BEFORE THE MADURAI BENGH OF MADRAS HIGH COURT
DATED: 26.09.2019
CORAM
THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN
CRL.O.P (MD) No.3849 of 2018
and
Crl.M.P.(MD) No.1872 of 2018

Seenivasan ... Petitioner/A1

Vs

1.State represented by
The Inspector of Police,
Alanganallur Police Station,
Madurai District.
Crime No.122 of 2015 ...1st Respondent/Complainant

2.R.Sundaram ... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records pertaining to the case in C.C.No.460 of 2017 on the file of the Judicial Magistrate, Vadipatti, Madurai and quash the same as against this petitioner.

For Petitioner : Mr.I.Saliyakhan

For Respondents : Mr.K.Suyambulinga bharathi,
G.A. (Crl. Side) for R1
No Appearance for R2

O R D E R

This petition has been filed to quash the proceedings in C.C.No.460 of 2017 on the file of the Judicial Magistrate, Vadipatti, Madurai as against the petitioner, having been taken cognizance for the offences under Sections 406, 417, 420 of I.P.C. read with 120(b) of I.P.C.

2.The learned counsel appearing for the petitioner submitted that there are totally two accused and the petitioner is arraigned as A1. On the complaint lodged by the 2nd respondent, 1st respondent registered FIR in crime No.122 of 2015 on the allegation that on 10.03.2015, the house property comprised in S.No.70/4 New S.No.107/3 at Kulamangalam II bit village, Madurai District, classified as Natham to an extent of 1530 sq. ft. belongs to his ancestors' property. The said property stands in the name of his grand father and after his demise, the property goes to his legal heirs, in which, the 2nd respondent has share admeasuring 510 sq. ft. over the above property. Without his consent and knowledge, the 1st accused sold out his share to the second accused for a sum of Rs.32,130/-.

3.The learned counsel appearing for the petitioner further submitted that the alleged occurrence taken place on 01.04.2014. Whereas the complaint has been lodged only on 10.03.2015 and there is absolutely no explanation on the side of the 2nd respondent for lodging the complaint. He further submitted that to attract the offence under Section 406 of I.P.C., there is absolutely no averments and no property was entrusted with the petitioner. Insofar as the offences under Sections 417 and 420 of I.P.C. are concerned to attract these offences no specific averments and no materials to file a final report for these offences. Further, the offence under Section 120(b) of I.P.C. also is not made out since there is absolutely no plan between the 1st accused and 2nd accused to agitate the 2nd respondent is being one of their brother. He further submitted that the prior to the sale of the said property, the petitioner caused legal notice to the 2nd respondent, calling upon him that he would sell the property with the consent of other legal heirs, for which, the 2nd respondent also issued reply notice. Since the house situated in the said property was in dilapidated condition and as such, he obtained consent from other legal heirs and sold out the property. Thereafter, the petitioner distributed the sale consideration to the legal heirs including the son of the 2nd respondent herein and even after receipt of the share, he filed this false complaint with the false allegation. Therefore, he sought for quashment of the entire proceedings.

4.The learned Government Advocate (criminal side) submitted that on the complaint lodged by the 2nd respondent, a case has been registered and after investigation filed final report for the offences 406, 417, 420 read with 120(b) of I.P.C. in which, the petitioner arraigned as A1. Though there is a dispute between the brothers, there are specific allegations to attract the offence as alleged by the 2nd respondent. He further submitted that all the points raised by the petitioner to be considered only during the trial before the trial Court and hence, he prayed for dismissal of this petition.

5.Heard the learned counsel appearing for the petitioner and the learned Government Advocate (criminal side) appearing for the 1st respondent and perused the materials available on record. Though notice was served and the name of the 2nd respondent is printed in the cause list, no one is appeared on behalf of the 2nd respondent.

6.There are totally two accused, in which, the petitioner arraigned as A1. The crux of the complaint is that the 2nd respondent lodged a complaint stating that without consent and knowledge, the petitioner sold our the property in favour of A2 for lesser price. In the said property, he is also having share as per Will executed by his grand father. According to the petitioner, the 2nd respondent is his brother and admittedly, the subject property belongs to their ancestors and classified as natham comprised in complaint S.No.70/4 New S.No.107/3 at Kulamangalam II bit village, Madurai District, in which, the 2nd respondent has share in respect of 510 sq.fts. The building in the said property was in a dilapidated condition and as such, the legal heirs including the petitioner herein decided to sell the property. In fact, the petitioner caused legal notice on 10.04.2007 to the 2nd respondent and informed about the sale of the said property for the reason that the building was in a dilapidated condition and on receipt of the same, the 2nd respondent issued reply on 24.04.2007. Therefore, the 2nd respondent had absolutely knowledge over the sale of the property. That apart, the son of the 2nd respondent also received the sale consideration of their share from the petitioner. Insofar as the other legal heirs are concerned, the petitioner duly paid their respective shares. That apart, the offence under Sections 406, 4167 and 420 are concerned, there are absolutely no averments to attract those offences, since the dispute between the brothers in respect of the sale of the property. The specific averment on the complaint is that the petitioner sold out the property for lesser price. On one hand, he alleged that he had no knowledge about the sale and on the other hand, he made allegation that the property was sold for lesser price. Moreover, the sale consideration also duly received by the son of the 2nd respondent herein. Therefore, no offence is made out as against the petitioner.

7.In this regard, the learned counsel appearing for the petitioner relied upon the decision of the Hon'ble Apex Court in ***Mohammed Ibrahim V. State of Bihar reported*** in ***(2009) 3 Supreme Court Cases (Cri) 929***, wherein, the Hon'ble Supreme Court has held as follows:

> *"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."

8.He further relied on the another decision of the Hon'ble Apex Court in ***Anand Kumar Mohatta V. State*** reported in ***(2018) 4 MLJ (Crl) 732 SC***, wherein, the Hon'ble Supreme Court has held as follows:

"18.The second submission of learned counsel for the Respondent No.2 is that the Appellant No.1 has fraudulently transferred the property which is the subject matter of the agreement dated 03.06.1993 to his wife and has thereby committed criminal breach of trust. This charge is wholly untenable and rather extraordinary since the alleged fraudulent transfer of property by the Appellant No.1 to his wife, assuming it to be illegal, by no stretch of imagination can constitute the offence of a criminal breach of trust, since the property was not entrusted by the Respondent No.2 to the Appellants. The property belonged to Appellant No.1 and there was therefore no question of Appellants having been entrusted with their own property, and that too by the complainant, who had merely entered into a development agreement in respect of the property.

19. Lastly, we find that the FIR and the charge sheet essentially charged the petitioner for an offence under Section 406 of the Cr.P.C. for retaining the amount of Rs. One crore which was advanced to him by the Respondents at the time of entering into the development agreement.

Whether an offence under Section 406 made out

20. It is necessary to refer to Sections 405 and 406 of the IPC in order to ascertain, whether in the facts and circumstances of the present case, an offence under Section 406 is made out against the Appellants.

Section 405 and 406 of the IPC reads as follows: -

"405. Criminal breach of trust.—Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".

[Explanation [1].—A person, being an employer [of an establishment whether exempted under section 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), or not] who deducts the employee's contribution from the wages payable to the employee for credit to a Provident Fund or Family Pension Fund established by any law for the time being in force, shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said law, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.]

[Explanation 2.—A person, being an employer, who deducts the employees' contribution from the wages payable to the employee for credit to the Employees' State Insurance Fund held and administered by the Employees' State Insurance Corporation established under the Employees' State Insurance Act, 1948 (34 of 1948), shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of

such contribution to the said Fund in violation of the said Act, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.]
406. Punishment for criminal breach of trust.— Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

9.In the above decisions, the Hon'ble Supreme Court has held that the entire allegations are civil in nature and no criminal offence is constituted as against the accused. Like wise, in the case on hand also, all the allegations are civil in nature and the second respondent is attempted 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. Therefore, the Court should ensure that proceedings before it are not used for settling scores or to pressurise parties to settle civil disputes.

10.In view of the above discussion, the entire proceedings is vitiated and it is nothing but clear abuse of process of law. Accordingly, this criminal original petition is allowed and the proceedings in C.C.No.460 of 2017 on the file of the Judicial Magistrate, Vadipatti, Madurai is quashed as against this petitioner. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (AD I)

// True Copy //

Sub Assistant Registrar(CS)

Arul

To

1.The Inspector of Police,
Alanganallur Police Station,
Madurai District.

2.The Judicial Magistrate, Vadipatti, Madurai

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

+1 CC to M/s.I.SALIYAKHAN, Advocate (SR-89902[F] dated 27/09/2019)

Order made in
CRL.O.P (MD) No.3849 of 2018
26.09.2019

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