BEFORE THE MADURAI BENGH OF MADRAS HIGH COURT
DATED: 16.09.2019
CORAM
THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN
CRL.O.P (MD) No.11638 of 2019
and
Crl.M.P.(MD) Nos.7316 and 7317 of 2019

1.Murugesan
2.Sangumuthu
3.Muthuraja ... Petitioners

Vs

1. State rep. by
The Inspector of Police,
District Crime Branch,
Tirunelveli District
Crime No.01/2006

2. Kallapiran ... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records in C.C.No.468 of 2019 on the file of the Judicial Magistrate No.1, Tirunelveli and quash the same as illegal as against these petitioners.

For Petitioner : Mr.C.Ramesh

For Respondents : Mr.K.Suyambulinga Bharathi,
G.A. (Crl. Side) for R1
Mr.S.Deenadhayalan for R2

O R D E R

This petition has been filed to quash the proceedings in C.C.No.468 of 2019 on the file of the Judicial Magistrate No.1, Tirunelveli as against the petitioners are concerned.

2.The learned counsel appearing for the petitioner submitted that the petitioner arraigned as A2 to A4 and on the complaint lodged by the 2nd respondent, a case has been registered in crime No.1 of 2006 for the offences under Sections 420, 467, 468, 474 r/w 120(b) I.P.C. @ 120(b), 467, 468, 474 and 420 I.P.C. on the allegation that the father of the 2nd respondent owned a property in S.No.81/B1, B4, B6 to an extent of 11 acres 30 cents at Melaambasamuthiram, Ambasamuthiram Taluk, Tirunelveli District. During his life time, the portion of the property was sold out and thereafter, he died on 15.04.1988. Thereafter, the 2nd respondent along with other legal heirs arrived for an amicable solution to sell some extent of the said property and rest of the property kept unsold. It is further alleged that A1 viz., the brother of the 2nd respondent herein conspired along with other accused persons viz., the petitioners herein forged the signature of their deceased father and fabricated the Will dated 21.02.1988 as if the portion of property bequeathed in favour of A1 and on the strength of the said Will, they sold out the property.

3.The learned counsel appearing for the petitioner would further submit except the offence under Section 120(b) I.P.C., no other offences are attracted as against the petitioner. The entire allegations are made only as against the 1st respondent. No doubt, A1 died. Even according to the case of the defacto complainant, A1 conspired with other accused persons and fabricated the Will and on the strength of the Will, some portion of the property sold out to the petitioners herein. The prosecution examined 15 witnesses and no one has spoken about the involvement of the petitioners with A1 with regard to conspiracy.

4.He further submitted that the petitioners have purchased the said property in the year 2000 and thereafter, converted into house plots in the year 2001. Thereafter, sold out to various persons and they have obtained planning permission and constructed the house. In fact, A1 filed a suit in O.S.No.120 of 2000 for declaration and enjoyment on the strength of the Will as against the 2nd respondent/defacto complainant and the same was decreed. Thereafter, the 2nd respondent did not prefer any appeal as against the decree passed in favour of A1. After the period of 6 years, the present complaint has been lodged and the same was registered in crime No.1 of 2006. Thereafter, after a period of 12 years, though the 1st respondent completed the investigation and filed final report, there is absolutely no explanation for the belated final report. Thereafter, A1 and died and all the charges against him are abated. Insofar as the petitioners are concerned, they arraigned as A2 to A4 and the only charge against them is for the offence under Section 120(b) I.P.C. However, to attract the offence of conspiracy, there is absolutely no evidence and no one has spoken about the conspiracy between the petitioners and the 1st accused. In support of his contention, he also relied upon the judgment reported in ***(2009) 8 Supreme Court Cases 751 - Mohd. Ibrahim V. State of Bihar*** and the decision reported in ***(2018) 7 Supreme Court Cases 581 - Sheila Sebastian V. R.Jawaharaj*** *and also the unreported decision of this Court made in* **Crl.O.P.No.26219 of 2016** dated **26.06.2018.**

5.The learned counsel appearing for the 2nd respondent/defacto complainant submitted that the petitioners along with A1 conspired together and have committed the offence under Sections 120(b), 467, 468, 474 and 420 I.P.C. All the accused persons have conspired together and fabricated a Will dated 21.02.1988 as if their deceased father executed a Will and bequeathed the property to the extent of

8 acres 84 cents by way of unregistered Will. Therefore, immediately, he lodged a complaint and unfortunately, the same was not enquired by the concerned police and thereafter, he approached this Court for registration of their complaint. Therefore, there is absolutely no delay on the part of the 2nd respondent. Even after registration of the complaint, they approached so many times for enquiry with the 1st respondent and they have completed the investigation and filed the final report only in the year 2015. Though A1 died, the other accused have committed the offence along with A1 and as such, all the offences are clearly attracted as against the petitioners and they are liable to be prosecuted.

6.The learned Government Advocate (criminal side) submitted that there are totally four accused, in which A3 died. The petitioners arraigned as A2 to A4 and they have charged for the offence under Sections 120(b), 467, 468, 474 and 420 I.P.C. and the same has been taken cognizance in C.C.No.468 of 2019 on file of the Judicial Magistrate No.1, Tirunelveli. All the witnesses have spoken about the fabricate a Will and also forged the signature of the deceased father. Though the petitioners are purchasers, they have also conspired with A1 and have committed the offences. Therefore, he prayed for dismissal of the quash petition.

7.Heard the learned counsel appearing for the petitioner and the learned Government Advocate (criminal side) appearing for the 1st respondent and also the learned counsel appearing for the 2nd respondent.

8.There are totally four accused and the petitioners are arraigned as A2 to A4. A1 is none other than the own brother of the defacto complainant and now, he died and all the charges are abated as against him. Insofar as the charges against the petitioners are concerned, they conspired along with the 1st accused and committed the offence. Therefore, the petitioners have been impleaded in this crime.

9.The crux of the allegations are that A1 with the help of the other accused persons have fabricated a Will dated 21.02.1988 and whereby, forged the signature of their father as if the property to the extent of 8 acres 84 cents has been bequeathed in favour of A1, in turn, he sold the said property in favour of the other accused persons. It is seen that A1 filed a suit in O.S.No.120 of 2000 for declaration and enjoyment on the strength of the Will in respect of the said disputed property and the same was decreed in his favour. On the strength of the decree passed by the Civil Court, the petitioners have purchased the property in the year 2001 and subsequently let out house plots and now, all the house plots are sold out to various parties and they have also constructed houses according to their planning permission. The second respondent lodged the complaint in the year 2006 and the 1st respondent completed the investigation and they have filed the final report only in the year 2018 and there is absolutely no reason stated by the respondents for the belated complaint as well as the huge delay in filing the final report.

10.The learned counsel appearing for the petitioner relied on the judgment of ***2009) 8 Supreme Court Cases 751 - Mohd. Ibrahim V. State of Bihar***, where, the Hon'ble Supreme Court has held as follows:

> "8.This Court has time and again drawn attention to the growing tendency of the complainants attempting to give the cloak of a criminal offence to matters which are essentially and purely civil in nature, obviously either to apply pressure on the accused, or out of enmity towards the accused, or to subject the accused to harassment. Criminal courts should ensure that proceedings before it are not used for settling scores or to pressurize parties to settle civil disputes. But at the same time, it should be noted that several disputes of a civil nature may also contain the ingredients of criminal offences and if so, will have to be tried as criminal offences, even if they also amount to civil disputes. (See G.Sagar Suri V. State of U.P. and Indian Oil Corpn. v.NEPC India Ltd.) Let us examine the matter keeping the said principles in mind."

11.In the case on hand, the allegations are that A1 fabricated a Will and on the strength of the same, he executed a sale in favour of the petitioners. It is also seen that A1 filed a suit for declaration on the strength of the Will and it was declared in his favour. The petitioners approached the said property on the strength of the Will as well as the decree granted in favour of the A1. Therefore, the entire issues are civil in nature. Hence, the above said decision is applicable to the facts of the present case.

12.In the further decision relied on by the learned counsel appearing for the petitioners reported in ***(2018) 7 Supreme Court Cases 581 - Sheila Sebastian V. R.Jawaharaj***, the Hon'ble Supreme Court has held as follows:

> *"25.Keeping in view the strict interpretation of penal statue i.e. referring to rule of interpretation wherein natural inferences are preferred, we observe that a charge of forgery cannot be imposed on a person who is not the maker of the same. As held in plethora of cases, making of a document is different than causing it to be made. As Explanation 2 to Section 464 further clarifies that, for constituting an offence under Section 464 it is imperative that a false document is made and the accused person is the*

maker of the same, otherwise the accused person is not liable for the offence of forgery.

26.The definition of "false document" is a part of the definition of "forgery". Both must be read together. "Forgery" and "fraud" are essentially matters of evidence which could be proved as a fact by direct evidence or by inferences drawn from proved facts. In the case in hand, there is no finding recorded by the trial Court that the respondents have made any false document or part of the document/record o execute mortgage deed under the guise of that "false document". Hence, neither Respondent 1 not Respondent 2 can be held as makers of the forged documents. It is the imposter who can be said to have made the false document by committing forgery. In such an event the trial Court as well as the appellate court misguided themselves by convicting the accused. Therefore, the High Court has rightly acquitted the accused based on the settled legal position and we find no reason to interfere with the same.

27.A reasonable doubt has already been thoroughly explained in Latesh V. State of Maharastra wherein "reasonable doubt" has been enunciated by this Court as (at SCC p.83, para 46) "a mean between excessive caution and excessive indifference to a doubt, further it has been elaborated that reasonable doubt must be a practical one and not an abstract theoretical hypothesis".

13.In the other unreported decision of this Court dated ***26.06.2018*** made in ***Crl.O.P.(MD) No.26219 of 2016,*** this Court has held as follows:

"13.The aforesaid order is self explanatory. While discussing the legal position for constituting the offences of 'Criminal Conspiracy' and 'Abetment', the learned Judge had found that there was absolutely no material prima facie to connect the petitioner (A5) with the alleged act of aiding as abetment in facilitating the commission of offence by the first accused in the manner as spoken by the prosecution.

14.While the fifth accused has been absolved of all the charges, I am unable to comprehend as to how the petitioner herein/A6 could be proceeded with. In all the incidents where LW- 22 and LW-50 had spoken about the possible involvement of the petitioner herein in the alleged act of aiding and abetting the first accused, as per the prosecution, it was the fifth accused, who had the key role to play in the statements of the witnesses and since this Court had rendered a finding that there was no material to prima facie to connect the fifth accused with the alleged acts, it would automatically follow that the sixth accused should also be absolved from the charges levelled against him. The learned counsel for the petitioner relied on the judgment in Shri Ram V. The State of U.P. reported in AIR 1975 SC 175 and submitted that intentional aiding is the essential ingredients for constituting the offence under Section 107 IPC. Likewise, the learned counsel also relied upon the judgment in 1974 Cri. L.J. 1200 [Onkar v. State of Madhya Pradesh] and submitted that the circumstances must have come proximate relation to the actual occurrence. In the judgment in State Of Tamil Nadu Through Superintendent of Police, CBI/SIT vs Nalini and 25 Others reported in 1999 (5) SCC 253, it has been held that for constituting an offence of criminal conspiracy, there should not be an intention alone but there has to be an agreement to carry out the object of the intention. In the judgment in S.Arul Raja V. State of Tamil Nadu reported in 2010 (3) SCC (Cri) 801, entertaining an intention however 'horrendous' it may be, may not be sufficient to constitute an offence of conspiracy. Likewise, in the judgment in Esher Singh V. State of A.P. reported in 2004 (11) SCC 585, it is observed that a few bits herein and few bits therein which the prosecution relies could not be relied with the commission of the crime of criminal conspiracy. ”

*14.*In the above said decision, this Court has held that to prove the offence of conspiracy, there must be an agreement between the parties for doing unlawful act. The offence of conspiracy is an exception to the general law, where intend alone does not constitute crime. It is intention to commit crime and joining hands with persons having the same intention. Not only the intention but there has to be agreement to carry out the object of the intention, which is an offence.

15.In the case on hand, there is absolutely no evidence to show that the petitioners conspired with A1 to do the crime. Therefore, the offence of conspiracy is not at all attracted as against the petitioners. If the offence of conspiracy is not attracted as against the petitioners, other offences are also not attracted as against them,. Further, the entire allegations are only as against A1 and as such, no purpose would be served, if the petitioners directed to undergo the trial and as such, the petitioners need not undergo for the ordeal trial.

16.In view of the above discussion, this criminal original petition is allowed and the proceedings in C.C.No.468 of 2019 on the file of the Judicial Magistrate No.1, Tirunelveli, is quashed as against the petitioners. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (P&A)

// True Copy //

Sub Assistant Registrar(CS)

To

1. The Judicial Magistrate No.I,
   Tirunelveli.

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

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

+1 CC to MR.C.RAMESH, Advocate (SR-87158[F] dated 17/09/2019)

+1 CC to MR.S.DEENADHAYALAN, Advocate (SR-87011[F]dated 17/09/2019)

Order made in
CRL.O.P (MD) No.11638 of 2019
16.09.2019

Arul
VB(17.10.2019) 7P 6C