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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.06.2022

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.4238 of 2020
and Crl.M.P.Nos.2437 & 2438 of 2020

1.K.Eswaran
2.Neela Gounder
3.K.Venkatachalam
4.P.Chandira
5.V.Visalakshi
6.K.P.Sakthivel
7.R.Palanisamy
8.K.Nataraj
9.K.Sampathkumar

... Petitioners

Vs.

1.The State rep. by
The Inspector of Police,
DCB, Tiruppur,
crime No.19 of 2014,
Tiruppur District

2.R.Jayaeraj

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records relating to the criminal case in CC.No.95 of 2019 on the file of the Judicial Magistrate, Palladam, quash the same by allowing this criminal original petition.

For Petitioners : Mr.N.Manoharan

For Respondents

For R1 : Mr.A.Gopinath,
Government Advocate(crl.side)

For R2 : No appearance.

ORDER

This petition has been filed to quash the proceedings in C.C.No.95 of 2019 on the file of the learned Judicial Magistrate, Palladam, thereby taken cognizance for the offences under Sections 120B, 417, 467, 468, 471, 420, 423 of IPC and Section 82(d) of the Indian Registration Act, 1908 in Crime No.19 of 2014 on the file of the first respondent police, as against the petitioners.



2. The case of the prosecution is that the property admeasuring 2.90 acres out of 11.60 acres comprised in SF.No.947 situated at Kandiyar Koil Village was owned by one, Chennamalai Gounder and his two sons i.e. Karuppa Gounder and Muthu Gounder. The said Karuppa Gounder sold his undivided 1/8th share admeasuring 1.45 acres out of 11.60 acres to one, Kaliappa Gounder under the registered sale deed dated 13.05.1920 registered vide document No.1044 of 1920. The said Karuppa Gounder's brother Muthu Gounder sold his undivided 1/8th share admeasuring 1.45 acres to Karuppa Gounder under the registered sale deed dated 16.06.1928 registered vide document No.1281 of 1928. After the purchase, the said Karuppa Gounder had mortgaged the property admeasuring 1.45 acres in favour of one, Kaliappa Gounder by the registered mortgage deed dated 16.06.1928 registered vide document No.1282 of 1928. Later, the said Karuppa Gounder sold the said land in favour of the said Kaliappa Gounder by the registered sale deed dated 14.01.1929 registered vide document No.35 of 1929, thereby the said Kaliappa Gounder became the owner of 2.90 acres out of 11.60 acres.

2.1 While being so, the accused persons created and executed a general power of attorney dated 17.04.1990 registered vide document No.99 of 1990 in respect of the subject property admeasuring 2.90 acres in the name of one, Venkatachalam and thereafter the accused persons have dealt with the entire extent of the land admeasuring 10.33 acres including the subject property admeasuring 2.90 acres by the registered sale deed dated 15.09.1993 vide document No.5034 of 1993. Thereafter, the purchasers have sold again by the sale deed registered on 15.12.1998 vide document No.2120 of 1998. On receipt of the complaint, the first respondent police registered a complaint in Crime No.19 of 2014 for the offences under Sections 120B, 417, 467, 468, 471, 420, 423 of IPC and Section 82(d) of the Indian Registration Act, 1908. The first respondent after completion of investigation, filed final report as against 17 accused persons and the same has been taken cognizance in CC.No.95 of 2019 for the offences under Sections 120B, 417, 467, 468, 471, 420, 423 of IPC and Section 82(d) of the Indian Registration Act, 1908. In fact, while pending investigation, some of the accused persons died except the petitioners herein who are arrayed as A2, 4, 7 to 11, 13 & 14.

3. Whereas, the case of the petitioners is that the property admeasuring 10.33 acres comprised in SF.No.947/1 situated at Kandiyar Koil Village, Tiruppur was originally owned by 11 persons and they appointed one K.Venkatachalam, who is arrayed as A7, as their power agent under general power of attorney dated 17.04.1990 registered vide document No.99 of 1990. In turn, he executed sale deed on 15.09.1993 registered vide document No.5034 of 1993 in favour of the accused 8 to 10. On the strength of the sale deed, they had taken possession in respect of the subject property in respect of



the entire property admeasuring 10.33 acres comprised in SF.No.947/1 including other properties comprised in SF.Nos.887, 889, 890, 891 and 894 situated at Kandiyar Koil Village. Thereafter, they executed sale deed dated 15.12.1998 registered vide document No.2120 of 1998 in favour of the accused Nos.11, 13 and 14. They were put in possession and enjoyment of the subject property. Thereafter, the entire revenue records have been mutated in their name and they also obtained patta, chitta, adangal, re-survey register, kist receipts, etc. In fact, the original re-survey settlement register was issued in the year 1912, patta proceedings of the year 1966 and the patta transfer order made in MTR No.14/1979 dated 03.06.1969 would also indicate the ownership and possession of the subject property. The second respondent stated that his great grandfather aforesaid Kaliappa Gounder owned the subject property admeasuring 2.90 acres out of total extent of 11.60 acres comprised in SF.No.947. The second respondent claimed the said property by way of sale deed of the year 1920 and 1929. However, no one was in possession and enjoyment of the subject property.

3.1 The further case of the petitioners is that the present complaint has been lodged after period of 95 years, that too by the great grand son i.e. the second respondent herein. He also submitted petition before the District Registrar on 03.09.2013 to cancel the power of attorney dated 17.04.1990 and the subsequent sale deeds. On receipt of the same, the District Registrar, Tiruppur conducted enquiry and passed order dated 10.02.2014, thereby cancelled the power of attorney as well as the subsequent sale deeds. It was challenged before the Hon'ble Division Bench of this Court in WP.No.7034 of 2014 and it was allowed by order dated 30.10.2017, thereby set aside the order passed by the District Registrar, Tiruppur.

4. Heard Mr.N.Manoharan, learned counsel appearing for the petitioners and Mr.A.Gopinath, learned Government Advocate (crl.side) appearing for the first respondent police. Though notice served to the second respondent, no one appeared on behalf of the second respondent either by person or through pleader.

5. Now the petitioners are facing charges for the offences under Sections 120B, 417, 467, 468, 471, 420, 423 of IPC and Section 82(d) of the Indian Registration Act, 1908. The power of attorney dated 17.04.1990 was executed by 11 persons in favour of one, Venkatachalam who is arrayed as 7th accused / third petitioner herein. He executed sale deed in favour of the petitioners 4 to 6 herein on 15.09.1993. Thereafter, they executed sale deed in favour of the petitioners 7 to 9 herein. Mere execution of sale deeds will not come under the definition of 'false document' as defined



under Section 464 of IPC. The term forgery used in Sections 467 and 471 is defined under Section 463 of IPC. It is relevant to extract the provisions under Section 464 of IPC hereunder:

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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 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, 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 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.

6. It is also relevant to extract the provision under Section 420 of IPC hereunder:

420. Cheating and dishonestly inducing delivery of property.—Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed,



and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Therefore, the offence under Section 420 of IPC is not at all made out as against the petitioners, since the petitioners neither made any dishonest nor any fraudulent representation to the second respondent.

7. It is observed in the case of Md.Ibrahim &Ors Vs. State of Bihar &Anr reported in 2009 (8) SCC 751, as follows:

14. 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 practicing deception, or from a person not in control of his senses.

Therefore, making of sale deeds would not constitute forgery within the meaning of Section 463.

8. It is laid down in the case of Devendra & Ors Vs. State of U.P. & another reported in 2009 (7) SCC 495 as follows:

Making of any false document, in view of the definition of 'forgery' is the sine qua non therefor. What would amount to making of a false document is specified in Section 464 thereof. What is, therefore, necessary is to execute a document with the intention of causing it to be believed that such document inter alia was made by the authority of a person by whom or by whose authority he knows that it was not made.

9. The execution of a sale deed by a person which is not his, as his property, is not making a false document and therefore no forgery and such act never be a criminal offence. Further, in fact the term 'fraud' is not defined in IPC. The definition of 'fraud' is that deliberate, deception, treachery or cheating intended to gain advantage. Under Section 17 of the Contract Act defines 'fraud' with reference to a party to a contract. The expression 'defraud' involves two elements and injury to the person deceived. Therefore, by



merely alleging or showing that a person acted fraudulently, it cannot be assumed that he committed an offence punishable under the Code or any other law, unless that fraudulent act is specified to be an offence under the Code or other law. In this regard, the learned counsel for the petitioner also relied upon the judgment in the case of Md.Ibrahim & Ors Vs. State of Bihar &Anr reported in 2009 (8) SCC 751, wherein the Hon'ble Supreme Court of India held as follows:

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.

10. If at all the second respondent and other legal heirs have right over the subject property, he has to work out his remedy before the civil court. In fact, he also filed suit in OS.No.467 of 2018 on the file of the II Additional District Court, Tiruppur for partition in respect of the subject property. However, he failed to seek any relief to annul the sale deeds which were executed on the strength of the power of attorney. That apart, there is absolutely no explanation for the belated complaint, that too after 95 years. Admittedly, the second respondent is not in possession and enjoyment of the subject property. On perusal of the records produced by the petitioners such as patta, chitta, adangal, kist receipts, etc. would reveal that they are in possession and enjoyment of the subject property. Further, even according to the second respondent, his great grandfather purchased only to an extent of 2.90 acres out of 11.60 acres comprised in SF.No.947 situated at Kandiyar Koil Village. Therefore, no sub-division was made after purchase of the property admeasuring 2.90 acres. In this regard, the learned counsel for the petitioners relied upon the judgment in the case of M/S Thermax Ltd. & Ors Vs. K.M.Johny & Ors reported in 2011 (13) SCC 412, wherein the Hon'ble Supreme Court of India held as follows:

34. if there is a flavour of civil nature, the same cannot be agitated in the form of criminal proceeding. If there is huge delay and in order to avoid the period of limitation, it cannot be resorted to as criminal proceeding.



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36. ... inasmuch as the dispute arose out of a contract and a constituted remedy is only before a Civil Court, the Magistrate ought to have appreciated that Respondent No.1 was attempting to use the machinery of the criminal courts for private gains and for exerting unjust, undue and unwarranted pressure on the appellants in order to fulfill his illegal demands and extract undeserving monetary gains from them.

11. Therefore, there is no iota of material indicating the guilt of the petitioners. The trial court mechanically had taken cognizance without even perusing the materials produced along with final report.

12. In view of the above, the entire proceedings cannot be sustained as against the petitioners and it is liable to be quashed. Accordingly, the entire proceedings in CC.No.95 of 2019 on the file of the learned Judicial Magistrate, Palladam is quashed and this criminal original petition is allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The Judicial Magistrate,
Palladam

2.The Inspector of Police,
DCB, Tiruppur,
crime No.19 of 2014,
Tiruppur District

3.The Public Prosecutor
Madras High Court,
Chennai.

+1cc to Mr.N.Manoharan, Advocate SR. No. 32706

CRL.O.P.No.4238 of 2020

PM (CO)

PR (20/06/2022)