BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 18.09.2019
CORAM :
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
Crl OP(MD)No.21199 of 2014
and
MP(MD)No.1 of 2014

1.A.Mayalagu

2.N.T.R.Ramamoorthy

3.P.Udayasuriyan

4.Mallika Devi ... Petitioners

Vs.

1.State, rep.by
The Inspector of Police,
District Crime Branch,
Madurai. (Crime No.29 of 2014)

2.S.Baskaran ... Respondents

Prayer : Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records in Crime No.29 of 2014 on the file of the Inspector of Police, District Crime Branch, Madurai pending disposal of the Criminal Original Petition.

For Petitioners : Mr.C.Muthu Saravanan

For Respondents : Mr.A.Robinson,
Government Advocate (crl.side) for R1

Mr.D.Shanmugarajasethupathi for R2

ORDER

The second respondent herein is the defacto complainant in Crime No.29 of 2014 on the file of the Inspector of Police, District Crime Branch, Madurai for the offences punishable under Sections 468, 471, 420 and 506(ii) IPC. The case of the defacto complainant is that the property in question belonged to one Muthiah Konar. The said Muthiah Konar had sold the said property in favour of one Easwaramoorthy in the year 1987. From Easwaramoorthy, the defacto complainant had taken power of attorney in the year 1990. He had also acted pursuant to the said power of attorney. While so, the said Muthiah Konar had once again dealt with the very same property by executing a sale deed in favour of the petitioners herein. That led to the registration of the impugned FIR. To quash the same, this criminal original petition has been filed.

2.It is to be noted at the very outset that the vendors of the petitioners herein are not before this Court. Only the purchasers are before this Court. If Muthiah Konar had conveyed the property to the petitioners herein which he had already sold to the third party, then the petitioners cannot be fastened with penal liability. For having purchased the property from someone else, the petitioners cannot be blamed. The case on hand is no longer res integra. The Hon'ble Supreme Court in the decision reported in ***(2009) 8 SCC 751 (Md.Ibrahim vs. State of Bihar)*** set out the circumstances when the offences of forgery and cheating will be attracted. As regards the offence of forgery, the Hon'ble Supreme Court held 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."

Likewise, the ingredients of offence of cheating have also been dealt with in the very same decision of the Hon'ble Supreme Court in Paragraph Numbers 13 and 14 which read as follows :

"13.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. 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).

14.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. 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. As the ingredients of cheating as stated in Section 415 are not found, it cannot be said that there was an offence punishable under Sections 417, 418, 419 or 420 of the Code."

3.Applying the aforesaid ratio laid down by the Hon'ble Supreme Court, I have to necessarily hold that no case is made out against the petitioners herein. The very implication of the petitioners in the impugned FIR can only be characterised as an abuse of legal process. Hence, the impugned prosecution stands set aside as far as the petitioners are concerned. This criminal original petition stands allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

Sub Assistant Registrar(CS)

To

The Inspector of Police,
District Crime Branch,
Madurai.

+1 CC to M/s.D.SHANMUGARAJA SETHUPATHI, Advocate (SR-87786[F] dated 19/09/2019)

Crl OP(MD)No.21199 of 2014
and
MP(MD)No.1 of 2014
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