BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Date : 18/09/2019

PRESENT

The Hon`ble Mr.Justice G.R.SWAMINATHAN

CRL OP(MD). No.19625 of 2014 and
M.P.(MD)No.1 of 2014 and CRL.M.P.(MD)No.1446 of 2018

1. C. Ilangovan
2. I. Karthikeyan
3. I. Karpoora Sundarapandian
4. S.Sankarapandian
5. K. Pitchairaj
6. M. Sangili Muthu
7. V. Periyasamy
8. V. Sellapandian ... Petitioners/Accused Nos.1 to 8

Vs

1. The Inspector of Police,
Special Cell For AlGSC, Theni. ... Respondent/Complainant

2. Chitra,
W/o.M. Murugesan, Ward No.1, Vethakoil
Steret, K.K. Patti, Uthamapalayam Taluk,
Theni District. ... Respondent/Complainant

For Petitioners : M/s.C.Muthu Saravanan,
Advocate.
For R-1 : Mr.A.Robinson,
Government Advocate (Crl.Side).
For R-2 : M/s.J.Lawrance,
Advocate.

PRAYER :- Criminal Original petition is filed under Section 482 of Cr.P.C., to call for the records in Crime No.35 of 2014 on the file of the Inspector of Police, Special Cell for ALGSC, Theni.

ORDER : The Court made the following order :-

The second respondent herein Chitra is the defacto complainant in Crime No.35 of 2014 registered on the file of the first respondent for the offences under Sections 120(B), 467, 468 and 420 of I.P.C. The substance of her allegation is that the property in question belonged to Chinnathai. Her mother-in-law purchased the same from one Shanmugathai. After the demise of the said Chinnathai, the property was enjoyed in common by the husband of the defacto complainant and his brother. On 24.01.2014, a settlement deed was executed in favour of the defacto complainant. While so, petitioners 1 to 3 herein have dealt with the property as if it was belonged to them and sold the same to petitioners 4 to 8. To quash this First Information Report, this Criminal Original petition has been filed.

2. Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the defacto complainant and the learned Government Advocate(Crl.Side) appearing for the first respondent.

3. It is not in dispute that Chinnathai was the original owner of the property. But then, vide registered sale deed dated 24.04.1980, Chinnathai had sold the said property to Ilangovan, the first petitioner herein. The defacto complainant does not make a whisper about the document dated 24.04.1980. In order to satisfy the conscience of this Court, the prosecution was called upon to verify if any forgery has been committed while executing the sale deed dated 24.04.1980.

4. Today the learned Government Advocate(Crl.Side) produced a copy of the report of the Deputy Superintendent of Police/Finger Print Expert, District Finger Print Bureau, Theni District, indicating that the thumb impressions found in the sale deed dated 24.04.1980 belongs to Chinnathai. Therefore, the very foundation case of the second respondent goes.

5. That apart, the elementary ingredients of Sections 420, 467 and 468 of I.P.C. are wholly absent.

6. The learned counsel appearing for the petitioners 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 valuable 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.”

7. Applying the ratio laid down in the aforesaid decision, I have to necessarily hold that the impugned First Information Report is liable to be quashed. It is accordingly quashed. The Criminal Original petition stands allowed. Consequently, connected Miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-II)

/TRUE COPY/

Sub Assistant Registrar

PMU

TO

1. The Inspector of Police,
   Special Cell For ALGSC, Theni.

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

+1 CC to M/s.C.MUTHUSARAVANAN, Advocate (SR-87519[F] dated 18/09/2019)

ORDER
IN
CRL OP(MD) No.19625 of 2014
and M.P.(MD)No.1 of 2014 and
CRL.M.P.(MD)No.1446 of 2018
Date : 18/09/2019

JM/10.10.2019/6P/4C