BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 01/11/2021
Pronounced on : 25/11/2021

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.O.P.(MD)No.3186 of 2021
and
Crl.MP(MD)No.1747 of 2021

S.Muthaiah ... Petitioners/3rd Accused

Vs.

1.The Inspector of Police,
City Crime Branch,
Tirunelveli District.
(Crime No.1 of 2021) ... 1st Respondent/Respondent/Complainant

2.C.Rajeshwari ... 2nd Respondent/Defacto Complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records pertaining to the impugned FIR in Crime No.1 of 2021 dated 20.01.221 on the file of the CCB Police Station, Tirunelveli City, Tirunelveli District and quash the same as far as the petitioner is concerned.

For Petitioner : Mr.S.Ramasundara Vijayaraj
for M/s.Veera Associates

For R1 : Mr.K.Sanjay Gandhi
Government Advocate (Criminal side)

For R2 : Mr.S.Poornachandran

ORDER

This Criminal Original Petition is filed to quash the impugned FIR in Crime No.1 of 2021, dated 20.01.221 on the file of the CCB Police Station, Tirunelveli City, Tirunelveli District.

2.Earlier, this court heard the matter in detail in the absence of the learned counsel appearing for the 2nd respondent. Subsequently, by order, dated 14/07/2021 passed a detailed order, by allowing the main criminal original petition. But the learned counsel appearing for the 2nd respondent filed a petition in Crl.MP(MD)No.7683 of 2021 to reopen and rehear the main case, which was disposed of by this court, on 14/07/2021. The said Miscellaneous Petition was allowed by this court, on 01/11/2021 and the matter was reheard by this court.

3.The case of the prosecution on the basis of the complaint given by the second respondent is that the disputed property, originally belongs to her father, namely, Palaveshathevar. The following children namely, Muthulakshmi, Balasubramanian, Murugan, Velappan, Andal, Rajeswari, Shanmugaiah and P.Ganesan born to him. He executed a Will in favour of the eighth son, namely, Ganesan on 13.12.1992. According to her, this is a forged Will. So, on the basis of the alleged forged Will, the first accused made a settlement, in favour of the second accused, who is his wife. The second accused, in turn, sold the property, to the third accused. Later, the first accused has executed a settlement, in favour of the fourth accused. The fourth accused, in turn, sold the property to the second accused.

4.According to the second respondent, all the accused persons have conspired together and indulged in creating forged documents, so as to deprive her lawful right over the property left by her father. Based upon the complaint given by her, originally CSR was registered in CSR.No.676 of 2020 and after preliminary enquiry, a case was registered in Crime No.1 of 2021 on the file of the first respondent herein.

5.The third accused in this case has filed this petition on the ground that he was not all in the picture when the alleged Will was executed by the Palaveshathevar in favour of the first accused and he is the *bona fide* purchaser for value after perusing all the documents. He purchased the property to an extent of 15.85 cents, as detailed in the sale document for a valuable consideration, on 24.11.2010. According to him, he is in no way connected with the alleged forgery of the Will and a case has been falsely foisted against him .

6.Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the first respondent and the learned counsel appearing for the second respondent.

7.**For better appreciation, the history of the property is required to be seen briefly**:- The property under dispute originally belonged to Palaveshathevar, who is the father of the defacto complainant, the second respondent herein and the first accused. As mentioned earlier, Palaveshathevar had eight children, out of 8 children, he had chosen to execute a Will in favour of the eighth son namely, Ganesan. The second accused is the wife of the first accused and the third accused is the petitioner herein and other accused persons were the subsequent purchasers. The Will dated 13.12.1982, is a registered one. It also contains the signature of Palaveshathevar apart from his left thumb impression. This document is attacked by the defacto complainant/second respondent stating as forged document.

8.Now, one of the children of the said Palaveshathevar namely, Rajeswari, who is the sixth child, filed this complaint. Since it is a registered Will, the first accused executed a settlement in respect of 15.85 cents in favour of the second accused on 31.08.2010. This is a registered document. Later, patta was transferred to the second accused on 19.10.2010 and later, on 24.11.2010, the petitioner purchased the said property from the second accused. So, it appears that after a gap of above 18 years, the transaction took place. Palaveshathevar died on 07.06.1999. His wife also died on 28.10.2003. So, the petitioner seems to have purchased the property after 11 years from the date of death of Palaveshathevar and 18 years from the date of the alleged Will.

9.A Short point that has been argued by the learned counsel for the petitioner is that he was not in the picture when the alleged Will was executed by the Palaveshathevar in favour of the first accused and he is the *bona fide* purchaser for value after perusing all the documents. He purchased the property to an extent of 15.85 cents, as detailed in the sale document for a valuable consideration, on 24.11.2010. According to him, he is in no way connected with the alleged forgery of the Will and a case has been falsely foisted against him. For that purpose, he would rely upon the judgment of the Hon'ble Supreme Court reported in **Mohammed Ibrahim Vs State of Bihar and another (2009) 8 SCC 751**. It is stated that this is the classic case on the subject when and how the offences under Sections 464, 463, 471 and 467 IPC are made out, have been clearly and elaborately discussed and frequently followed almost in all the cases. The offences alleged against the petitioner are under Sections 465, 567, 488 and 471 IPC, since this is the settled position of law, frequently followed in all the cases, the relevant portion from the judgment is extracted hereunder:-

> "*14. An analysis of Section 464 of Penal Code shows that it divides false documents into three categories:*
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> ***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.*
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> ***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 practicing deception, or from a person not in control of his senses.

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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 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.*

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Section 420 IPC

18. Let us now examine whether the ingredients of an offence of heating 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.

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20. When a sale deed is executed conveying a property claiming ownership there to, 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.

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A clarification

23. When we say that execution of a sale deed by a person, purporting to convey a property which is not his, as his property, is not making a false document and therefore not forgery, we should not be understood as holding that such an act can never be a *criminal offence. If a person sells a property knowing that it does not belong to him, and thereby defrauds the person who purchased the property, the person defrauded, that is the purchaser, may complain that the vendor committed the fraudulent act of cheating. But a third party who is not the purchaser under the deed may not be able to make such complaint."*

10.According to the petitioner, the observations made by the Hon'ble Supreme Court clearly shows that he cannot be roped in anyone of the ingredients of the offences that are mentioned in the First Information Report.

11.But the learned counsel appearing for the 2nd respondent would submit that the petitioner is also a beneficiary of the above said illegal act and he was also aware of the fraudulent document and having known all these facts, he purchased the property. So, for considering this ground, it is directed to rehear the main petition, since prima facie ground is made out that the disputed Will is a forged one as the date of registration fell on Sunday.

12.Even though the petitioner is not directly involved in the alleged creation of fraudulent Will, dated 13/12/1992, I am of the considered view that this petitioner is also one of the beneficiaries of the above said alleged fraudulent document. Apparently, it is a fraudulent document, since it is dated 13/12/1992, which date fell on Sunday. This position is also admitted by the learned counsel appearing for the petitioner.

13.Whether the contention of the petitioner is correct or not cannot be a matter for consideration and discussion at this stage, since the investigation is in the preliminary stage. The involvement or non involvement of this petitioner can be found out only during the course of investigation process. So the Investigating Officer can file either by including the petitioner as an accused or he may delete his name, if he find that he is not involved in the fabrication of false document. If final report is filed implicating him also, he can work out the remedy by appropriate proceedings.

14.In view of the above observations, I am of the considered view that this criminal original petition is dismissed with the above said liberty. Consequently, the connected miscellaneous petition is closed.

25.11.2021

Internet:Yes
Index:Yes/No
Speaking order/Non-Speaking order

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Inspector of Police,
City Crime Branch,
Tirunelveli District.

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

G.ILANGOVAN,J.,

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