IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 18.01.2019	Delivered on 23.01.2019

CORAM:

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.OP Nos.30188, 21632/2015 & 27940/2018
and
M.P.No.1 of 2015

Mr.M.Nesamani ..Petitioner
in Crl.O.P.No.30188 of 2015

Mrs.Anusya ..Petitioner
in Crl.O.P.No.21632/2015

Tmt.Kalavathy Rengasamy ..Petitioner
in Crl.O.P.No.27940 /2018

..Vs..

1.The state,
rep. by Inspector of Police,
CCB Team-17,
Office of the Commissioner of Police,
Chennai-600 007. ..Respondent
in Crl.O.P.No.27940/2018
and first respondent in
Crl.OP Nos.30188 & 26132/2015

2.Tmt.Kalavathi Rengaswamy ..Respondents
in Crl.OP Nos.30188 & 21632/2015

PRAYER in Crl.O.P.No.30188/2015: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to (i) stay of all further proceedings in pursuance of FIR No.264/2015 pending before the 1st respondent, on the file of the Inspector of Police, CCB Team-17, Office of the Commissioner of Police, Chennai-600 007 with respect to accused no.1, pending disposal of the above criminal original petition. ii) call for the entire records and quash the proceedings in FIR No.264 of 2015 pending before the 1st respondent, on the file of the

Inspector of Police, CCB Team-17, Office of the Commissioner of Police, Chennai-600 007 with respect to accused No.1.

PRAYER in Crl.O.P.No.21632/2015: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, call for records and to quash the proceedings in Crime No.264 of 2015 under Section 465, 471,447, 448, 506(i) r/w 120 (B) of IPC and 3 of the TNPPDC Act on the file of the 1st respondent Police.

PRAYER in Crl.O.P.No.27940/2018: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, directing the respondent herein to file final report concerned in Crime No.264 of 2015 on the file of the respondent within the stipulated time fixed by this Hon'ble Court.

For Petitioner
in Crl.O.P.No.30188/2015 : Mr.G.Mohana Krishnan

in Crl.O.P.No.21632/2015 : Mr.N.Chandrasekaran

in Crl.O.P.No.27940/2018 : Mr.C.Prabakaran

For Respondents

in Crl.OP Nos.30188,21632/2015 & 27940/2018 : Mr.M.Mohamed Riyaz, APP for R1

in Crl.O.P.Nos.30188 & 21632/2015: Mr.R.C.Paul Kanagaraj, for R2
Mr.M.Sounder Vijay Arulram

COMMON ORDER

These Criminal Original Petitions have been filed seeking to quash the FIR in Crime No.264 of 2015, pending investigation on the file of the 1st respondent. All the three accused persons whose names have been shown in the FIR have filed the quash petitions.

2. The allegations as found in the complaint is that the de-facto complainant had purchased the disputed property from one Singaravelu by a registered Sale Deed dated 19.10.1995, and she is in possession of the enjoyment of the property and the very same property was sold by one Nesamani [A1] by impersonation and by committing forgery in favour of Anusya [A2] by a Sale Deed dated 29.01.2014, and the husband of Anusya viz; Mr.R.Chin Ram [A3] was instrumental in

creating the fake Sale Deed in favour of his wife. The further case in the complaint is that based on the fake Sale Deed, A-2 filed a suit in O.S.No.66/2014, seeking for the relief of permanent injunction against the 2nd respondent and one Elangovan and in the said suit an Interlocutory Application was filed for interim injunction. Initially, the interim injunction was granted and later the same was vacated after the attention of the Civil Court was drawn to the fake Sale Deed. The further case of the complainant is that A-3, who is a Police Officer, using his power is causing threat to the 2nd respondent and is preventing the 2nd respondent from enjoying the property.

3. Based on the above complaint, an FIR was registered in Cr.No.264 of 2015, for an offence under Section 465, 471,447,448,506(i) r/w 120 (B) IPC and 3 of TNPPDL Act.

4. Mr.G.Mohanakrishnan, learned counsel appearing on behalf of the petitioner in Crl.O.P.No.30188 of 2015, would submit that there are absolutely no allegations as against A-1 in the complaint and it is not even known as to why this petitioner has been made as an accused in this case. The learned counsel would further submit that this petitioner is the owner of the property in question by virtue of the Sale Deed dated 20.06.1983, executed by one Kirupanithi in favour of the petitioner. Subsequent to the execution of the Sale Deed, this petitioner was the absolute owner of the property and was in possession and enjoyment of the same and in his capacity as the owner, the said property was sold in favour of Anusya [A2] by virtue of Sale Deed dated 29.01.2014, and there is absolutely no ground to prosecute the FIR as against this petitioner, and at the best the entire dispute can only be purely civil in nature.

5. Mr.N.Chandrasekaran, learned counsel appearing on behalf of A-2 and A-3 in Crl.O.P.No.21632 of 2015 contended that A-2 filed a suit in O.S.No.66 of 2014, as against the 2nd respondent and one Elangovan on the ground that they are attempting to trespass into the suit property, and therefore sought for the relief of permanent injunction restraining them from interfering with the possession and enjoyment of the property. In the said suit, the 2nd respondent had filed a written statement. By drawing the attention to this written statement, the learned counsel submitted that there was absolutely no allegation regarding any impersonation or forgery, and the entire written statement only questioned the right and title over the property of Nesamani [A1]. The learned counsel submitted that this written statement was filed on 20.06.2014.

6. The learned counsel further contended that the 2nd respondent had earlier given a complaint against A-2 and A-3 before the Commissioner of Police on 26.02.2014, and even in

that complaint there was no allegation of impersonation and forgery against the petitioners and the only allegation that was made was that the petitioners are attempting to interfere with the possession of the property and are causing threat to the 2nd respondent. When the 2nd respondent approached this Court by filing Crl.O.P.No.6368 of 2018, seeking to register an FIR based on the complaint given by the 2nd respondent, this Court by an order dated 30.07.2014, dismissed the petition on the ground that the dispute is purely civil in nature.

7. The learned counsel further contended that the 2nd respondent gave another complaint on 26.12.2014, before the T4 Maduravoyal Police Station with the very same allegation of criminal trespass and threat and this complaint was referred to the Executive Magistrate under Section 145 of Cr.P.C in Cr.No.25 of 2015, and the same is pending. The learned counsel therefore submitted that when all the earlier attempts taken by the 2nd respondent had failed, the 2nd respondent seems to have given a complaint in the office of the Director General of Police on 22.01.2015, and the same was referred to the present respondent Police and an FIR came to be registered on 16.07.2015 in Cr.No.264 of 2015, and in this complaint the earlier complaints were concealed and a new allegation of impersonation and forgery has been made.

8. The learned counsel further submitted that the right and title over the property is pending before the competent Civil Court and ultimately it is for the Civil Court to decide the same and there are absolutely no grounds to sustain the FIR and the same is liable to be quashed.

9. Per contra, the learned Additional Public Prosecutor appearing on behalf of the respondent Police submitted that the absolute owner of the property namely Kirupanithi had given a Power of Attorney coupled with interest in favour of Mahadevan in the year 1981. This Power of Attorney was cancelled, and the property was sold in favour of Nesamani [A1] in the year 1983. The said Mahadevan had challenged the cancellation of the Power of Attorney by filing a suit against Kirupanithi and ultimately the case ended up in a Second Appeal before this Court in S.A.No.1807 of 1991, and this Court by a judgment dated 01.01.1995, upheld the Power of Attorney executed in favour of Mahadevan, and also the right of Mahadevan to execute documents pursuant to the deed of Power of Attorney. By pointing out to the judgment of this Court in S.A.No.1807 of 1991, the learned Additional Public Prosecutor submitted that only Mahadevan had the right to execute the Sale Deed in favour of Singaravelu in the year 1992, and in turn the said Singaravelu executed a Sale Deed for the property in favour of the 2nd respondent who became the absolute owner of the property. The learned

Additional Public Prosecutor therefore would contend that the entire transaction between Nesamani [A1] and Anusya [A2] is a fake transaction, and therefore there is no ground to interfere with the investigation.

10. Mr.R.C.Paul Kanagaraj, learned counsel appearing on behalf of the de facto complainant brought to the notice of this Court, the entire transaction that took place from the year 1981 onwards and submitted that Nesamani, who is shown as A-1 as an impersonator was engaged by A-3, and a forged Sale Deed has been created in favour of A-2 and therefore the accused persons have committed an offence of forgery, cheating, criminal trespass and criminal intimidation and have also caused destruction to the property and the pendency of the Civil Suit will have no bearing on the investigation conducted by the respondent Police. The learned counsel also submitted that the Civil Court while vacating the injunction granted in favour of A-2 had categorically held that the legality of the Sale Deed executed by Kirupanithi in favour of Nesamani [A1] itself is questionable, and therefore Nesamani did not have the title to sell the property in favour of A-2. By pointing out to this finding, the learned counsel submitted that the Civil Court has not given any weightage even to the Sale Deed executed in favour of Nesamani [A1], and therefore A-2 cannot claim any right over the property by virtue of the Sale Deed executed in the year 2014 in her favour. The learned counsel submitted that prima facie allegations have been made in the complaint, and there is no scope for interfering with the investigation at this stage, and therefore the petitions are liable to be dismissed.

11. This Court has carefully bestowed its attention to the submissions made by the respective counsel and also the materials placed on record.

12. Before proceeding to decide the issue in question, this Court reminds itself the limitation prescribed by the Hon'ble Supreme Court in Gunmala Sales .Vs. Anu Mehta, reported in 2015 1 SCC 103, wherein the Hon'ble Supreme Court had held that the High Court cannot conduct a mini trial or a roving enquiry while deciding a petition filed under Section 482 of Cr.P.C. This is subject to the caveat that unimpeachable evidence may be taken into consideration to quash a case wherever necessary.

13. It is important to note that the Sale Deed has been executed in favour of Nesamani [A1] by Kirupanithi on 20.06.1983. There is no dispute regarding this fact, and the same is supported by the copy of the registered Sale Deed filed before this Court. This Court does not want to go into the question of right and title of Nesamani [A1] over the property.

It is for the Civil Court to decide regarding the same.

14. It is also not in dispute that Nesamani [A1] has executed a Sale Deed in favour of Anusya [A2] on 29.01.2014, and the same is also clear from the copy of the Sale Deed produced before this Court. Again the right and title of the Anusya [A2] over the property is something to be decided only by the Civil Court in the pending Suit.

15. The 2nd respondent earlier had given four complaints for the very same dispute. The 1st complaint was given on 05.02.2014, before the T4 Maduravoyal Police Station, and the same was taken on file in CSR No.99 of 2014. Another complaint was given n 28.02.2014, before the very same Police and the same was taken on file in CSR No.167 of 2014. Both these complaints were enquired and closed as civil in nature. Thereafter, the 2nd respondent gave another complaint on 26.02.2014, before the Commissioner of Police and filed Crl.O.P.No.6368 of 2014, before this Court by an order dated 30.07.2014, dismissed the petition on the ground that a case is pending before a Civil Forum and there is no scope to direct the respondent Police to register an FIR.

16. The 2nd respondent gave yet another complaint on 27.12.2014, through her husband before the T4 Maduravoyal Police Station, and the same was taken on file in CSR No.1637 of 2014. Simultaneously A-2 had also given a complaint before the very same Police Station against the 2nd respondent and her husband and the same was taken on file in CSR No.1635 of 2014. An FIR was registered in Cr.No.25/2015, under Section 145 of Cr.P.C and the matter was referred to the Executive Magistrate, Thiruvallur District and the said proceedings are pending. All the above proceedings are borne out by records filed before this Court and there is no dispute regarding the same.

17. In the meantime A-2 had filed a suit in O.S.No.66 of 2014, against the 2nd respondent and one Elangovan seeking for the relief of permanent injunction, before the Additional District Munsif Court, Poonamallee. The 2nd respondent has filed a written statement in the said suit, and in the entire written statement she has only questioned the right of A-1 to execute the Sale Deed in favour of A-2 and there is not even a whisper about any impersonation or forgery. This written statement was filed on 20.06.2014. This is also borne out by records and there is no dispute regarding the same.

18. In none of the complaints or the written statement filed in the suit, the 2nd respondent has spoken anything about impersonation or forgery and the only claim raised by the 2nd respondent was regarding the right of Nesamani

[A1] to execute a Sale Deed in favour of Anusya [A2] and also with regard to the various attempts made to interfere with the possession and enjoyment of the property, and the alleged threat caused by A-2 and A-3 against the 2nd respondent and her husband.

19. For the first time in the complaint given before the DGP on 22.01.2015, the 2nd respondent comes up with the theory of impersonation and creation of a forged Sale Deed in favour of A-2. It is very important to note that the 2nd respondent has concealed all the earlier complaints and also the pending 145 proceedings between the parties in the complaint given to the DGP. This complaint has been forwarded down the line, and ultimately resulted in the registration of the FIR by the respondent Police on 16.07.2015.

20. There are absolutely no allegations against Nesamani [A1] in the complaint. As stated above, Nesamani [A1] purchased the property in the year 1983, from Kirupanithi and the 2nd respondent had purchased the same property in the year 1995, from one Singaravelu. Therefore Nesamani in the year 1983, could not have prognosticated that the 2nd respondent is going to purchase the very same property in the year 1995. Nesamani [A1] himself has taken a specific stand that he in turn has sold the property in favour of Anusya [A2] in the year 2014. Therefore it is beyond imagination as to how impersonation and forgery will fall into the scheme of things. At the best what can be questioned is only the right of Nesamani [A1] to execute the Sale Deed in favour of Anusya [A2]. This aspect can be gone into only by the Civil Court before which the suit is pending.

21. If the Sale Deed executed by Nesamani [A1] in favour of Anusya [A2] is to be construed as a false document amounting to forgery, it has to satisfy the requirements of Section 464 of IPC. It will be relevant to place reliance on the recent judgment of this Court, wherein this Court considered in detail as to when the execution of false document will amount to forgery in T.Muthuramalingam .Vs. Inspector of Police, District Crime Branch, Theni, Theni District and another reported in 2018 4 MLJ Crl P 392. The relevant portions are extracted hereunder:

> 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) 929. The relevant portion of the judgment is extracted hereunder.
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> 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.

22. From the above, it is clear that the Sale Deed executed by A-1 in favour of A-2 does not satisfy the requirements of a forged document. It is therefore clear that there is absolutely no material to rope in Nesamani [A1] as an accused person in this case.

23. Insofar as the other offences are concerned, the 2nd respondent had given similar complaints earlier against A-2 and A-3 and the same was enquired and closed. That part, 145 proceedings are also pending before the Executive Magistrate. Therefore, there is nothing to be independently investigated in this case by the respondent Police. The other offences are inextricably attached to the offence of impersonation and forgery and once this Court has held that no offence of impersonation and forgery are made out, the consequential offences automatically fall. That apart, the 145 proceedings and the Civil Suit is already pending between the parties and the right, title and possession over the property will be decided in these proceedings.

24. In view of the above discussion, this Court is of the considered view that the pendency of the FIR will amount to an abuse of process of law and it is manifestly attended with malafides. The uncontroverted allegations made in the FIR and the clinching materials placed on record, do not disclose the commission of any offence and it does not make out a case against the accused persons. A dispute which should have been agitated before the Competent Civil Court has been given a criminal colour. In the result, the FIR in Cr.No.264 of 2015, pending on the file of the 1st respondent Police is hereby quashed, and accordingly Crl.O.P.Nos.30188 & 21632 of 2015 are allowed. Consequently, the connected miscellaneous petition is closed.

In view of the above order, nothing survives in Crl.O.P.No.27940 of 2018, and the same is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

KP

To

1. The Inspector of Police,
CCB Team-17,
Office of the Commissioner of Police,
Chennai-600 007.

2. The Public Prosecutor,
High Court of Madras,
Madras.

+2 cc to M/s.C.Prabakaran, Advocate Sr.No.5301&4166
+1 cc to Mr.N.Chandrasekaran, Advocate Sr.No.4950
+1 cc to Mr.G.Mohanakrishnan, Advocate Sr.No.4886

Common Order made in
Crl.OP Nos.30188, 21632/2015
& 27940/2018

CSL/30.01.2019