



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P.(MD)No.9603 of 2021

and

Crl.M.P.(MD)No.4908 of 2021

WEB COPY

1.Samuel Benjamin Rajendran

2.S.Samuel Alexander

3.Devasahayam ... Petitioners/Accused Nos.1 to 3

vs.

1.State represented by its,
The Sub-Inspector of Police,
Sambavar Vadakarai Police Station,
Tenkasi District.

(Crime No.285 of 2020) ...1 st Respondent/Complainant

2.Betsy Daniel Bhasker ... 2nd Respondent/De-facto Complainant

PRAYER : Criminal Original Petition filed under Section 482 Cr.P.C,
to call for the records in Crime No.285 of 2020 on the file of the
first respondent police and quash the same.

For Petitioners : Mr.R.J.Karthick

For Respondents : Mr.T.Senthil Kumar
Additional Public Prosecutor for R1
Mr.T.Villavan Kothai for R2

O R D E R

This Criminal Original Petition has been filed to quash the
FIR in Crime No.285 of 2020 registered on the file of the first
respondent for the offences under Sections 120B, 294(b), 420, 468,
406, 471 and 506(1) IPC.

2.The de-facto complainant is the second respondent herein.
According to her, the property in question belonged to her grand
parents namely Samuel Ubathiyar and Elizabeth Manonmani. Samuel
Ubathiyar executed will dated 19.08.1985 vide document No.26 of
1985. The property devolved on his 4 sons. Dharmaraj Samuel is
father of the de-facto complainant and one of the son of Samuel
Ubathiyar. Samuel Ubathiyar passed away on 11.11.1985. The property



was enjoyed by his 4 sons. Dharmaraj Samuel passed away on 09.02.1990. Before his demise, he said to have executed settlement deed dated 15.11.2018.

3. The grievance of the de-facto complainant is that the other legal heirs entered into fraudulent partition deed dated 19.08.2019 and based on the same, the committed alienation. When the de-facto complainant became aware of the same, she filed a private complaint before the Judicial Magistrate, Shencottah. The Judicial Magistrate issued direction under Section 156(3) Cr.P.C. Pursuant to the said direction, the impugned FIR in Crime No.285 of 2020 came to be registered. To quash the same, this Criminal Original Petition has been filed by the accused Nos.1 to 3.

4.The learned counsel appearing for the petitioners reiterated all the contentions set out in the memorandum of grounds.

5.Per contra, the learned counsel appearing for the de-facto complainant submitted that no case has been made out for quashing the impugned FIR. His pointed contention is that the investigation is still at a preliminary stage and since charge of conspiracy has been made out, this Court ought to permit the investigation officer to collect materials. He called for dismissal of the Criminal Original Petition. The learned Additional Public Prosecutor endorsed the stand of the learned counsel for the de-facto complainant.

6.I carefully considered the rival contentions and went through the materials on record.

7.There is no dispute that the property in question belongs to the grandfather of the de-facto complainant. He died leaving behind 4 sons. Since the petitioners' father and the de-facto complainant's father had also passed away, the de-facto complainant is having a share in the property. The other legal heirs had entered into a partition deed dated 19.08.2019. The de-facto complainant is not party to the said partition deed. Now the only question is whether by executing the said partition deed dated 19.08.2019, the accused had committed any offence.

8.The accused did not put the signature of the de-facto complainant. There is no act of impersonation. That accused also did not hold out any assurance or representation to the de-facto complainant. The de-facto complainant did not alter her position, based on any such promise.

9.I agree with the contentions of the learned counsel for the petitioners. The issue is no longer *res integra*. It is squarely covered by the decision of the Honourable Supreme Court reported in **(2009) 8 SCC 751 (Mohammed Ibrahim and others vs. State of Bihar and another)**. It was held in the said decision as follows:-



"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.

20. When a sale deed is executed conveying a property claiming ownership thereto, 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."

10. Of course, the learned counsel appearing for the de-facto complainant would draw my attention to the order dated 09.04.2021 passed by the Hon'ble Madhya Pradesh High Court in **Crl.A.No.3430 of 2018 etc., (Ramji Kushwaha vs. The State of Madhya Pradesh)**. In the said decision also Mohammed Ibrahim's case was cited and it was held that it is not helpful to the case, as the matter was under investigation and in the nascent stage.

11. In the case on hand, FIR was registered in December 2020. we are now in November 2021. By no stretch of imagination, it is in nascent stage. In any event, even if the entire case of the de-facto complainant is taken to be true, still none of the ingredients of cheating or forgery are made out.

12. In these circumstances, permitting the prosecution to continue would only amount to an abuse of legal process. The impugned FIR is quashed. This Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

csm/mga



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 Sub-Inspector of Police,
Sambavar Vadakarai Police Station,
Tenkasi District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Crl.O.P. (MD)No.9603 of 2021
and
Crl.M.P. (MD)No.4908 of 2021
25.11.2021

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