



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE ON WHICH RESERVED : 17.06.2021

DATE ON WHICH PRONOUNCED : 14.07.2021

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)

...1stRespondent/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.Veera Kathiravan Senior Counsel
for M/s.Veera Associates

For R1 : Mr.R.M.Anbu Nithi,
Additional Public Prosecutor.

For R2 : No Appearance

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. 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. He had the following children namely, Muthulakshmi, Balasubramanian, Murugan, Velappan, Andal, Rajeswari, Shanmugaiah and P.Ganesan. He executed a Will in favour of the eighth son, namely, Ganesan on 13.12.1992. This is the 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 subsequently. 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.



3. So, 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.

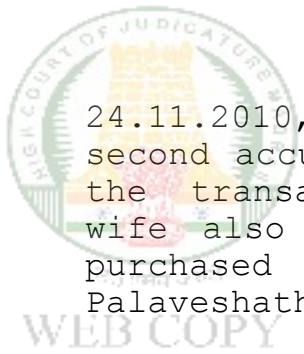
4. The third accused has filed this petition on the ground that he was not in the picture when the alleged Will was executed by the Palaveshathevar in favour of the first accused and he was the *bona fide* purchaser for value after perusing all the documents, he purchased the property to an extent of 15.85 cents, as detailed in the sale document for a valuable consideration, on 24.11.2010. So, 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 .

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

6. The second respondent was represented by an Advocate at the time of hearing and after, he was absent. So, the matter was posted for the purpose of giving an opportunity to the second respondent. Again, there was no representation, when the matter was listed. So, perusing the records available on record, this order is passed, after hearing the learned counsel for the petitioner as well as the learned Additional Public Prosecutor for the first respondent.

7. It is not in dispute that the property under dispute originally belongs to Palaveshathevar, who is the father of the defacto complainant and the first accused herein. As mentioned earlier, he had eight children, out of 8 children, he has 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 13.12.2019, 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 stating as forged document. Whether this document is genuine one or not, is a matter for deciding in this criminal case during the course of trial or before the Civil Court. It appears that no civil suit is filed.

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. Short point that has been argued by the learned counsel for the petitioner is that when he was not at all in the picture, during the alleged forgery, he cannot be roped in. 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:

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

<https://hcservices.ecourts.gov.in/hcservices/> (11) he obtained a document by practicing deception,



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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. A conjoint reading of the observations made by the Hon'ble Supreme Court clearly shows that the petitioner cannot be roped in anyone of the ingredients of the offences that are mentioned in the First Information Report. If the defacto complainant properly institutes a civil suit, and if there is the findings of the Trial Court that the Will is a forged one, then the defacto complainant has to work out her remedy appropriately. There is no representation on the part of the defacto complainant. So, this is a clear abuse of process of law.

11. In view of the above observations, I am of the considered view that the First Information Report is liable to be quashed and accordingly, the same is quashed with liberty to the second respondent to work out her remedy before the appropriate Court through appropriate proceedings. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

dss

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.

+1 CC to M/s.VEERA ASSOCIATES, Advocate(SR-22643[F]dated 15/07/2021)

**CrI.O.P. (MD)No.3186 of 2021
and
CrI.MP (MD)No.1747 of 2021
14.07.2021**

RK (26.07.2021) 6P 4C