420 and 120(B) of I.P.C. After completion of investigation, the first respondent filed charge sheet before the learned Judicial Magistrate No.1, Tirunelveli and the same has been taken cognizance for the offences stated above in C.C.No.541 of 2010. The said proceedings is under challenge in this quash petition by the petitioner/A15.

4.The learned counsel appearing for the petitioner would submit that the petitioner claimed that he is only the bonafide purchaser, purchased the land from the vendor for valid and proper consideration and he is no way connected with forgery and fabrication of documents as alleged by the complainant. Insofar as the petitioner is concerned, he purchased the land admeasuring 2 acres comprised in S.No.405/1 situated at Palabathiraramapuram village, Uthumalai Taluk, Tirunelveli District and the same is registered as Document No.1046/4 on 19.07.2004 registered in the office of Sub Registrar, Uthumalai. Hence, he has left with no other efficacious alternative remedy, he is constrained to invoke the inherent jurisdiction of this Court under Section 482 of Cr.P.C. to quash the entire criminal proceedings as against him taken cognizance in C.C.No.540 of 2010 on the file of the learned Judicial Magistrate No.1, Tirunelveli, on the following grounds:

(i) the petitioner is a bonafide purchaser and he is no way connected with the alleged fabrication of documents as alleged in the complaint.

(ii)the petitioner is arraigned as A15 and even as per the complaint, he purchased the said property from A10 for valid sale consideration. If at all any grievance over the sale of properties, the complainant can very well approach the civil Court to set aside the subsequent sale proceedings.

(iii)the entire allegations are civil in nature and wantonly, the complainant has given the colour of criminal proceedings as against the petitioner.

(iv)in fact, the defacto complainant also instituted civil suits claiming declaratory and other relief before the civil Court and as such, the remedy lies within the jurisdiction of civil Court and as such, as far as the petitioner is concerned, he has nothing to do with the above allegations.

(v)except the allegation that all the accused conspired together and with intention to grab the entire property from the complainant, all the accused conspired together and forged and fabricated the documents and impersonated the complainant and executed the sale deed, no other specific allegation or overt act against the petitioner.

(vi)Even from seeing the 161 (3) of Cr.P.C. statements, no piece of evidence or material to connect this petitioner in the said crime.

5.The learned counsel appearing for the petitioner further stated that the basic ingredients of the offence of cheating itself is not made out as against the petitioner. The motive, deception at the stage of inception of the transaction and intention let alone criminal intention to defraud are absolutely absent. Therefore, no offence is made out as against the petitioner. The entire criminal proceedings against this petitioner is nothing but abuse of process of law. Further, even according to the complainant, the petitioner has not created any document or forged any of signature or impersonated any of the person to execute the document in his favour and hence, prayed for quashing the entire criminal proceedings against the petitioner.

6.The learned Additional Public Prosecutor appearing for the first respondent would contend that clinching evidence and materials to connect the petitioner are very much available. The grounds raised by the petitioner are disputed questions of fact and therefore, it has to be gone into by full fledged trial and at this stage, it cannot be quashed and prayed for dismissal of the quash petition.

7.The learned counsel appearing for the second respondent/defacto complainant would contend that the defacto complainant is the absolute owner of the property comprised in S.No.405/1 admeasuring 8 acres and 2 cents and he purchased the said property on 01.07.1994 from one Rahim and one Pitchaikani through the document No.501/94. Thereafter, the first accused without any right or title in his favour committing forgery, fabrication and impersonating the complainant, executed the power of attorney and in turn, executed various sale deeds. The petitioner is arraigned as A15, who is none other than M/s.Suzlon Energy Limited, which is a sister concern of M/s.Sarjan Realities (P) Limited. They all know very well about the conspiracy and only to cheat the defacto complainant with dishonest intention, they created sale deed in their favour. Further he contended that all the allegations can be revealed out from the documents and as such, it cannot be quashed at this stage and the charges can be proved only through the full fledged trial. Hence, he prayed for dismissal of the quash application.

8.Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the first respondent and the learned counsel appearing for the second respondent.

9.The specific case of the respondent/defacto complainant is that the defacto complainant is the absolute owner of the property in S.No.405/1 admeasuring 8 acres and 2 cents and he claims that he had purchased the same by the sale deed dated 01.07.1994 registered as Document No.909/94 from one Rahim and Pitchaikani and as Document No.239/93 dated 31.03.1993 and Document No.425/1993 dated 24.02.1993. Thereafter, A6 posed himself as the son of the defacto complainant and impersonating him, executed a power deed and registered Document No.89/2004 dated 03.05.2004, in respect of the property comprised in S.No.405/1 admeasuring 08.03 acres as his ancestral property in favour of A7 to deal with the property. Whereas, one M/s.Sarjan Realities (P) Limited, through their power of attorney viz., Narendra Savalia, who is arraigned as A10 sold out the property comprised in S.No.405/1 admeasuring 2 acres situated at Palabathiraramapuram village, Uthumalai Taluk, Tirunelveli District to the petitioner herein, who is arraigned as A15. The accused persons also jointly conspired together forged and fabricated various deeds by impersonating the complainant.

10.Whereas, according to the petitioner, he purchased the property comprised in S.No.405/1 admeasuring 2 acres through the sale deed dated 19.07.2004 as Document No.1046/2004 for valid consideration from one Shri.Narendra Savalia, who is the power agent of Mrs.Sarjan Realities (P) Limited,who is arraigned as A10. After purchase, the petitioner is the absolute possession of enjoyment of the property from the date of purchase. Further, at the time of purchase, the petitioner verified the title and legal opinion by encumbrance certificate and he claimed that he has bonafidely purchased the said property for valid consideration.

11.As per the complaint, the only allegation as against the petitioner is that he also conspired with other accused and fabricated and forged the signature of the complainant and also impersonated the complainant and executed the sale deed in his favour. It is seen from the records that the petitioner purchased the property from A10 for valid consideration. He did not forge any of the signature and he did not fabricate any of the documents in his favour. He purchased the said property vide sale deed dated 19.07.2004 and registered as Document No.1046/2004. Further, he also did not impersonate any one to execute the sale deed. Further the only allegation is that conspiracy with other accused persons. It is seen from the records that the alleged impersonation of defacto complainant has been committed and the sale deeds were executed in the year 1997, whereas, the petitioner purchased the property only in the year 2004 and as such, there is absolutely no chance for the petitioner for conspiracy with A1 and A2 to impersonate the defacto complainant for execution of the power of attorney deed and subsequent sale deeds.

12.In this regard, the learned counsel appearing for the petitioner relies upon the judgment of this Court reported in ***2011 (1)MWN (Cr.) 128 - R.Lakshminarayanan V. D.Gurumurthy***, wherein this Court has held as follows:

> "11.The only allegation against the petitioners is that they have hatched a Criminal conspiracy during the year 1999 to defraud the respondent. In Mohd.Ibrahim V. State of Biharm 2009(3) SCC (Crl.) 929, the Supreme Court has dealt in detail on the provisions of Sections 467, 471 and 420 of IPC, the Apex Court has held as follows:
>
>> "16.here 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. ”

He further rely upon the judgment of the Hon'ble Supreme Court reported in ***(2011) 2 MLJ (Crl.) 365 (SC) - V.P.Shrivastava V. Indian Explosives Ltd.,*** wherein, the Apex Court has held as follows:

“34.In the instant case, there is nothing in the complaint which may even suggest remotely that the IEL had entrusted any property to the appellants or that the appellants had dominion over any of the properties of the IEL, which they dishonestly converted to their own use so as to satisfy the ingredients of Section 405 of the IPC, punishable under Section 406 IPC.

35.Having come to the conclusion that no prima facie case had been made out against the appellants in respect of the alleged offences under Sections 420 and 406 IPC, the question of alleged conspiracy between the appellants does not arise. Nevertheless, in order to bring home the charge of conspiracy within the ambit of Section 120B of the IPC, it is necessary to establish that there was an agreement between the appellants for doing an unlawful act. The complaint lacks any such substance.”

He would further rely on the judgment of the Hon'ble Supreme Court reported in ***(2010) 1 MLJ (Crl.) 1095 (SC) - Devendra V. State of U.P.,*** wherein, the Hon'ble Apex Court has held as follows:

“15.`Cheating' has been defined in Section 415 of the Indian Penal Code to mean:

"Cheating-- 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 9 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'."

16.In V.Y. Jose v. State of Gujarat and Anr. [(2009) 3 SCC 78], this Court opined:

"14.An offence of cheating cannot be said to have been made out unless the following ingredients are satisfied:

i) deception of a person either by making a false or misleading representation or by other action or omission;

(ii) fraudulently or dishonestly inducing any person to deliver any property; or to consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit.

For the purpose of constituting an offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. Even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in absence of a culpable intention at the time of making initial promise being absent, no offence under Section 420 of the Indian Penal Code can be said to have been made out."

10 It is, therefore, evident that a misrepresentation from the very beginning is a sine qua non for constitution of an offence of cheating, although in some cases, an intention to cheat may develop at a later stage of formation of the contract.

17.In Hridaya Ranjan Prasad Verma and Ors. v. State of Bihar and Anr.[(2000) 4 SCC 168], this Court held:

"14. On a reading of the section it is manifest that in the definition there are set forth two separate classes of acts which the person deceived may be induced to do. In the first place he may be induced fraudulently or dishonestly to deliver any property to any person. The second class of acts set forth in the section is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases the inducing must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but not fraudulent or dishonest.

15. In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time to inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show 11 that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed."

[See also Indian Oil Corporation v. NEPC India Ltd. and Ors. (2006) 6 SCC 736, Veer Prakash Sharma v. Anil Kumar Agarwal and Anr. 2007 (9) SCALE 502, V.Y. Jose (supra) and Ravindra Kumar Madhanlal Goenka & Anr. v. M/s. Rugmini Ram Raghav Spinners & Anr. 2009 (6) SCALE 162] 23.

18.Section 463 of the Indian Penal Code reads as under:

"463. Forgery - Whoever makes any false documents or false electronic record or part of a document or electronic record with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery."

According to Mr. Das, making of a false document so as to support any claim over title would constitute forgery within the meaning of the said provision and as a document was created for the purpose of showing one- third share in the joint property by the appellants although they were not entitled to therefor, they must be held to have committed an offence.

19.Making of any false document, in view of the definition of `forgery' is the sine qua non therefor. What would amount to making of a false document is specified in Section 464 thereof. What is, therefore, necessary is to execute a document with the intention of causing it to be believed that such document inter alia was made by the authority of a person by whom or by whose authority he knows that it was not made.

20. to 26. ....

27. Mr. Das submits that a wrong committed on the part of a person may be a civil wrong or a criminal wrong although an act of omission or commission on the part of a person may give rise to both civil action and criminal action. A distinction must be made between a civil wrong and a criminal wrong. When dispute between the parties constitute only a civil wrong and not a criminal wrong, the courts would not permit a person to be harassed although no case for taking cognizance of the offence has been made out.

28.Furthermore, in a case of this nature where even, according to Mr. Das, no case has been made out for taking cognizance of an offence under Section 420 of the Indian Penal Code, it was obligatory on the part of the learned Chief Judicial Magistrate to apply his mind to the contents of the chargesheet. Such application of mind on his part should have been reflected from the order. [See State of Karnataka and Anr. v. Pastor P. Raju (2006) 6 SCC 728 and Pawan Kumar Sharma v. State of Uttaranchal, Criminal Appeal No. 1692 of 2007 decided on 10th December, 2007].

29.We, however, must place on record that we have not entered into the merit of the dispute as the civil suit is pending. The same has to be determined in accordance with law. We would request the court concerned to consider the desirability of the disposing of civil suit as expeditiously as possible. The appeal is allowed with the aforementioned directions."

He would also rely on the decision of the Hon'ble Apex Court reported in (2010) 1 MLJ (Crl) 840(SC), the Apex Court has held as follows:

> "18. The last offence which is alleged against the appellant is Section 471 IPC. This section is not applicable in the case of the appellant for the simple reason that we have already found that there was no dishonest intention on the part of the appellant nor had she acted fraudulently. This Section applies only in case of the use of a forged document as a genuine document. Since we have found that there is no element of forgery at all, there would be no question of there being any valid allegation against the appellant."

13. It is seen from the above, the ingredients of any of the offence as alleged by the prosecution would not made against the petitioner. For the purpose of constituting an offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. In the absence of such culpable intention, no offence under Section 420 of the Indian Penal Code been made out against the petitioner. Insofar as the allegation of forgery, the petitioner admittedly did not commit any forgery on his purchase. While making of a false document so as to support any claim over title would constitute forgery. What would amount to making of a false document is specified in Section 464 of I.P.C., to execute a document with the intention of causing it to be believed that such document interalia was made by the authority of a person by whom or by whose authority he knows that it was not made.

14.Here, the petitioner is a bonafide purchaser and his vendor executed sale deed in his favour. Further, the execution of sale deed is also not denied and there is no falsification of any documents to attract the offence under Section 465 of I.P.C. Admittedly, the petitioner has come into the picture only in the year 2004 by their sale deed from A10. Therefore, even on the basis of the records, there is no offence made out against the petitioner.

15.In the result, this criminal original petition is allowed and proceedings in C.C.No.541 of 2010 pending before Judicial Magistrate No.1, Tirunelveli is quashed against the petitioner alone. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(crl side)

/True Copy/

Sub Assistant Registrar(Cs-I)

To

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

2. The Judicial Magistrate No.1,
   Tirunelveli.

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

+1cc to Mr. T.Antony Arulraj, Advocate Sr.No.82317
+1cc to M/s. Polax Legal Solutions, Sr.No.82118

ARUL

VB/SKN/SAR1/14.09.2018/11P/6C

order made in
Crl.O.P.(MD).No.5776 of 2011
and
M.P(MD).No.2 of 2011
04.09.2018