IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on 15.03.2022	Orders pronounced on 06.05.2022

CORAM

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

Crl.O.P.No.11477 of 2015
and
M.P.Nos.1 and 2 of 2015

1. K.Thulasingamoorthy
2. T.Pushpa
3. A.Balamurugan ... Petitioners/Accused 1 to 3

Vs.

1. The State represented by
The Inspector of Police
Central Crime Branch
Team XII
Egmore, Chennai - 600 008. ... Respondent/Complainant

2. M.Karunakaran ... Respondent/Defacto Complainant

This Criminal Original Petition filed under Section 482 Cr.P.C. to to call for records in C.C.No.103 of 2008 on the file of learned Judicial Magistrate No.I, Poonamallee (Crime No.516 / 07 on the file of Central Crime Branch, Chennai) and quash the same.

For Petitioners : M/s.R.Srinivas

For Respondent-1 : Mr.E.Raj Thilak
Additional Public Prosecutor

For Respondent-2 : Mr.C.Prabakaran

ORDER

This petition is filed to call for records in C.C.No.103 of 2008 on the file of the learned Judicial Magistrate No.I, Poonamallee and quash the same.

2. Final report in C.C.No.103 of 2008 was filed on the basis of the complaint of the defacto complainant dated 30.07.2007. The defacto complainant is the second respondent in this case. The case of the second respondent is that he is a practising Advocate, he purchased two plots in Sivappoothamedu village, Vanagaram, Chennai in Plot Nos.21 and 22 in S.No.83/2 totally measring 3150 sq.ft from one K.Thulasinga Moorthy on 03.05.2002. The sale consideration was Rs.80,000/-. At the time of registration, the sale deed was kept pending for registration due to want of NOC. Second respondent filed Writ Petition before this Court and got order releasing the sale deed. On 15.07.2007 at about 3pm, Thulasinga Moorthy, his brother-in-law A.Balamurugan and one Venkatesan along with 5 others trespassed into his plots with deadly weapons. Second respondent came to know that Thulasinga Moorthy created forged documents after his purchase. He created documents in favour of his wife Tmt.Pushpa and brother-in-law Balamurugan for the same plot Nos.21 and 22. They, in turn, created power of attorney deeds in favour of one Venkatesan. Knowing fully well that after the purchase by the second respondent and he is in possession from 2002, the accused colluded and committed criminal breach of trust, created forgery of documents and cheated him. They criminally trespassed into his plots and made criminal intimidation with deadly weapons. Therefore, this complaint.

3. On the basis of this complaint, first respondent conducted investigation and filed final report against the accused for the offences under Sections 465, 466, 467, 469 r/w.471, 420 r/w.120-B and 109 IPC. Challenging taking cognizance of this case against the petitioners, petitioners filed this petition for quashing the proceedings.

4. Learned counsel for the petitioners submitted that even after taking the averments and allegations in C.C.No.103 of 2008 and all the materials and evidence on record, uncontroverted, no offence is made out against any of the petitioners under any of the Sections of IPC cited in the final report. There is no averments or allegations in the charge sheet that petitioners made any false and fraudulent representation and made the second respondent part with money, property or act to his detriment and therefore, no case of cheating under Section 420 IPC is made out. Execution of sale deed by first petitioner in favour of second and third petitioners will not and may not tantamount or make out a case of forgery and creating a false document etc. No offence under Sections 465, 466, 467, 469 r/w.471, 420 r/w.120-B and 109 IPC is made out and when there is no material to prove the substantial offence under IPC, they cannot be said to have committed the offence of criminal conspiracy or

abetment. In support of his submission, learned counsel for the petitioners relied on the judgments reported in 2006 (6) SCC 736 (Indian Oil Corporation ..vs.. NEPC India Ltd., and others), (2009) 8 SCC 751 (Mohammed Ibrahim and Others ..vs.. State of Bihar and another), (2009) 15 SCC 643 (Mir Nagvi Askari ..vs.. Central Bureau of Investigation) and 2018 (7) SCC 581 (Sheila Sebastian ..vs.. R.Jawaharaj and another).

5. In reply, learned counsel for the second respondent submitted that the petitioners are close relatives and they created a sale deed after the property was sold to the second respondent. When the second sale deed was executed, first petitioner was no more the owner of the property, but he continued to execute the sale deed in favour of the petitioners 2 and 3. Hence, there was an intention to cheat and divest the property of the second respondent by the execution of the sale deed in favour of petitioners 2 and 3. Materials produced in support of the prosecution case clearly established the offences of forgery, forgery for the purpose of cheating, use of forged document as a genuine document and cheating. The accused connived and conspired with each other, abetted each other in the commission of offence and therefore, charges have to be framed and trial has to be conducted. He relied on the following judgments in support of his argument:- (2012) 10 SCC 155 (State of Madhya Pradesh ..vs.. Surendra Kori) and 2020 (12) SCC 588 (State of Madhya Pradesh ..vs.. Yogendra Singh Jadon and another).

6. From the case set out by the parties, there is no dispute with regard to the fact that the second respondent/defacto complainant purchased two plots in P.Nos.21 and 22 in S.No.83/2 from its owner first petitioner on 03.05.2002 for a sale consideration of Rs.80,000/-. It is also not in dispute that the first petitioner had again executed a sale deed in favour of petitioners 2 and 3 on 18.05.2007. Petitioners 2 and 3 in turn had executed Power of Attorney Deed in favour of 4th accused Venkatesan. The counsel appearing for both the parties do not dispute these facts.

7. Learned counsel for the petitioners prays the quashment of the proceedings, mainly on relying the judgment reported in (2009) 8 SCC 751 (Mohammed Ibrahim and Others ..vs.. State of Bihar and another), which is relied by the later judgment in 2018 (7) SCC 581 (Sheila Sebastian ..vs.. R.Jawaharaj and another). It is the submission of the learned counsel for the petitioners that the final report was filed against the accused in this case for the offences under Sections 465, 466, 467, 468 r/w.471, 420 r/w.120(b) IPC. To make out a charge under Sections 467 and 471 IPC, the condition precedent is making a false document (or false electronic records or part thereof).

When a question arose as to whether the accused in executing and registering two sale deeds purporting to sell the property, even if it is assumed that it did not belong to him can it be said to have made and executed false document, in collusion with the other accused, the Hon'ble Supreme Court observed that,

> “14. ...... A person is said to have made a 'false document', if
> (1) he made or executed a document claiming to be someone else or authorised by someone else or
> (2) he altered or tampered a document; or
> (3) he obtained a document by practicing deception, or from a person not in control of his senses.
>
> 15. The sale deeds executed by the first accused, clearly and obviously do not fall under second and third caterogies of 'false document'. It, therefore, remains to be seen whether the claim of the complainant that the execution of the sale deeds by the first accused, who was in no way connected with the land, amounted to committing forgery of the document, with the intention of taking possession of the complainant's land, would bring the case under the first category.
>
> 17. When a document is executed by a person claiming a property, which is not his, he is not claiming that he is some one else nor is he claiming that he is authorised by someone else. Therefore, the execution of such document, 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, neither Section 467 nor Section 471 of the Code are attracted.
> 18. ....
>
> 19. To constitute an offence under Section 420 IPC, there should not only be cheating, but as a consequence of such cheating, the accused should have dishonestly induced the person deceived.
>
> 20. When a sale deed is executed conveying the property claiming ownership thereto, it may be possible for the purchaser

under such sale deed to allege that the vendor had 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.

21. It is not the case of the complainant that any of the accused tried to deceive him either by making a false or misleading representation or by any other action or omission, nor is it his case that they offered him any fraudulent or dishonest inducement to deliver any property or to consent to the retention thereof by any person or to intentionally induce him to do or omit to do anything, which he would not do or omit, if he were not so deceived. Nor did the complainant allege that the first accused pretended to be the complainant while executing the sale deeds. Therefore, it cannot be said that first accused, by the act of executing sale deeds in favour of the second accused or the second accused, by reason of being the purchaser or 3rd, 4th and 5th accused, by reason of being the witness, scribe and stamp vendor in regard to the sale deeds, deceived the complainant in any manner.

22. As the ingredients of cheating as stated in Section 415 IPC are not found, it cannot be said that there was an offence punishable under Sections 417, 418, 419 or 420 of the Code."

8. For the same proposition, learned counsel for the petitioners relied the judgment reported in 2018 (7) SCC 581 (Sheila Sebastian ..vs.. R.Jawaharaj and another), where the judgment reported in (2009) 8 SCC 751 (Mohammed Ibrahim and Others ..vs.. State of Bihar and another) was considered and observed that " a charge of forgery cannot be imposed on a person, who is not maker of the same. Making of a document is different, than causing it to be made. Explanation 2 to Section 464 IPC clarifies that for constituting an offence under Section 464, it is imperative that a false document is made, the accused person is a maker of the same, otherwise, the accused person is not liable for the offence of forgery. The definition of "false document" is a part of definition of "forgery". Both must be read together".

9. It is observed in the judgment reported in (2009) 15 SCC 643 (Mir Nagvi Askari ..vs.. Central Bureau of Investigation) that only if a person satisfies one of the three conditions under Section 464 IPC, he is said to have made a false document.

10. It is submitted by the learned counsel for the petitioners that in the case before hand, none of these three conditions can be attributed to the petitioners. Therefore, there can be no charge against the petitioners for the offence under Sections 465, 466, 467 and 468 r/w.471 and 420 IPC.

11. Finally, he pressed into service the judgment reported in 2006 (6) SCC 736 (Indian Oil Corporation ..vs.. NEPC India Ltd., and others) for the proposition that the complaint can be quashed where the allegations made on the complainant, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out the case alleged against the accused.

12. Learned counsel for the petitioners also submitted that the sale deeds executed by the first petitioner in favour of the second and third petitioners were cancelled by two separate cancellation of sale deeds dated 15.05.2009. Therefore, it is submitted that there is absolutely no ground for framing charges against the petitioners.

13. Learned counsel for the second respondent relying on the judgment reported in (2012) 10 SCC 155 (State of Madhya Pradesh ..vs.. Surendra Kori) and 2020 (12) SCC 588 (State of Madhya Pradesh ..vs.. Yogendra Singh Jadon and another) submitted that the High Court in exercise of its powers under Section 482 Cr.P.C., does not function as a Court of Appeal or Revision. It should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of wide magnitude and cannot be seen in their true perspective without sufficient materials, especially when the allegations are referred to be proved in Court of Law. It is also submitted by the learned counsel for the second respondent that the given set of facts may make out,

(a) purely a civil wrong; or
(b) purely a criminal offence; or
(c) a civil wrong or also a criminal offence

In the case before hand, selling a property to second and third petitioners, after it was already sold to the second respondent, certainly attracts the offence of cheating and making a false document for the purpose of forgery and cheating.

14. Considered the rival submission and perused the records.

15. Section 415 IPC defines what is cheating. It reads as follows:-

> 415. Cheating.—Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything, which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".
>
> Explanation.—A dishonest concealment of facts is a deception within the meaning of this section

16. This Section has (a) to (i) illustrations. For the purpose of disposal of this case, we are concerned with illustration (i). Illustration (i) reads that

> (i) A sells and conveys an estate to B. A, knowing that in consequence of such sale he has no right to the property, sells or mortgages the same to Z, without disclosing the fact of the previous sale and conveyance to B, and receives the purchase or mortgage money from Z. A cheats.

17. This Section makes it clear that if a person sells the same property, which he already sold to a person, to another person, he commits the offence of cheating, as defined under Section 415 IPC.

18. In the case before hand, first petitioner had sold the property to the second respondent and then sold the property again to the second and third petitioners. Therefore, there is no doubt that he had committed the offence of cheating, but against whom? is the question.

19. Section 463 IPC defines what is forgery. It is extracted hereunder:-

> 463. Forgery.—3 [Whoever makes any false document or false electronic record or part of a document or electronic record, 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 any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.

20. Section 464 deals with the making of false documents. Section 464 reads as follows:-

464. Making a false document.— [A person is said to make a false document or false electronic record—

Firstly—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 [electronic signature] on any electronic record;

(d) makes any mark denoting the execution of a document or the authenticity of the [electronic signature], with the intention of causing it to be believed that such document or part of document, electronic record or [electronic 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, singed, 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 [electronic 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 [electronic 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.]

This explanation shows that conveying an estate, which was already conveyed to a person to another person is an act of forgery.

21. Explanation 1 to Section 464 makes it clear that a man's signature of his own name may amount to forgery.

22. Illustration (i) to Section 415 makes it clear that selling the estate to a person, after selling it to another person, without disclosing the previous sale, certainly amounts to cheating. Next question arose cheating against whom? whether it was a cheating against the first purchaser or second purchaser. The Hon'ble Supreme Court answered this question in para-20 of the judgment reported in (2009) 8 SCC 751 (Mohammed Ibrahim and Others ..vs.. State of Bihar and another). May be that the second purchaser can claim that the vendor had cheated him/her, but she cannot be shown as an accused. The relevant paragraph in the above judgment is extracted hereunder:-

> "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."

23. Illustration (h) to Section 464 IPC deals with the situation where after conveying an estate to a person, in order to defraud that person, seller executed another conveyance to another person anti-dating it and in that situation, it becomes an act of forgery. In the case before hand, there is no claim that the sale deed in favour of petitioners 2 and 3 were anti-dated. Therefore, there is no question of making out a charge under Section 464 IPC. When the ingredients of Section 415 are not found, it cannot be said that offences under Section 420 IPC is made out. Similarly, when there is no forgery made out, there is no question of committing forgery for the purpose of cheating and using a genuine document as forged document. Taking the allegations made in the complaint and final report as true and the law laid down by the Hon'ble Supreme Court in the judgment reported in (2009) 8 SCC 751 in Mohammed Ibrahim and Others ..vs.. State of Bihar and another (cited supra), this Court is of the considered view that none of the offences alleged in the final report is made out against the petitioners and therefore, the proceedings in C.C.No.103 of 2008 on the file of learned Judicial Magistrate No.I, Poonamallee (Crime No.516 / 07 on the file of Central Crime Branch, Chennai) is liable to be

quashed and accordingly, quashed.

24. In fine, this Criminal Original Petition is allowed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(Vacation Officer)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate No.I,
Poonamallee.

2. The Inspector of Police
Central Crime Branch
Team XII
Egmore, Chennai – 600 008.

3. The Public Prosecutor,
Madras High Court,
Chennai.

+1cc to Mr.R.Srinivas, Advocate, S.R.No.31125

+1cc to Mr.C.Prabakaran, Advocate, S.R.No.31126

Crl.O.P.No.11477 of 2015
and
M.P.Nos.1 and 2 of 2015

JPL(CO)
SU(06/06/2022)