BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 09.01.2020
CORAM
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
Crl.O.P.(MD)Nos.952, 6114 & 6398 of 2016
and
CRL.M.P.(MD)Nos.471, 3021, 3022,
3180, 3181 & 9556 of 2016

1. K.L.Venktachalam
2. Kula.Jaganathan
3. R.Varadhalakshmi
4. R.Sankar
5. R.Natarajan
6. R.Balaji (a) Balakrishnan ... Petitioners/Accused Nos.1 to 6 in CRL.O.P.(MD)No.952 of 2016

1. S.Devika
2. R.Rajaram
3. Balasubramanian ... Petitioners/ Accused Nos.8,10&11 in CRL.O.P.(MD)No.6114 of 2016

Rajamani Ammal ... Petitioner/7th Accused in CRL.O.P.(MD)No.6398 of 2016

Vs.

ATP.Senthil Kumaran ... Respondent/Defacto Complainant in all petitions

Common Prayer: Criminal Original petitions are filed under Section 482 of Cr.P.C, to call for the records in C.C.No.241 of 2015 pending on the file of the learned Judicial Magistrate, Karaikudi and quash the same with regard to the petitioners.
(in all Cr.O.Ps.)

For Petitioners : Mr.S.Sathish Kumar
For Respondent : Mr.K.Govindarajan, for Mr.S.Ravi.

C O M M O N O R D E R

These criminal original petitions have been filed for quashing the proceedings in C.C.No.241 of 2015 on the file of the Judicial Magistrate, Karaikudi.

2. It is a private complaint filed by the respondent ATP.Senthil Kumaran, S/o.Ponnusamy Chettiar. The complaint alleges commission of the offences under Sections 420, 468, 471 and 120(B) of I.P.C. Cognizance of the aforesaid offences was taken by the learned trial Magistrate. To quash this private complaint, these criminal original petitions have been filed.

3. Heard the learned counsel on either side.

4. It is not in dispute that the property in question is comprised in Survey No.109/25 at Pudhuvayal Village, Karaikudi Taluk, Sivagangai District. The complainant is aggrieved by the

alienation made in the year 1997, inclusion of the said property in the power deeds bearing document Nos.201 of 1997 and 1097 of 1997 and sale deeds bearing document Nos.945 and 946 of 2005 on the file of the Sub Registrar Office, Karaikudi.

5. The case of the defacto complainant is that the property in question originally belonged to one Palaniyammal. She sold the property in favour of Kalimuthu in the year 1944. From Kalimuthu, Akilandammal purchased the said property. One Thangasamy Chettiyar purchased the said property from Akilandammal in the year 1953. Thangasamy Chettiar died leaving behind his legal heir Ponnusamy Chettiar. Ponnusamy Chettiar is the father of the complainant herein. On 20.01.2012 Ponnusamy Chettiar had executed a gift deed in favour of the complainant and his brother Sathiya Narayanan. The specific allegation of the complainant is that the accused herein have made it appear as if the property belongs to Kulandaisamy Chettiar who is none other than the brother of Thangasamy Chettiar. According to the complainant, Kulandaisamy Chettiar had no title over the property in question. Therefore, by including the property in question through power deeds and sale deeds, the accused have committed the offences in question. This is the substance of the complaint.

6. Per contra the learned counsel appearing for the accused would point out that the property in question was actually purchased by Kulandaisamy Chettiar way back in the year 1929. It is a registered document. He also produced the copies of 'A' Registers which appear to indicate that the survey number in question stood in the name of Kulandaisamy Chettiar. Kulandaisamy Chettiar passed away in the year 1946. He had as many as four sons and it is not in dispute that he was the grand-father of some of the accused(accused Nos.4 to 8).

7. The learned counsel appearing for the petitioners would point out that the complainant and his brother were not aware of these offending transactions and that when they became aware of the same, they lodged a complaint before the competent authority under the Registration Act and made an endorsement that the transactions entered into by the accused herein are forged. The accused have preferred an appeal before the Inspector General of Registration, challenging the said endorsement. But the appeal is still pending. The learned counsel appearing for the complainant would point out that so long as the endorsement is operating against the accused, it would not be open to them to maintain this quash petition under Section 482 of Cr.P.C.

8. I carefully considered the rival contentions.

9. The dispute between the accused and the complainant is whether the property belonged exclusively to Thangasamy Chettiar. The case of the accused is that they belong absolutely to Kulandaisamy Chettiar. It is essentially a title dispute. Of course as pointed out by the learned counsel appearing for the defacto

complainant, registering authorities are seized of the matter. It is also admitted that the property in question is the subject matter of certain civil proceedings. Be that as it may, the question that arises for consideration is whether the accused can be said to have committed the offence of cheating and forgery.

10. It is not as if the accused held out any representation to the complainant. It is not as if the complainant was induced to change his position on account of the assurances or promises held out by the accused. Likewise the accused have not affixed the signature of the complainant. Admittedly the accused have affixed only their signatures. They are tracing their title independently. Therefore, the essential ingredients of cheating and forgery are wholly absent in this case.

11. The issue raised in this quash petition 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) 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."

12. Applying the ratio laid down, I hold that continuance of the impugned proceedings will only amount to an abuse of legal process. The elementary ingredients of the offences are absent. Therefore, the impugned proceedings against the petitioners stand quashed. The criminal original petitions stand allowed.

13. It is made clear that this order quashing the proceedings will not have any bearing on the appeal before the registering authority or any other proceedings that may be instituted by the complainant. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

pmu

To:

The Judicial Magistrate, Karaikudi, Sivagangai District.

+2ccs to Mr.S.SathishKumar, Advocate, Sr.No.1438/2020

+1cc to Mr.S.RAVI, Advocate, Sr.No.1627

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09.01.2020

SM/19/06/2020/6P/5C