# IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Crl.O.P.No.11885 of 2018 &
Crl.M.P.No.6275 of 2018

1. B.Chandravarma
2. B.Samrat
3. A.R.Nruptunga
4. B.G.Manjula ... Petitioners

Vs

1. State rep. by
   The Inspector of Police,
   District Crime Branch,
   Krishnagiri
   (Crime No.10 of 2018)

2. R.Ramakrishnan ... Respondents

PRAYER :

Criminal Original Petition filed under Section 482 Cr.P.C., to call for the entire records relating to the Crime No.10 of 2018 on the file of the 1st respondent and quash the same.

For Petitioners: Mr.R.Ezhilarasan

For Respondents: R1 - Mr.R.Kishore Kumar,
Government Advocate (Criminal Side)

R2 - Mr.Mr.Arun Prakash
for A.V.Raja

O R D E R

This Criminal Original Petition has been filed to quash the First Information Report in Crime No.10 of 2018 on the file of the 1st respondent Police registered against the petitioners for the offences punishable under Sections 420, 406, 465, 471, 468 and 506(i) of IPC.

2. The crux of the allegation in the F.I.R. is that the defacto complainant purchased to an extent of 5.41 cents on 12.10.2007 from the first accused and others. Thereafter, in the year 2011-12, the accused have created a Power of Attorney and also sold certain properties and also entered into a partition deed among themselves. Thereby, the First Information Report has been registered.

3. It is the contention of the learned counsel for the petitioner that the accused have not fraudulently created any documents and they have dealt with the property as their own property. Hence, offence of cheating and forgery is not attracted. Further, the suit in O.S.No.65 of 2010 has been filed by the first accused and the suit in O.S.No.60 fo 2018 has been filed by the defacto complainant. The suit filed by the defacto complainant has been dismissed for default. The entire dispute is with regard to the title of the properties. Therefore, submitted that the injunction already granted in favour of the defacto complainant has already been vacated in O.S.No.65 of 2010 by the Order of this Court in CRP.No.191 and 195 of 2020. Hence, submitted that present case is nothing but abuse of process of law and the same has to be quashed.

4. The Order of this Court also indicate that the defacto complainant though purchased to an extent of 5.41 cents in the year 2007, he has sold to an extent of 5.86 cents, more than what he has purchased. Further, there are title dispute between the parties and the same has to resolved only before the Civil Court. Merely because the accused claiming right over the ancestral property and dealt with the property as their own property, offences under section 420 and 465 will not be attracted. The documents have been filed on the side of the petitioner and the accused are claiming right only on the basis of the documents of the year 1979 and 1983. Therefore, a person executing a sale deed claiming that the property as his own cannot be a ground for the offences under sections 420 and 465 IPC.

5. It is relevant to note that to attract the offence under section 420 IPC, essential ingredients of the offence of cheating are as follows :

> (i) deception of a person either by making a false or misleading representation or by dishonest concealment or by any other act or omission;

(ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived; and

(iii) such act or omission causing or is likely to cause damage or harm to that person in body, mind, reputation or property.

Therefore to constitute an offence under section 420, there should not only be cheating, but as a consequence of such cheating, the accused should have dishonestly induced the person deceived to deliver any property to any person. It is not case of the defacto complainant that the accused have dishonestly executed sale deed. The main charge itself indicate that the accused have executed sale deed claiming that the property is their own property.

6. It is further to be noted that in this regard, the apex Court in Mohammed Ibrahim and others Vs. State of Bihar and another reported in [2009] 8 SCC 751 in para 20 the Apex Court has held as follows :

18. Let us now examine whether the ingredients of an offence of cheating are made out. The essential ingredients of the offence of "cheating" are as follows:

(i) deception of a person either by making a false or misleading representation or by dishonest concealment or by any other act or omission;

(ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived; and

(iii) such act or omission causing or is likely to cause damage or harm to that person in body, mind, reputation or property.

19. To constitute an offence under section 420, there should not only be cheating, but as a consequence of such cheating, the accused should have dishonestly induced the person deceived

(i) to deliver any property to any person, or

(ii) to make, alter or destroy wholly or in part a valuable security (or anything signed or sealed and which is capable of being converted into a valuable security).

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.

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 appellant pretended to be the complainant while executing the sale deeds. Therefore, it cannot be said that the 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 the third, fourth and fifth accused, by reason of being the witness, scribe and stamp vendor in regard to the sale deeds, deceived the complainant in any manner.

Applying the above ratio, as the purchaser is not the complainant, for cheating, offence under section 420 of IPC cannot be attracted.

7. Now with regard to the offence of forgery, it is relevant to note that Section 464 deals with making of false documents and the same extracted as follows :

"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 alternation; 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.”

Therefore, to attract offence under sections 467 and 471, the essential requirement is making of false documents. In this regard also, the Apex Court in the above judgment in para 16 and 17 has clearly held 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 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 bonafide 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. Section 420 IPC ”

8. When a person has executed a sale deed by impersonating the owner or falsely claiming to be authorised or empowered by the owner, to execute the deed on owners behalf, then it can be said that there is a making of false document. But when the document itself executed by the person claiming to be owner of the property, execution of such documents do not fall within the definition of execution of false document as defined under section 464 IPC. Considering the above judgment and that the entire charge relate to the title to the property, the defacto complaint claiming title on the basis of the documents, such an act would not constitute any offence. Even when the materials collected by the prosecution is taken as a proof, the same would not constitute any of the aforesaid offences. In such view of the matter, continuing of prosecution is a futile exercise and is nothing but an abuse of process of law.

9. Accordingly, this Criminal Original Petition is allowed and the First Information Report in Crime No.10 of 2018 on the file of the 1st respondent Police has been quashed. Consequently, connection miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

vrc / kbs

To

The Inspector of Police,
District Crime Branch,
Krishnagiri.

Copy To

The Section Officer,
Criminal Section, High Court,
Madras.

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Crl.M.P.No.6275 of 2018

PL(CO)
PM/11/02/2022