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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.11.2019

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Cr1 OP (MD) No.2408 of 2011

and

MP (MD) No. 2 & 3 of 2011

Vijayan

... Petitioner /Accused No.2

Vs.

Sathiaraj

... Respondent / Complainant

Prayer : Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to C.C No.124 of 2009 on the file of the Judicial Magistrate No.2, Kuzhithurai and quash the same in accordance with law.

For Petitioner : Mr.C.K.M.Appaji

For Respondent : M/s.J.Anandhavalli

ORDER

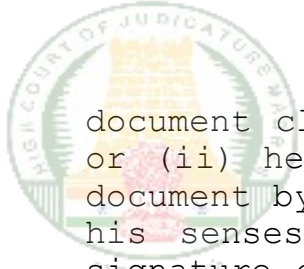
The petitioner herein is shown as Accused No.2 in C.C No.124 of 2009 on the file of the Judicial Magistrate No.2, Kuzhithurai. It is a private complaint instituted by the respondent herein against one Asari Nadar and six others. The sum and substance of the complaint is that the property allotted to him in a final decree proceedings was made subject matter of a settlement deed by the first accused Asari Nadar executed in favour of the petitioner herein. During the pendency of these proceedings, the first accused is said to have passed away. This petition has been filed for quashing the impugned proceedings.

2.Heard the learned counsel on either side.

3.The learned counsel appearing for the petitioner pointed out that the complainant herein had committed the offence of forgery in respect of the very same property and that is why he is facing trial in C.C No.143 of 2013 on the file of the Judicial Magistrate No.2, Kuzhithurai. According to him, as a counter blast, the present complaint has been initiated. The case of the complainant is that the property that belongs to him has been made the subject matter of deeds of conveyance by A1 in favour of the petitioner herein. Whether this will amount to commission of offence of forgery, is an issue that is no longer res integra.

<https://hcservices.equitsys.gov.in/hcservices/> 4.The Hon'ble Supreme Court in the decision reported in (2009)

8 SC C 751 (Md.Ibrahim vs. State of Bihar) held that 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. In this case, the first accused did not affix the signature of the complainant herein. He had put his own signature. The Hon'ble Supreme Court in the aforesaid decision held as follows :

"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. 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."

5.The ratio laid down by the Hon'ble Supreme Court in the aforesaid case clearly applies to the case on hand. I hold that even the elementary ingredients of the offences in question alleged by the complainant against the petitioner are not made out. Therefore, the impugned proceedings stand quashed. This criminal original petition stands allowed. The benefit of this order will enure to the non-petitioning accused also. Connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (AD_II)

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To ஸ்ரீமத் உரிசை

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The Judicial Magistrate No.2, Kuzhithurai.

+1 CC to M/s.J.ANANDHAVALLI, Advocate (SR-100515[F] dated 22/11/2019)

+1 CC to Mr.C.K.M.APPAJI, Advocate (SR-100517[F] dated 22/11/2019)

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VB(23.03.2020) 3P 4C