



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 01.10.2019

Pronounced on : 07.11.2019

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P (MD) No.3921 of 2018

and

CrI.M.P.(MD) No.1919 of 2018

WEB COPY

1.Velpandian
2.V.Viswanathan

... Petitioners

Vs

1.The State rep by
The Inspector of Police,
Vikramasingapuram Police Station,
Tirunelveli District
Crime No.45 of 2012

2.S.Krishnakanthan

... Respondents

PRAYER: Criminal Original Petitions filed under Section 482 of Cr.P.C, praying to call for the entire records pertaining to the case in C.C.No.8 of 2018 on the file of the Judicial Magistrate, Ambasamudram, Tirunelveli District and quash the same as against the petitioners.

For Petitioner : Mr.R.Anand

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

O R D E R

This petition has been filed to quash the criminal proceedings in C.C.No.8 of 2018 on the file of the Judicial Magistrate, Ambasamudram, Tirunelveli District, having been taken cognizance for the offences under Sections 147 and 120(B) I.P.C. as against the petitioners.

2.The learned counsel appearing for the petitioners would submit that there are totally 8 accused, in which, the petitioners are arraigned as A7 and A8. On the basis of the complaint lodged by the 2nd respondent, the 1st respondent registered the case with the allegation that the house and shop situated at S.No.565, Vickramasingapuram Village, Tirunelveli District are exclusively belongs to the 2nd respondent/defacto complainant. However, A1 projected herself as if she is the lawful owner of the said property



and sold out the same to A2 on 09.12.2009 through a sale deed, in which, A3 and A4 stood as witnesses. Insofar as A5 and A6 are concerned, they also extended their co-operation for executing the sale deed in favour of A2. The entire transaction has been taken place with the conspiracy of A7 and A8.

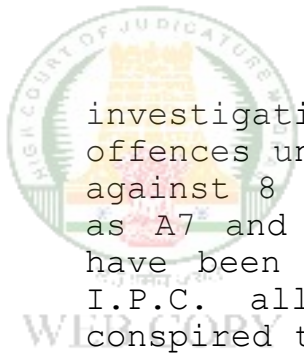
WEB COPY

3.The learned counsel appearing for the petitioners submitted that insofar as the offence of forgery is concerned, there is absolutely no allegation to connect the petitioners to the commission of the offence of forgery. When there is absolutely no averment to attract the other offences, the 1st respondent simply charged the petitioners for the offence under Sections 147 and 120 (B) I.P.C. To connect the petitioners, there is absolutely no averments to attract the offence under Section 120(B) I.P.C. The Hon'ble Supreme Court of India categorically held that making a counter claim in respect of a particular property through a sale deed executed by a person claiming to be the owner of the same cannot be termed as forgery unless it is specifically alleged that impersonation has been taken place and the signature of the real owner has been forged for executing such sale deed. He further submitted that insofar as the offence under Section 147 I.P.C. is concerned, there is absolutely no averments and allegations to attract the said offence. Nowhere, unlawful assembly made by the petitioners and as such, the entire proceedings are vitiated and are liable to be quashed. In support of his contention, he relied on the following decisions of the Hon'ble Supreme Court of India and this Court:

- 1.(2009) 3 Supreme Court Cases (Cri) 929 - Mohd. Ibrahim V. State of Bihar.**
- 2.(2018)3 Supreme Court Cases (Cri) 275 - Sheila Sebastian V. R.Jawaharaj.**
- 3.Order dated 16.09.2019 made in Crl.O.P.(MD) No.11638 of 2009 - Murugesan and two others V. State rep. by the Inspector of Police and another.**

4.Per contra, the learned counsel appearing for the 2nd respondent/defacto complainant submitted that the petitioners arraigned as A7 and A8 and they are the key persons for the entire transaction held in favour of A2. The petitioners arranged A1 and she projected herself as the owner of the property and executed the sale deed in favour of A2. There are categorical averments to attract the offences as charged by the 1st respondent as against the petitioners. All the points raised by the petitioners cannot be considered here and as such, he prayed for dismissal of the quash petition.

5.The learned Government Advocate (criminal side) submitted that on the complaint lodged by the 2nd respondent, a case has been registered in crime No.45 of 2012 for the offences under Sections 147, 417, 420, 468 and 471 I.P.C. However, after completing the



investigation, the 2nd respondent filed the final report for the offences under Sections 147, 417, 420, 468, 471 and 120(B) I.P.C. as against 8 accused persons, in which, the petitioners are arraigned as A7 and A8 and as far as these petitioners are concerned, they have been charged for the offences under Sections 147 and 120(B) I.P.C. alleging that all the accused unlawfully assembled and conspired together and without right over the property, executed the sale deed through A1 in favour of A2 with the co-operation of A5 and A6 and A3 and A4 stood as witnesses to the said document. Insofar as A7 and A8/these petitioners are concerned, they are the key persons to execute the sale deed in favour of A2 through A1. Therefore, all the accused have conspired together and committed the offences and hence, he prayed for dismissal of this petition.

6. Heard the learned counsel appearing for the petitioners as well as the 2nd respondent and the learned Government Advocate (criminal side) appearing for the 1st respondent and also perused the materials available on records.

7. The petitioners are arraigned as A7 and A8 and they have been charged for the offences under Sections 147 and 120(B) I.P.C. According to the case of prosecution, the petitioners arranged A1 and through her, they executed the sale deed in favour of A2 even without any title or right over the disputed property. According to the petitioners, A1 is the real owner of the property and she has derived the property from her ancestors. In fact, the 2nd respondent filed a suit in O.S.No.262 of 2009 on the file of the Additional District Munsif, Ambasamudram as against A1 and others and the same was dismissed vide order dated 27.04.2019. According to the learned counsel for the petitioners, A1 derived title over the disputed property by the sale deed dated 02.11.1971 executed by the mother of the 2nd respondent/defacto complainant.

8. The learned counsel appearing for the petitioners 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:

"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. "

9. In the decision reported in **(2018)3 Supreme Court Cases (Cri) 275 - Sheila Sebastian V. R. Jawaharaj**, the Hon'ble Supreme Court has held as follows:

"25. Keeping in view the strict interpretation of penal statute 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 to execute mortgage deed under the guise of that 'false document'. Hence, neither respondent no.1 nor respondent no.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 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 the case of Latesh @ Dadu Baburao Karlekar Versus The State of Maharashtra, (2018) 3 SCC 66 wherein 'reasonable doubt' has been enunciated by this Court as "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."

28. In this case at hand, the imposter has not been found or investigated into by the concerned officer. Nothing has been spilled on the relationship between the imposter and respondent no.1. Law is well settled with regard to the fact that however strong the suspicion may be, it cannot take the place of proof. Strong suspicion, coincidence, grave doubt cannot take the place of proof. Always a duty is cast upon the Courts to ensure that suspicion does not take place of the legal proof. In this case, the trial Court as well as the appellate Court carried away by the fact that accused is the beneficiary or the executant of the mortgage deed, where the prosecution miserably failed to prove the first transaction i.e PoA as a fraudulent and forged transaction. The standard of proof in a criminal trial is proof beyond reasonable doubt because the right to personal liberty of a citizen can never be taken away by the standard of preponderance of probability.

29. This case on hand is a classic example of poor prosecution and shabby investigation which resulted in the acquittal of the accused. The Investigating Officer is expected to be diligent while discharging his duties. He has to be fair, transparent and his only endeavour should be to find out the truth. The Investigating Officer has not even taken bare minimum care to find out the whereabouts of the imposter who executed the PoA. The evidence on record clearly reveals that PoA was not executed by the complainant and the beneficiary is the accused, still the accused could not be convicted. The latches in the lopsided investigation goes to the root of the matter and fatal to the case of prosecution. If this is the coordination between the prosecution and the investigating agency, every criminal case tend to end up in acquittal. In the



criminal justice delivery system, which is not a good symptom. It is the duty of the investigation, prosecution as well as the Courts to ensure that full and material facts and evidence are brought on record, so that there is no scope for miscarriage of justice."

WEB COPY

10.Following the above said decisions, this Court passed an order dated **16.09.2019** made in **Crl.O.P.(MD) No.11638 of 2009 - Murugesan and two others V. State rep. by the Inspector of Police and another** and quashed the criminal proceedings arising out of the offence of forgery. However, in the case on hand, the petitioners had been charged for the offences under Sections 147 and 120(B) I.P.C. They conspired with other accused and committed the offences. Therefore, the above judgments are not helpful to the case of the petitioners. Further, the disputed question of facts cannot be considered by this Court under Section 482 of Cr.P.C.

11.In this regard, It is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in **Crl.A.No.255 of 2019** dated **12.02.2019** in the case of **Sau. Kamal Shivaji Pokarnekar vs. the State of Maharashtra & ors.**, as follows:-

"4. The only point that arises for our consideration in this case is whether the High Court was right in setting aside the order by which process was issued. It is settled law that the Magistrate, at the stage of taking cognizance and summoning, is required to apply his judicial mind only with a view to taking cognizance of the offence, or in other words, to find out whether a prima facie case has been made out for summoning the accused persons. The learned Magistrate is not required to evaluate the merits of the material or evidence in support of the complaint, because the Magistrate must not undertake the exercise to find out whether the materials would lead to a conviction or not.

5. Quashing the criminal proceedings is called for only in a case where the complaint does not disclose any offence, or is frivolous, vexatious, or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same. It is not necessary that a meticulous analysis of the case should be done before the Trial to find out whether the case would end in conviction or acquittal. If it



appears on a reading of the complaint and consideration of the allegations therein, in the light of the statement made on oath that the ingredients of the offence are disclosed, there would be no justification for the High Court to interfere.

6.....

7.....

8.....

9. Having heard the learned Senior Counsel and examined the material on record, we are of the considered view that the High Court ought not to have set aside the order passed by the Trial Court issuing summons to the Respondents. A perusal of the complaint discloses that prima facie, offences that are alleged against the Respondents. The correctness or otherwise of the said allegations has to be decided only in the Trial. At the initial stage of issuance of process it is not open to the Courts to stifle the proceedings by entering into the merits of the contentions made on behalf of the accused. Criminal complaints cannot be quashed only on the ground that the allegations made therein appear to be of a civil nature. If the ingredients of the offence alleged against the accused are prima facie made out in the complaint, the criminal proceeding shall not be interdicted."

12.It is also relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in **Crl.A.No.579 of 2019** dated **02.04.2019** in the case of **Devendra Prasad Singh Vs. State of Bihar & Anr.**, as follows:-

" 12.So far as the second ground is concerned, we are of the view that the High Court while hearing the application under Section 482 of the Cr.P.C. had no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their statements and, therefore, there was no prima facie case made out against respondent No.2. In our view, this could be done only in the trial while deciding the issues on the merits or/and by the Appellate Court while deciding the appeal arising out of the final order passed by the Trial Court but not in Section 482 Cr.P.C. proceedings.



13. In view of the foregoing discussion, we allow the appeal, set aside the impugned order and restore the aforementioned complaint case to its original file for being proceeded with on merits in accordance with law.

WEB COPY

13. Recently, the Hon'ble Supreme Court of India held in respect of the very same issue in **Crl.A.No.1572 of 2019 - Central Bureau of Investigation Vs. Arvind Khanna, dated 17.10.2019** wherein, it has been held as follows:

"19. After perusing the impugned order and on hearing the submissions made by the learned senior counsels on both sides, we are of the view that the impugned order passed by the High Court is not sustainable. In a petition filed under Section 482 of Cr.P.C., the High Court has recorded findings on several disputed facts and allowed the petition. Defence of the accused is to be tested after appreciating the evidence during trial. The very fact that the High Court, in this case, went into the most minute details, on the allegations made by the appellant-C.B.I., and the defence put-forth by the respondent, led us to a conclusion that the High Court has exceeded its power, while exercising its inherent jurisdiction under Section 482 Cr.P.C.

20. In our view, the assessment made by the High Court at this stage, when the matter has been taken cognizance by the Competent Court, is completely incorrect and uncalled for."

The above judgments are squarely applicable to this case and as such, the points raised by the petitioners cannot be considered by this Court under Section 482 Cr.P.C.

14. Considering the above said judgments, this Court is of the view that there are specific allegations as against the petitioners. The documents which are relied upon by the petitioners have to be tested before the trial Court. Further, the mixed question of facts can not be considered by this Court that too under Section 482 of Cr.P.C.

15. In view of the above discussions, this criminal original petition is dismissed. Consequently, connected miscellaneous petition is also dismissed. The 1st respondent is directed to complete the investigation and file the final report, within a period of six months from the date of receipt of a copy of this order. The personal appearance of the petitioners before the trial



Court is dispensed with, except the dates on which, the trial Judge insisted the petitioners for their personal appearance.

Sd/-

Assistant Registrar (AD-I)

WEB COPY

// True Copy //

Sub Assistant Registrar(CS)

Arul
To

- 1.The Inspector of Police,
Vikramasingapuram Police Station,
Tirunelveli District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.T.S.R.VENKAT RAMANA, Advocate (SR-96852[F] dated
07/11/2019)

Order made in
CRL.O.P (MD) No.3921 of 2018
and
Cr1.M.P. (MD) No.1919 of 2018

07.11.2019

VB(25.11.2019) 10P 4C