



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl OP(MD)No.10024 of 2014

and

Crl MP(MD)No.1 of 2014

WEB COPY

A.Balasubramania Vandayar

... Petitioner / Accused

Vs.

Kulumaiyan

... Respondent / Defacto
Complainant

Prayer : This Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records in C.C No.257 of 2013 pending on the file of the learned Judicial Magistrate No.II, Thanjavur and quash the same as illegal.

For Petitioner : Mr.C.Arul Vadivel @ Sekar
For Respondent : Mr.K.Abiya

ORDER

The petitioner herein has been shown as the sole accused in C.C No.257 of 2013 on the file of the Judicial Magistrate No.II, Thanjavur. The respondent herein is the complainant. The case of the defacto complainant/respondent is that the petitioner while executing the sale deed had also executed a portion of the land belonging to the complainant. The court below has taken cognizance of the offences under Sections 467, 471 and 447 IPC. The core allegation of the complainant is that by conveying a property that belongs to the complainant, the accused had committed an act of forgery. To quash the said private complaint, the accused filed this criminal original petition.

2.The learned counsel appearing for the accused submitted that the impugned proceedings will have to be quashed in the light of the decision of the Hon'ble Supreme Court reported in **(2009) 8 SCC 751 (Md.Ibrahim vs. State of Bihar)**. The Hon'ble Supreme Court was concerned with a case arising under Section 467 and 471 of IPC. Paragraph Nos.8 to 12 of the said decision are as follows :

"8.Let us first consider whether the complaint averments even assuming to be true make out the ingredients of the offences punishable either under Section 467 or Section 471 of Penal Code. Section 467 (in so far as it is relevant to this case) provides that whoever forges a document which purports to be a security, shall be punished with imprisonment



for life or with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine. Section 471, relevant to our purpose, provides that whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document, shall be punished in the same manner as if he had forged such document. Section 470 defines a forged document as a false document made by forgery.

9. The term "forgery" used in these two sections is defined in Section 463. Whoever makes any false documents with intent to cause damage or injury to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into express or implied contract, or with intent to commit fraud or that the fraud may be committed, commits forgery. Section 464 defining "making a false document" is extracted below:

464. Making a false document.--A person is said to make a false document or false electronic record---

First.--Who dishonestly or fraudulently -

(a) makes, signs, seals or executes a document or part of a document;

(b) makes or transmits any electronic record or part of any electronic record;

(c) affixes any digital signature on any electronic record;

(d) makes any mark denoting the execution of a document or the authenticity of the digital signature, with the intention of causing it to be believed that such document or a part of document, electronic record or digital signature was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or

Secondly.--Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with digital signature either by himself or by any other person, whether such person be living or dead at the time of such alternation; or

Thirdly.--Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his digital signature on any electronic record knowing that such person by reason of unsoundness of mind or



intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration.

Explanation 1 - A man's signature of his own name may amount to forgery.

Explanation 2 - The making of a false document in the name of a fictitious person, intending it to be believed that the document was made by a real person, or in the name of a deceased person, intending it to be believed that the document was made by the person in his lifetime, may amount to forgery.

[Note: The words 'digital signature' wherever it occurs were substituted by the words 'electronic signature' by Amendment Act 10 of 2009].

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.

10. An analysis of Section 464 of Penal Code shows that it divides false documents into three categories:

10.1) 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.

10.2) 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.

10.3) 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.

11. In short,

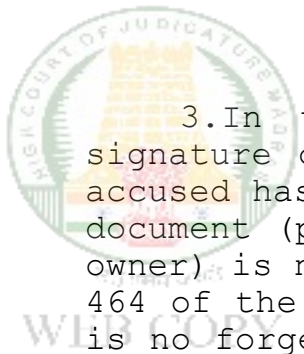
a person is said to have made a 'false document', if (i) he made or executed a document claiming to be



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.

12. 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.

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."



3.In this case, the petitioner herein has not affixed the signature of the complainant. In the offending sale document, the accused has affixed his own signature. 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. The aforesaid decision of the Hon'ble Supreme Court clearly applies to the case on hand. Since even the elementary ingredients of the offences are not made out, the impugned proceedings will have to be quashed. It is accordingly quashed.

4.This criminal original petition stands allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)

Skm

To

The Judicial Magistrate No.II, Thanjavur.

+1 CC to Mr.C. ARULVADIVEL@SEKAR, Advocate SR-85233.

+1 CC to Mr.K.ABIYA, Advocate SR-85492.

Crl.OP(MD)No.10024 of 2014

and

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CS(25.09.2019) 5P 4C