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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.12.2021

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THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

CRL.O.P.NO.26024 OF 2017

AND

CRL.M.P.NOS.15001 & 15002 OF 2017

A.Chellamuthu

...Petitioner

Vs

1.The State of Tamil Nadu
rep. by The Inspector of Police,
Anti Land Grabbing Spl.Cell,
Kancheepuram District.

2.M.Thirugnanasambamdam

...Respondents

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to the Charge Sheet filed in C.C.No.130 of 2017 on the files of the learned Judicial Magistrate No.II, Chengalpet, quash the same.

For Petitioner : Mr.R.Selvakumar

For Respondents : R1 - Mr. S.Vinoth Kumar
Government Advocate(Criminal Side)
R2 - No appearance

O R D E R

This petition has been filed to quash the charge sheet filed in C.C.No.130 of 2017 on the file of the learned Judicial Magistrate No.II, Chengalpet against the petitioner for the offences punishable under Sections 120B, 420, 423, 465, 468 and 471 of I.P.C.

2. The crux of the allegation is that the accused claims to be the owner of the property. The property originally belong to the defacto complainant's ancestors. The accused claiming to be the owner of the property have created a false document and sold the property to A2 and A1 was attesting witness of the above document and A2 has settled the property in favour of his son on 17.06.2010, wherein A1 also is a attesting witness.



3. It is the only contention of the learned Counsel for the petitioner that A1 is only the attesting witness of the document and absolutely there is no material to show that either A1, A2 and others have made a false document. Therefore, submitted that merely a person claiming to be the owner of the property and executing documents, such an act never comes within the definition of Section 465 of I.P.C. to contend that there was forgery. Therefore, submitted that the entire prosecution was nothing but motivated and A2 has already died and A1 is a attesting witness of the document. Therefore, prays to quash the charge sheet.

4. Normally, the Court will not interfere with the final report when the materials collected by the investigation agency prima facie indicate that there are materials to proceed against the accused. At the same time, the entire prosecution materials taken on face value do not constitute any offence, still forcing the persons to undergo the ordeal of trial can be prevented while exercising power under the Section 482 of Cr.P.C.

5. The crux of the charge is that the accused has committed the offence of forgery in creating the documents. It is relevant to note that Section 464 of I.P.C. deals with making the false documents and Section 464 of IPC reads as follows :

"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



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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."

6. It is not the case of the prosecution that the accused created any documents. In fact they have sold the property and they claiming to be the owner of the property. Therefore, when a person executing the property conveying the property describing it as his, the said act could not constitute an offence of making a false document as held by the Apex Court in the judgment in Mohammed Ibrahim and others Vs. State of Bihar and another reported in [2009] 8 SCC 751.

7. Therefore, even the entire materials collected by the prosecution, it is stated that A1 is only an attesting witness of the document and A2 is already died which is also not disputed. In such view of the matter, the prosecution against the petitioner is nothing but futile exercise.

8. Accordingly, this Criminal Original Petition is allowed and the charge sheet filed in C.C.No.130 of 2017 on the file of the learned Judicial Magistrate No.II, Chengalpattu against the petitioner for the offences punishable under Sections 120B, 420, 423, 465, 468 and 471 of I.P.C. is quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CO)

// True Copy //

Sub Assistant Registrar

vrc / kbs

To

1.The Judicial Magistrate No.II,
Chengalpattu.



2.The Chief Judicial Magistrate,
Chengalpattu.

3.The Inspector of Police,
Anti Land Grabbing Spl.Cell,
Kancheepuram District.

4.The Public Prosecutor,
High Court,
Madras.

+1cc to Mr.R.Selvakumar, Advocate SR.No.69625

Crl.O.P.No.26024 of 2017 and
Crl.M.P.Nos.15001 & 15002 of 2017

SSI (CO)
RVM(11/01/2022)