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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 24.01.2022

C O R A M

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Crl.O.P.No.9268 of 2018
and Crl.M.P.Nos.4768 of 2018
and Crl.M.P.No.3883 of 2021

1. Sekar
S/o. Pavadai Gounder

2. Babu
S/o. Selvaraj

3. Karnan
S/o. Selvaraj

... Petitioners/ Accused 1 - 3

Versus

1. The Inspector of Police
District Crime Branch,
Villupuram District.

... Respondent / Complainant

2. Babu

... Respondent / De facto Complainant

PRAYER : Criminal Original Petition filed under Section 482 Cr.P.C to call for the records relating in Crime No.7 of 2018 on the file of the 1st respondent police and to quash the same.

For Petitioners .. Mr.G.Mohammed Aseef

For Respondents .. Mr.R.Kishore Kumar
Govt. Advocate (Crl.side) for R1
No Appearance for R2

O R D E R

This Criminal Original Petition has been filed to quash the First Information Report filed against the petitioners in Crime No. 7 of 2018 for the offences under Sections 423, 465 and 471 of IPC.

2. The crux of the allegation is that the petitioners have created Power of Attorney in respect of the land originally belonging to one Ramesh and pursuant to the same, they have also



created subsequent documents resulting in the registration of the FIR against these petitioners.

3. The learned counsel appearing for the petitioners submits that it is a simple civil dispute between the parties. The petitioners have dealt with their own property, which is also the subject matter of the civil suit filed before the Principal District Munsif, Tindivanam. The trial Court also clearly held that the confusion over the dispute is only with regard to the re-survey proceedings, whereas the properties purchased by both sides are in their own possession. Therefore, it is submitted that as long as there is no allegation that the petitioners have created any false document, the civil dispute cannot be given a colour of criminality and therefore, learned counsel seeks to quash the proceedings.

4. I heard the learned Government Advocate (Crl.side) appearing for the first respondent.

5. On a perusal of the first information report, it reveals that the only allegation against these petitioners is that they executed Power of Attorney and pursuant to the same, the properties have been transferred in respect of Survey No.401/2. The entire allegation in the FIR indicates that the petitioners have executed a document claiming the properties as if it is their own property. It is relevant to note that Hon'ble Supreme Court in Mohammed Ibrahim and Others Vs. State of Bihar and another reported in (2009) 8 SCC 751 has held in paragraph Nos.16 and 17 as follows:

"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 authorized 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.



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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. "

6. Therefore, the offences under Sections 465 and 471 IPC are not attracted in this case. It is also not the case of the de facto complainant that the accused deceived the de facto complainant. Therefore, offence under Section 420 also does not get attract. Yet another fact is that the principal, who claimed to be the owner of the property, has already filed a civil suit seeking declaration that sale deeds executed by the parties on 05.02.2004, 19.01.2015 and 02.03.2015 are null and void. In the above suit, an interlocutory application has also been filed for grant of injunction. The learned trial Judge in paragraph 14 of the order dated 17.06.2016 in I.A.No.77 of 2016 has clearly observed that confusion arises due to the mistake in the re-survey proceedings and has also observed that the properties purchased by respective parties are in their own possession. Only after taking note of the above fact, the learned Magistrate has granted an order of status quo.

7. Hence, the entire dispute arose only due to the re-survey proceedings, which created a confusion over survey numbers and the trial Court has also prima facie observed that the properties purchased by the parties in dispute are in their possession. This Court is of the view that such civil dispute cannot be given a criminal colour.

Accordingly, this Criminal Original Petition is allowed and the case in Crime No.7 of 2018 is quashed. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

gpa/gba



To

1. The Inspector of Police
District Crime Branch,
Villupuram District.

2. The Public Prosecutor
Madras High Court
Chennai.

+lcc to Mr.G.Mohammed Aseef, Advocate, S.R.No.3912

+lcc to Mr.N.Suresh, Advocate, S.R.No.4200

Cr1.O.P.No.9268 of 2018
and Cr1.M.P.No.4768 of 2018 and
Cr1.M.P.No.3883 of 2021

KSM(CO)
CT 08/02/2022