IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2022

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.20364 of 2018
and
CRL.M.P.No.10917 of 2018

1.Perumal

2.Pappa

3.Rathinam

4.Thangam

5.Venkatachalam

6.Rathinam

7.Manoj Kumar

8.Banupriya ... Petitioners

Versus

S.Mahendran ... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in pursuant to case in C.C.No.177 of 2018 pending on the file of the Judicial Magistrate, Omalur, quash the same.

For Petitioners : Mr.M.Elango

For Respondent : Mr.R.Srinivas

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.177 of 2018, on the file of the Judicial Magistrate Court, Omalur.

2.The respondent filed a private complaint against the petitioners (A1 to A6, A9 & A10) and two others (A7 & A8), for offence under Sections 463, 464, 471, 294(b), 323 & 506(ii) of IPC and Section 82 of the Registration Act, 1908, which was taken on file as C.C.No.177 of 2018, against which, the present Criminal Original Petition.

3.For the sake of convenience and clarity, the petitioners are referred to as accused, as per their rank in the complaint in C.C.No.177 of 2018.

4.The gist of the case is that the respondent's father Sithan was having property in patta No.276 in survey No.52/6E to the extent of 0.22.50 hectare and property in survey No.52/8C to the extent of 0.4.50 hectare of agricultural lands. After the death of his father in the year 2000, the respondent, his brother and his sister were jointly enjoying the said property. Adjacent to the above said property, the 1st petitioner is having agricultural lands in survey Nos.52/6D, 52/6D, 52/6J, 52/8B, 52/6F, 52/6I, 52/8D, 52/10, 52/6H, 52/6G, 52/4 and 52/7. On the eastern side of the agricultural lands of the 2nd respondent, the 1st petitioner used to approach his lands from the 40 feet panchayat road. The petitioners 1 to 4 can approach their lands through panchayat road on eastern, western and northern side. On 08.07.2015, the 1st petitioner claimed that he has got right of way through the respondent's land, which was objected by the respondent. During conversation with the 1st petitioner, the respondent finding that a document has been created claiming right of way through the property of the respondent, had filed objection petition with the Sub Registrar Office, Omalur on 08.07.2015. Later, the respondent came to know that by document No.5840 of 2014, the petitioners 1 and 2 executed a settlement deed in favour of their son Balakrishnan. In the settlement deed, the right of way in the above said property of the respondent in survey Nos.52/8E, 52/6E, 52/8C was created.

5.On 09.11.2015, the respondent lodged a complaint to the District Registrar, Salem, District Collector, Salem and to the Superintendent of Police, Anti Land Grabbing Cell, Salem to cancel the document No.5840 of 2014. On the complaint of the respondent, enquiry conducted by the Inspector of Police, Omalur. During enquiry, the petitioners 1 and 2 produced document No.8784 of 2015 informing that the settlement deed in document No.5839 of 2014 was cancelled. Likewise through the document No.8783 of 2015, a settlement document No.5840 of 2014 was also cancelled. On 20.07.2016, A3, A4, A9 and A10 trespassed into the respondent's land using a tractor. When the same was questioned by the respondent, he was pushed down, threatened and assaulted. Thereafter, the family members of the respondent and neighbours rescued him. The respondent lodged a complaint with the Inspector of Police, Omalur Police Station, Salem. The Inspector of Police failed to entertain the complaint of the respondent, for the reason, that it is a civil dispute and directed the 2nd respondent to approach the civil Court. In this case, A7 and A8 are the document writers and A5 and A6 are witnesses to the documents. A settlement deed was executed by A1 and A2 in favour of A3, in turn A3 further settled the property in favour of A4 vide document No.169 of 2016. In this document, 10 feet common pathway through the respondent's land was mentioned and the petitioners are now attempting to create a right of way.

6.The Registration Authorities failed to follow the circular No.20564/C1/2007 of the Inspector General of Registration and registered the forged document by collecting fee. Thus, all the accused have joined together, created forged documents and thereby, created right over the property of the respondent. The complaint of the respondent was closed by the Inspector of Police, Anti Land Grabbing Cell, Salem on 11.07.2016 recording that the respondent informed that he shall approach this Court and seek remedy, hence, he did not participate in the enquiry. Likewise, the District Registrar, Salem in proceedings No.9044/A1/2015, dated 23.01.2017 closed the respondent's complaint directing him to approach the civil Court. Hence, the respondent filed the above private complaint, which was taken on file and the trial Court issued summons to the accused.

7.The learned counsel for the petitioners submitted that A1 had purchased the property in survey No.52/8 by way of registered sale deed in document No.2387 of 1968, dated 27.09.1968. For the said property, the patta was issued by the Tahsildar, Omalur in patta Nos.455, 477 and 857. Ever since A2 was in possession and enjoyment of the property. In the said sale deed, the pathway was clearly mentioned. On 20.05.2015, A1 and A2 executed a settlement deed in favour of A3 in document No.5342 of 2015. Thereafter, another settlement deed was executed by A3 in favour of A4 in document No.169 of 2016 on 13.01.2016. He further submitted that the Inspector of Police, Anti Land Grabbing Cell, Salem on enquiry identified the pathway in survey Nos.52/8E, 52/6E and 52/8C with the aid of the Village Administrative Officer and closed the complaint of the respondent on 11.07.2016. On 09.11.2015, the respondent made a petition before the District Registrar, Salem seeking to cancel the settlement deed in document No.5342 of 2015 & 169 of 2016. The District Registrar, Salem after conducting enquiry passed an order, dated 23.01.2017 in No.9044/A1/2015 that the complaint given by the respondent relates to civil dispute and therefore, the parties were advised to approach the civil Court to enforce their rights and further the purchase and enjoyment of the properties by A1 and A2 and thereafter, settlement in favour of A3, in turn A3 settled the property in favour of A4 were recorded. The trial Court without following the procedure contemplated in law, straight away took the case on file and issued summons to the accused.

8.The learned counsel further submitted that 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 authorized or empowered by the owner, to execute the deed on owner's behalf. It is not sufficient to allege that the document has been made or executed dishonestly or fraudulent. There is a further requirement to be shown that the document created with an intention, causing it to be believed as genuine and claim made over another property. In this case, no such requirement has been complied with. In support of his contention, the learned counsel for the accused relied on the decision of the Hon'ble Apex Court in the case of “Mohammed Ibrahim and others Versus State of Bihar and another reported in (2009) 8 SSC 751”.

9.The learned counsel for the respondent submitted that the accused are claiming right over the pathway referring to panchayat muchalika, which is said to have been executed on 28.07.1997 by the respondent's father in favour of A1. Based on which, in the settlement document No.5342 of 2015, the common pathway in the respondent's land is mentioned. The said muchalika, dated 28.07.1997 is not a registered document. Following the settlement made by A1 and A2 in favour of A3, to further encumber the property and to create right over the property, further settlement was made by A3 in favour of A4 vide document No.169/2016. The respondent is in uninterrupted possession and enjoyment of the property in survey Nos.52/8E, 52/6E, 52/8C from his father's days. While this being so, the accused creating forged documents based on the unregistered muchalika. He further submitted that the property of A1 to A4 are adjacent to panchayat road in all three directions, except southern sides wherein the respondent property is situated. The respondent land is adjacent to A1s' property. Now by using forged documents, the accused are attempting to grab the respondent's property and thereafter, to develop the entire property as per their design. Further the accused are claiming right to lay pipe line to carry water through the pathway. Despite the respondent made a complaint to the Inspector of Police, Anti Land Grabbing Cell, Salem and to the District Registrar, Salem, they failed to take any action, hence, he lodged the above private complaint.

10.He further submitted that the points now raised by the accused are factual in nature, which are to be decided only during trial. The trial Court on perusal of the documents and materials, found prima facie case against the accused, took the complaint on file and issued summons. Hence, he prayed for dismissal of the Quash Petition.

11.This Court considered the rival submissions and perused the materials available on record.

12.Primarily, the complaint is that on 20.07.2015, A1 and A2 settled the property in favour of A3 vide document No.5342 of 2015 by mentioning the survey numbers of the respondent's land, through which a pathway is shown. In the said document, the pathway shown is without any right. The survey numbers shown for the pathway is that of the respondent. By way of another settlement, A3 settled the property in favour of his wife/A4 vide document No.169 of 2016. As regards the other accused are concerned, they are witnesses to the documents and document writers. Earlier, a Police complaint was lodged, which was closed as Mistake of Fact and another complaint was lodged before the Registration Authorities, which was also closed directing the parties to approach the civil Court. In both the complaints, elaborate and detailed enquiry was conducted and thereafter only, the complaints were closed finding that the dispute is on assertion of right, which ought to be decided only by the civil Court.

13.It is seen that the petitioners claim right over the pathway based on panchayat muchalika, dated 25.07.1997, which was executed between the respondent's father Sithan and A1. It is not in dispute that they are close relatives holding adjacent lands. Till the death of Sithan, there was no dispute. In document No.5342 of 2015, there is a mention that on the northern side, 10 feet pathway is available, which passes through survey No.52/6K, through which water pipe line to pass through. On the western side in survey Nos.52/6E, 52/8C, there is a water pipeline and it has to pass through adjacent land of Sithan and nothing more. In the settlement document No.169/2016, the same is reflected. In panchayat muchalika, dated 25.07.1997, the common pathway, common well and its rights and usage are found with direction without mentioning details of survey numbers. Obviously, due to which, there is some difference, which leads to filing of criminal complaint. The assertion of common pathway and its right is a civil dispute, which has to be decided only by the civil Court.

14.The Hon'ble Apex Court in the case of "Mir Nagvi Askari Versus Central Bureau of Investigation reported in (2009) 15 SCC 643" in paragraph No.164 held as follows:-

> "164.A person is said to make a false document or record if he satisfies one of the three conditions as noticed hereinbefore and provided for under the said section. The first condition being that the document has been falsified with the intention of causing it to be believed that such document has been made by a person, by whom the person falsifying the document knows that it was not made. Clearly the documents in question in the present case, even if it be assumed to have been made dishonestly or fraudulently, had not been made with the intention of causing it to be believed that they were made by or under the authority of someone else. The second criterion of the section deals with a case where a person without lawful authority alters a document after it has been made. There has been no allegation of alteration of the voucher in question after they have been made. Therefore, in our opinion the second criterion of the said section is also not applicable to the present case. The third and final condition of Section 464 deals with a document, signed by a person who due to his mental capacity does not know the contents of the documents which were made i.e. because of intoxication or unsoundness of mind, etc. Such is also not the case before us. Indisputably therefore the accused before us could not have been convicted with the making of a false document."

15.The Hon'ble Apex Court in the case of "Mohammed Ibrahim and others Versus State of Bihar and another reported in (2009) 8 SSC 751" held as follows:-

> "8.This Court has time and again drawn attention to the growing tendency of the complainants attempting to give the cloak of a criminal offence to matters which are essentially and purely civil in nature, obviously either to apply pressure on the accused, or out of enmity towards the accused, or to subject the accused to harassment. Criminal courts

should ensure that proceedings before it are not used for settling scores or to pressurise parties to settle civil disputes. But at the same time, it should be noted that several disputes of a civil nature may also contain the ingredients of criminal offences and if so, will have to be tried as criminal offences, even if they also amount to civil disputes. (See G. Sagar Suri v. State of U.P. [(2000) 2 SCC 636 : 2000 SCC (Cri) 513] and Indian Oil Corpn. v. NEPC India Ltd. [(2006) 6 SCC 736 : (2006) 3 SCC (Cri) 188] ) Let us examine the matter keeping the said principles in mind.

Sections 467 and 471 of the Penal Code

9.Let us first consider whether the complaint averments even assuming to be true make out the ingredients of the offences punishable either under Section 467 or Section 471 of the Penal Code.

10.Section 467 (insofar as it is relevant to this case) provides that whoever forges a document which purports to be a valuable security, shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine. Section 471, relevant to our purpose, provides that whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document, shall be punished in the same manner as if he had forged such document.

11. Section 470 defines a forged document as a false document made by forgery. The term "forgery" used in these two sections is defined in Section 463. Whoever makes any false documents 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 express or implied contract, or with intent to commit fraud or that the fraud may be committed, commits forgery.

12. Section 464 defining "making a false document" is extracted below:

"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 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 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.

[Note.— The words 'digital signature' wherever they occur were substituted by the words 'electronic signature' by Amendment Act 10 of 2009.]"

13. The condition precedent for an offence under Sections 467 and 471 is forgery. The condition precedent for forgery is making a false document (or false electronic record or part thereof). This case does not relate to any false electronic record. Therefore, the question is whether the first accused, in executing and registering the two sale deeds

purporting to sell a property (even if it is assumed that it did not belong to him), can be said to have made and executed false documents, in collusion with the other accused.

14. An analysis of Section 464 of the 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 (iii) he obtained a document by practising deception, or from a person not in control of his senses.

15. The sale deeds executed by the first appellant, clearly and obviously do not fall under the second and third categories of "false documents". It therefore remains to be seen whether the claim of the complainant that the execution of sale deeds by the first accused, who was in no way connected with the land, amounted to committing forgery of the documents with the intention of taking possession of the complainant's land (and that Accused 2 to 5 as the purchaser, witness, scribe and stamp vendor, colluded with the first accused in execution and registration of the said sale deeds) would bring the case under the first category.

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 bona fide 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.
>
> 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.

16.In the above decisions, the Hon'ble Apex Court held that the execution of document, purporting to convey some property of which he is not the owner is not execution of false document. If there is no forgery, then neither Section 467 IPC nor Section 471 of Cr.P.C., are attracted. As regards the other contention in respect of offence under Sections 294(b), 323 and 506(ii) of IPC are concerned, it is admitted that in furtherance to the incident, dated 20.07.2016 except for commotion, push & pull, wordy quarrel, abuse and threat, nothing happened further.

17.Thus, the averments in the complaint do not make out any offence as alleged by the respondent. By merely alleging or showing that a person acted fraudulently, it cannot be assumed that he committed an offence.

18.In the result, the proceedings in C.C.No.177 of 2018, pending on the file of the Judicial Magistrate Court, Omalur is hereby quashed against the petitioners and other accused, who are similarly placed. Accordingly, this Criminal Original Petition is allowed. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

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To

The Judicial Magistrate Court,
Omalur.

+2cc to Mr.M.Elango, Advocate SR.No.18617, 13508

CRL.O.P.No.20364 of 2018

PMK(CO)
GN(28/03/2022)