BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P.(MD)No.6608 of 2016
and
Crl.M.P.(MD)Nos.3317 & 2181 of 2016

1.Hameeda Bagum

2.K.Meervava

3.K.Mubarak ... Petitioners

-vs-

1.The Inspector of Police,
District Crime Branch (Land Grabbing),
Theni District.
(Crime No.34 of 2014) ... 1st Respondent/Complainant

2.Pathukani ... 2nd Respondent/Informant

PRAYER: Petition filed under Section 482 of the Criminal Procedure Code to call for the records pertaining to FIR No.34 of 2014, dated 17.06.2014 on the file of the first respondent, District Crime Branch, Theni District and quash the same.

For Petitioners : Mr.Kalamurugappan

For R1 : Mr.R.Anandharaj,
Additional Public Prosecutor.

O R D E R

Heard the learned counsel on either side.

2.The petitioners herein are closely related to each other. The property in question originally belonged to one Syed Ammal. She was blessed with three children. Out of them, one son by name Syed Rowdhar had passed away and he had left behind three legal heirs. Syed Ammal, vide a gift deed dated 14.05.1945, settled 25 ½ cents in favour of one son Meer Bawa Rowdhar and 87 ½ cents in favour of the legal heirs of Syed Rowdhar. The petitioners herein belonged to Meer Bawa Rowdhar branch.

3. The case of the defacto complainant who belongs to the other branch is that the petitioners, after selling away 25 ½ cents that was gifted to their branch, are living on a substantial portion of 87 ½ cents that was gifted to the legal heirs of Syed Rowdhar. The defacto complainant is settled in Periyakulam. The defacto complainant's family appears to be settled elsewhere. Their grievance is that whenever they visited their ancestral property, the petitioners have been entering into a physical dispute with them. That lead to the registration of the impugned First Information Report in Crime No.34 of 2014 for the offences under Section 294(b), 406, 420, 463, 464, 465, 441, 506(ii), 307 of IPC.

4.The prosecution case is that on 21.11.2005, the daughters of Meer Bawa Rowdhar had already sold their property in favour of one Vinod Viswanathan. Thus whatever was gifted by Syed Ammal to their branch had already been sold by them and they no longer have any further claim. Yet, inorder to defeat the legitimate property rights of the defacto complainant, on 03.02.2014 the petitioners herein had executed a release deed. According to the defacto complainant, this constitutes the offences in question.

5.As rightly contended by the learned counsel for the petitioners, the issue is no longer *res integra*. The Hon'ble Supreme Court in the decision reported in ***[2009 (8) SCC 751]*** in the case of ***Mohammed Ibrahim and others Vs. the State of Bihar and another*** had held as follows:

> *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."

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."*

6.Applying the ratio set out above, I have to necessarily hold that none of the offences set out in the impugned First Information Report are made out against the petitioner herein. The very registration of the impugned First Information Report is an abuse of legal process.

7.But then, this Court has to necessarily address the concerns projected by the learned counsel appearing for the defacto complainant. The defacto complainant states that even though they are having a clear title over the 87 ½ cents of land, the petitioner's herein, on the strength of a patta fraudulently obtained from the Revenue authority, are preventing them from accessing their property.

8.The defacto complainant has to necessarily workout his rights only before the Court below. It appears that a civil suit in O.S.No.17 of 2017 on the file of District Munsif Court, Periyakulam has already been filed and that the same appears to have suffered a dismissal for default.

9.The learned counsel for the petitioner on instructions states that they will have no objection for restoration of the said suit to the file of the trial Court.

10.Therefore, the learned trial Munsif is directed to allow the application for restoration to be filed by the respondent herein and take it up on file. It is always open to the second respondent herein to file an appropriate injunction application and the respective rights of the parties herein will abide by the outcome of the civil Court's decision.

11.With this observation, this Criminal Original Petition is allowed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

pnn

To

1.The District Munsif Court, Periyakulam

2.The Inspector of Police,
District Crime Branch (Land Grabbing),
Theni District.

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

+1 CC to M/s.R.MURUGAPPAN, Advocate (SR-377[F] dated 06/01/2020)

Crl.O.P.(MD)No.6608 of 2016
and
Crl.M.P.(MD)Nos.3317 & 2181 of 2016

kmv(CO)
TR(04.03.2020) 5P 5C