IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.05.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.Nos.28679 and 29046 of 2018
and Crl.MP.Nos. 16711, 16997 of 2018 and
Crl.M.P.Nos. 882 & 862 of 2019

Pavankumar ... Petitioner in Crl.O.P No.28679 of 2018/Accused

1. Santhalingam
2. Rajinikanth
3. Ramasubramaniyam
4. Anusha
5. Murugesan
6. Mathiaahagan ... Petitioners in Crl.O.P No.29046 of 2018

Vs.

1. The State represented by
   The Inspector of Police,
   DCB Police Station,
   Coimbatore.
   (Crime No.31 of 2018)

2. S.Palanisamy ... Respondents in both petitions.

COMMON PRAYER: Criminal Original Petitions filed under Section 482 of Cr.P.C. praying to call for the records in Crime No.31 of 2018 on the file of the first respondent police and quash the same as against the petitioners.

For Petitioners in both petitions : Mr.R.Vivekananthan

For Respondent in both petitions

For R1 : Mr.M.Mohamed Riya, Additional Public Prosecutor

For R2 : Mr. Ayyadurai, Senior Counsel For Mr.K.Magesh

COMMON ORDER

These petitions have been filed to quash the FIR in Crime No.31 of 2018 on the file of the first respondent registered for the offences under Sections 120B, 420, 467, 468, 474 and 506(ii) of IPC.

2. The learned counsel appearing for the petitioners in both petitions submitted that the petitioners are arrayed as A1 to A7 in Crime No.31 of 2018 registered on the complaint lodged by the second respondent for the offences under Sections 120B, 420, 467, 468, 474 and 506(ii) of IPC. The allegations made in the complaint are that the second respondent/ defacto complainant is an agriculturist by profession and indulged in the activity of cultivating various crops in his land in S.No.2/3B2, situated at Vilangurichi Village, Coimbatore District ad measuring to an extent of 1.10 acres. While being so, various persons had visited his property and when the same was questioned by the defacto complainant, the first accused claimed ownership of the said property and sold out some plots to the accused 2 to 4 herein. The first accused filed a suit in O.S.No.286 of 2016 and obtained an ex-parte order and on the strength of the ex-parte decree, he mutated all the revenue records in his favour. Thereafter, the first accused created false documents and on the basis of the same, he obtained patta. Hence, the complaint.

2.1. The learned counsel appearing for the petitioners further submitted that even as per the complaint, there is no averment to attract any of the offences registered by the first respondent as against the petitioners. The first accused filed suit in O.S.No.286 of 2016 and obtained decree. Thereafter, he applied for mutation of revenue records in his favour. Accordingly, by communication dated 13.06.2017, the Tahsildar, Coimbatore recommended to mutate all the revenue records to the higher officials. In fact, the first petitioner also filed a writ petition in W.P.No.26281 of 2017 and the same was allowed by an order dated 28.12.2017 by this Court. On the basis of the order passed by this Court, the Revenue Divisional Officer, Coimbatore, vide proceedings dated 19.05.2018, directed the Tahsildar, Coimbatore to consider the request of the first petitioner/first accused. Thereafter, the patta was issued in favour of the first petitioner/first accused herein. As against the said order, the second respondent/defacto complainant filed revision before the District Revenue Officer, Coimbatore and suppressed the entire facts, the second respondent/defacto complainant lodged the present complaint, in order to settled the scores of malafides as against the petitioners. Therefore, he sought for quashment of the FIR.

3. Per contra, the learned Senior Counsel appearing for the second respondent/defacto complainant submitted that the second respondent is in possession and enjoyment of the property ad-measuring at 1.10 acres comprised in old S.R.No.2/3 and new S.F.No.2/3B, situated at Vilankurichi Village by virtue of sale deed dated 30.09.1996 and the same was also registered in Doc.No.3218 of 1996 on the file of the Sub Registrar Officer, Ganapathy. All the accused persons had conspired together with intention to grab the property, had created and fabricated the documents as if the said property belonged to the first petitioner/first accused and paid sale consideration every month from 01.01.2011 and also executed sale deed in favour of the other accused persons, on the strength of the ex-parte decree obtained by him. Thereafter, the first petitioner/first accused mutated all the revenue records in his favour and the same was under challenge before the District Revenue Officer, Coimbatore. All the accused persons are colluded with each other and conspired together and obtained exparte decree on the strength of the fabricated, false document and executed sale deed. The said ex-parte order passed in O.S.No.286 of 2016 on the file of the I Additional District Munsif, Coimbatore is under challenge in O.S.No.1415 of 2018 before the Sub Court, Coimbatore. Therefore, there are materials to connect the offence as registered by the first respondent as against the petitioners. He further submitted that the FIR cannot be quashed on its threshold and it has to be investigated further. Therefore, he prayed for dismissal of the quash petition.

4. The learned Additional Public Prosecutor submitted that the petitioner in Crl.O.P.No. 28679 of 2018 is arrayed as A5 and the petitioners in Crl.O.P.No.29046 of 2018 are arrayed as A1 to 4, 6 & 7. He further submitted that all the allegations are related to the documents executed by the first petitioner/first accused in favour of the other accused persons, as such it has to be investigated further to unearth the truth. Further the FIR is not an encyclopedia and it cannot be quashed on its threshold. Therefore, he prayed for dismissal of the quash petition.

5. Heard Mr.R.Vivekananthan, learned counsel appearing for the petitioners in both petitions, Mr.M.Mohamed Riyaz, learned Additional Public Prosecutor appearing for the first respondent and Mr.Ayyadurai, learned Senior Counsel appearing for the second respondent.

6. The petitioners in both petitions are arrayed as A1 to A7 in Crime No.31 of 2018 on the file of the first respondent police registered for the offences under Sections 120B, 420,

467, 468, 474 and 506(ii) of IPC. On perusal of the documents, it is seen that one V.K.Periyaswamy Gounder, who is the father of the first accused settled the subject property in favour of his mother, viz., Subbammal vide Doc. No.3407 of 1940. The said Subbammal, i.e., grand mother of the first accused executed settlement deed in favour of her daughter-in-law i.e., mother of the first accused viz., Chinammal and the same was registered as Doc.No.1055 of 1968. Since, the original settlement deed was misplaced, the first petitioner/first accused being an only legal heir, filed a suit in O.S.No.286 of 2016 on the file of the I Additional Munsif Court, Coimbatore, for declaration to declare that the Doct. No.3407 of 1940 was lost. It was decreed in his favour and thereafter the Thasildar, Coimbatore (North) recommended for issuance of patta in favour of the first petitioner herein. On the basis of the recommendation, the first accused was issued patta and the said order was challenged by the second respondent herein before the District Revenue Officer and stayed the proceedings. As against which, the first petitioner/first accused preferred a Writ Petitions in W.P.Nos. 27905 of 2018 and 28326 of 2018, in which status quo was ordered by this Court.

7. It is also seen that the second respondent filed a suit in O.S.No.1415 of 2018, for declaration, declaring that the ex-parte decree obtained by the first accused in O.S.No.286 of 2016 dated 26.10.2018 is null and void and the suit is also pending on the file of the learned Subordinate Judge, Coimbatore. There is no interim order granted in favour of the second respondent. After having been filed a suit for declaration declaring that the ex-parte order obtained by the first accused in O.S.No.286 of 2016 is null and void, the impugned complaint has been filed on the allegations that the first accused colluded with other accused persons and conspired together filed the said declaration suit in O.S.No.286 of 2016 and obtained ex-parte order. It is also alleged that on the strength of the said exparte order, the first accused executed so many documents in favour of the other accused persons.

8. It is seen from the above, the second respondent and the first petitioner/first accused claimed right over the same property and the suits are pending. Admittedly, on the strength of the settlement deeds dated 07.09.1940 and 01.07.1968, the first petitioner/first accused being the only legal heir of the deceased Chinammal, who is the mother of the first petitioner/first accused, he executed sale deed in favour of the other petitioners/accused. Therefore, the first petitioner/first accused did not fabricate or create any of the document as alleged by the prosecution. In this regard, the learned counsel appearing for the petitioners relied upon the judgment reported in (2009) 8 SCC 751 in the case of Mohammed Ibrahim and others Vs. State of Bihar and another, as follows :-

"13. The condition precedent for an offence under sections 467 and 471 is forgery. The condition precedent for forgery is making a false document (or false electronic record or part thereof). This case does not relate to any false electronic record. Therefore, the question is whether the first accused, in executing and registering the two sale deeds purporting to sell a property (even if it is assumed that it did not belong to him), can be said to have made and executed false documents, in collusion with the other accused.

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. Section 420 IPC.

18. Let us now examine whether the ingredients of an offence of cheating are made out. The essential ingredients of the offence of "cheating" are as follows: (i) deception of a person either by making a false or misleading representation or by dishonest concealment or by any other act or omission; (ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived; and (iii) such act or omission causing or is likely to cause damage or harm to that person in body, mind, reputation or property.

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."

The Hon'ble Supreme Court of India and this Court repeatedly held that the complainants are not attempting to give the cloak of a criminal offence to the matters which are essentially and purely civil in nature, obviously either to apply pressure on the accused to harassment. Further held that the criminal Courts should ensure that proceedings before it are not used for settling scores or to pressurise parties to settle civil disputes.

9. In the case on hand, after filing a suit the second respondent/ defacto complainant lodged the present complaint as against the petitioners. On perusal of documents, on the strength of the settlement deeds, the first petitioner/first accused being an absolute owner, filed a suit for declaration declaring the above settlement deed were lost and the same was decreed in his favour. Thereafter, he executed sale deed in favour of the other petitioners/accused, on the strength of the civil Court decree. The said ex-parte decree is also under challenge in O.S.1415 of 2018 on the file of the Sub Court, Coimbatore by the second respondent herein. Therefore, the entire issues are civil in nature and there is no iota of evidence to constitute any of the offence as registered by the first respondent. The entire complaint is nothing but clear

abuse of process of Court and it cannot be sustained as against the petitioners.

10. Accordingly, the Criminal Original Petition stands allowed and the F.I.R in Crime No.31 of 2018 on the file of the first respondent police is hereby quashed. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar(V.O)

True Copy

Sub-Assistant Registrar

rts
To
1. The Inspector of Police,
DCB Police Station,
Coimbatore.

2. The Public Prosecutor,
High Court, Madras.

+2 Ccs to Mr.R.Vivekananthan, Advocate sr 43475, 43476.
+1 CC to Mr.K.Magesh, Advocate sr 43381.
+1 CC to Mr.K.Magesh, Advocate sr 43382(14/05/2019)

CRL.O.P.Nos.28679 & 29046 of 2018
and Crl.MP.Nos.16711 & 16997 of 2018
and Crl.M.P.Nos.882 & 862 of 2019

VGII(CO)
SP(10/05/2019)