IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 22.09.2021

PRONOUNCED ON: 05.10.2021

CORAM

THE HON'BLE Mr. JUSTICE C.V.KARTHIKEYAN

Crl.O.P.No. 6466 of 2016
And
M.P.Nos. 3359 & 3360 of 2016

1. Balamurugan

2. Shanmuga Sundharam

[second petitioner has died on 03.01.2019
charge against so, the second petitioner is abated
Amended the cause title as per order in
Crl.O.P.No. 6466 of 2016
dated 09.09.2021.]

3. Jagadeesan

4. Haribabu

5. Thulasi @ Thulasiraman

... Petitioners/Accused 2 to 5 & 7

Vs.

1. The State rep. by
The Inspector of Police
District Crime Branch
Vellore, Crime No. 55/2010 ... 1st Respondent/complainant

2. V. Pughazhedi ... 2nd Respondent/Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. to call for records and quash the charge sheet in C.C.No. 36 of 2016 on the file of the Judicial Magistrate No.II, Vellore.

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For Petitioners : Mr. P.Krishnan

For 1st Respondent : Mr. E.Raj Thilak
Government Advocate (Crl.Side)

For 2nd Respondent : Mr. K.R.Samratt

ORDER

This Criminal Original Petition has been filed under Section 482 of the Code of Criminal Procedure seeking to quash the charge sheet in C.C.No. 36 of 2016 pending on the file of the learned Judicial Magistrate No.II, Vellore.

2. The second respondent herein had given a complaint to the Superintendent of Police, Vellore alleging that the third and fourth petitioners/A-4 & A-5 herein had induced him to purchase lands in s.No. 843/4 at Mosur Village measuring to an extent of 2.80 acres. He also claimed that he purchased the property by a registered sale deed dated 05.11.2007 registered as Document No. 9116 of 2007 on the file of Sub Registrar Office – 1, Arakkonam for total consideration of Rs.9,80,000/-. He further claimed that when he came to take possession, he found that his Vendors, namely, the third and fourth petitioners herein did not have title but they had prevailed upon the first, second and third accused to sell the lands to them though it had already been sold by the accused Nos. 1, 2 and 3 to some other person. He alleged that the third and fourth petitioners herein /A-4 and A-5 had therefore cheated him and when he questioned them, they threatened him with dire consequences. The said complaint was thereafter forwarded to the District Crime Branch, Vellore / first respondent, who registered First Information Report in Crime No. 55 of 2010 under Sections 467, 468, 471, 420, 506(i) read with 120(b) IPC. The investigation was conducted by the first respondent and thereafter, a final report had been laid originally before the learned Judicial Magistrate Court at Arakonam and the same was taken cognizance as C.C.No. 221 of 2012 and later, it had been transferred to the learned Judicial Magistrate Court No.II, Vellroe and renumbered as C.C.No. 36 of 2016.

3. Heard Mr. P.Krishnan, learned counsel for the petitioners/A-2, A-3, A-4, A-5 and A-7, Mr. E.Raj Thilak, learned Additional Public Prosecutor appearing for the first respondent and Mr.K.R.Samratt, learned counsel for the second respondent/defacto complainant.

4. It must also be mentioned that A2 and A3 are the sons of A-1. Pending proceedings, A-1 had died. A-3 had also died

and death certificate was filed before this Court and also recorded. A-6 is also reported dead. Therefore, the charges against A-1, A-3 and A-6 naturally abate.

5. The learned counsel for the petitioners stated that the said lands in S.No. 843 /4 measuring 2.80 acres at Mosur Village, originally belonged to Navakotti, who was the husband of A-1 and father of A-2 and A-3. After his demise, the A-1, A-2 and A-3 had executed a power of attorney dated 05.11.2004 appointing one A.P.Gokul to develop the property. This power of attorney was subsequently cancelled on 27.03.2007 since the said agent did not develop the lands. Thereafter on 29.03.2007, A-1, A-2 and A-3 had sold the land in favour of the A-4 and A-5 / 3rd and 4th petitioners herein by a registered Deed of Sale as Document No. 1905 of 2007 on the file of Sub Registrar Office, Joint-I, Arakkonam, for a sale consideration of Rs.1,12,000/-.

6. It appears that thereafter, the third and fourth petitioners herein had executed a sale deed on 05.11.2007 in favour of the second respondent. There is also yet another sale deed dated 05.02.2007 in favour of the parents of the second respondent which was kept pending under Section 47(A)(1) of the Indian Stamp Act. The said document was therefore not immediately registered. This naturally mean that the said document was also not reflected in the encumbrance certificate. Thus, this fact led to another sale deed being executed and it is claimed that the third and fourth petitioners herein had executed such sale deed since the sale deed which was kept pending in the Registrar Office was not reflected in the encumbrance certificate.

7. The learned counsel for the petitioners Mr.P.Krishnan urged that all the documents were registered by the respective executant and there was no forgery committed and there was no impersonation. There was no putting of signatures by any third party, thereby creating false and fabricated documents. The learned counsel stated that it was an issue of the property being sold over again primarily because an earlier registered document had been kept pending in the Sub Registrar Office and was not to the knowledge of the petitioners herein.

8. Mr. K.R.Samratt, learned counsel for the second respondent pointed out that the second respondent had been induced to purchase the property by A-3 and A-4, which property had already been sold by A-1, A-2 and A-3 and therefore, the learned counsel stated that the second respondent had been put to loss by such inducement.

9. The learned Additional Public Prosecutor Mr. E.Raj Thilak stated that the investigation had been done and a charge sheet had been laid before the competent Magistrate Court which

had been taken cognizance for offence under Sections 468, 471, 420, 506(i) read with 120(b) IPC.

10. However as correctly pointed out by Mr.P.Krishnan, learned counsel for the petitioners though there are multiplicity of documents registered with respect to the same property, there was not forgery Petitioner fabrication or creation of those documents.

11. In Mir Nagvi Askari v. CBI [Mir Nagvi Askari v. CBI, (2009) 15 SCC 643 : (2010) 2 SCC (Cri) 718] , the Hon'ble Supreme Court held as follows:-

> “164. A person is said to make a false document or record if he satisfies one of the three conditions as noticed hereinbefore and provided for under the said section. The first condition being that the document has been falsified with the intention of causing it to be believed that such document has been made by a person, by whom the person falsifying the document knows that it was not made. Clearly the documents in question in the present case, even if it be assumed to have been made dishonestly or fraudulently, had not been made with the intention of causing it to be believed that they were made by or under the authority of someone else. The second criteria of the section deals with a case where a person without lawful authority alters a document after it has been made. There has been no allegation of alteration of the voucher in question after they have been made. Therefore, in our opinion the second criteria of the said section is also not applicable to the present case. The third and final condition of Section 464 deals with a document, signed by a person who due to his mental capacity does not know the contents of the documents which were made i.e. because of intoxication or unsoundness of mind, etc. Such is also not the case before us. Indisputably therefore the accused before us could not have been convicted with the making of a false document.”
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> 25. Keeping in view the strict interpretation of penal statute i.e. referring to rule of interpretation wherein natural inferences are preferred, we observe that a charge of forgery cannot be imposed on a

person who is not the maker of the same. As held in plethora of cases, making of a document is different than causing it to be made. As Explanation 2 to Section 464 further clarifies that, for constituting an offence under Section 464 it is imperative that a false document is made and the accused person is the maker of the same, otherwise the accused person is not liable for the offence of forgery.

12. In (2009) 8 SCC 751 [Md. Ibrahim & Ors. Vs. State of Bihar & Anr.], subsequently reiterated in (2018) 7 SCC 581, [Sheila Sebastian Vs. R.Jawaharaj & Anr.], the Hon'ble Supreme Court had held as follows:-

> "11. 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.
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> 12. Section 464 defining "making a false document" is extracted below:
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> "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 alteration; 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 they occur were substituted by the words 'electronic signature' by Amendment Act 10 of 2009.]"

13. 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.

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

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.

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.

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.

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 practising deception, or from a person not in control of his senses.

15. The sale deeds executed by the 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 the complainant's land (and that Accused 2 to 5 as the purchaser, witness, scribe and stamp vendor, colluded with the first accused in execution and registration of the said sale deeds) would bring the case under the first category.

16. 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 bona fide 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.
>
> 17. 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.”

13. The position of law has been very clearly pointed out by the Hon'ble Supreme Court that to attract a charge under Section 468, 471 IPC, primarily the ingredients of forgery as enunciated under Section 464 should be satisfied. Here that is not the case.

14. The Investigating Officer should have examined whether there had been deliberate forgery of the documents. As pointed out by the Hon'ble Supreme Court if a property does not stand in the name of the Vendor, but still it had been sold by a properly executed document, it would not attract the provisions of Sections 468, 471 IPC.

15. Without going any further into the facts since the learned Magistrate had taken cognizance of the charge sheet, I would quash the charge sheet only in so far as the offences under Sections 468 and 471 IPC are concerned. Let the trial proceed with respect to offences under Sections 420, 506(i) read with 120(b) IPC.

16. I am confident that the learned Judicial Magistrate No.II, Vellore, would grant more than ample opportunity to all concerned during the course of trial to put forward their rival contentions and would also properly appreciate the oral and documentary evidence produced on record.

17. As pointed out earlier, the A-1, A-3 & A-6 are reported dead. Let fresh death memos, if not already filed, be filed before the learned Judicial Magistrate No.II, Vellore, with respect to the aforesaid accused and thereafter on relevant proof of the same, the learned Judicial Magistrate may record that the charges as against the said accused as abated and proceed with trial with respect to the charges under Sections 420, 506(i) read with 120(b) IPC as against the other accused persons.

18. With the above observation, this Criminal Original Petition is partly allowed to that limited extent by interfering with the charge sheet with respect to the charges under Section 468 and 471 IPC. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

vsg
To

1.The Judicial Magistrate No.II, Vellore.

2.Do through the Chief Judicial Magistrate, Vellore.

3.The Inspector of Police
District Crime Branch
Vellore.

4. The Public Prosecutor,
High Court, Madras.

+1 cc to Mr.P.Krishnan, Advocate Sr.NO. 52616
+1 cc to Mr.K.R.Samratt, Advocate Sr.NO. 52273

Crl.O.P.No. 6466 of 2016
And
M.P.Nos. 3359 & 3360 of 2016

BP(CO)
A.SK(27.10.2021)