



CRL.R.C.No.798 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2022

CORAM

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.R.C.No.798 of 2018
and Crl.M.P.Nos.9073 to 9075 of 2018

1. T.Rajareddy @ Gullareddy

2. Rathinamma

... Petitioners

Vs.

1. The State rep. by
The Sub Inspector of Police,
Mathirgiri Police Station,
Hosur Taluka,
Krishnagiri District.

2. Srinivasa Reddy
(R2 impleaded as per the
order dated 21.11.2022
in Crl.M.P.No.17430 of 2022
in Crl.R.C.No.798 of 2018)

... Respondents

PRAYER: Criminal Revision case has been filed under Section 397 r/w 401 of Cr.P.C to call for the records relating to the order in C.A.No.45 of 2010 dated 03.04.2018 by the learned Additional District Judge, Hosur, Krishnagiri District, confirming the order in C.C.No.43 of 2008 by the



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learned Judicial Magistrate No.2, Hosur, dated 06.08.2010, convicting the first petitioner under Sections 465 & 468 of IPC to undergo rigorous imprisonment for a period of two years for each offence and a fine of Rs.2,000/- for each offence, in default three months simple imprisonment. The second petitioner is found guilty under Sections 465, 468 r/w 109 of IPC and convicted to undergo rigorous imprisonment for a period of two years for each offence and fine of Rs.2,000/- for each offence, in default three months simple imprisonment and the sentences shall run concurrently and set aside the same by allowing the above Criminal Revision Petition.

For Petitioners : Mr.B.Kumar, Senior Counsel
For Mr.G.M.Ananthakumar

For Respondents
For R1 : Mr.A.Gopinath
Government Advocate (Crl. Side)

For R2 : Mr.A.Nagarajan
For Mr.K.R.Ramesh Kumar

ORDER

This Criminal Revision is directed as against the judgment passed in C.A.No.45 of 2010 dated 03.04.2018 on the file of the learned Additional District Judge, Hosur, Krishnagiri District, confirming the conviction and sentence imposed in C.C.No.43 of 2008 dated 06.08.2010



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on the file of the learned Judicial Magistrate No.2, Hosur, thereby convicting the petitioners for the offences under Sections 465 & 468 r/w 109 of IPC.

2. The case of the prosecution is that the defacto complainant and the petitioners/accused are residing in the same village. The defacto complainant owned ancestral properties to an extent of 15.53 acres at Mookandapalli Village comprised in Survey Nos.604/3, 604/1, 604/2, 604/6, 605/7, 762/3-A, 650, 651, 652, 660/1, 660/3 and the defacto complainant is in possession and enjoyment of the property. One Munireddy is also owned property to an extent of 35 acres in survey Nos. 525, 647, 648, 649, 643, 544,759 and 461, situated at Kothur, Mookandapalli and he is in possession and enjoyment of the said property.

3. While being so, the petitioners/accused along with two other unknown persons entered into criminal conspiracy to do certain illegal activities by illegal means by creating forged document of gift deed



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pertaining to the above property totaling to an extent of 50 acres of land situated at Mookandapalli village. The first accused without having any right over the said property fraudulently and dishonestly executed settlement deed in favour of his wife the second accused. The second accused also effectively assisted and abetted the first accused to execute the said settlement deed in her favour and two other unknown persons were witnessed the said illegal document as if the first accused is the owner of the said property. Hence the complaint.

4. On receipt of the same, the respondent registered the FIR in Crime No.129 of 2007 for the offence under Sections 465, 467, 468, 471 and 420 of IPC. After completion of investigation, the first respondent filed final report and the same has been taken cognizance by the trial Court. On the side of the prosecution, they examined P.W.1 to P.W.17 and marked documents as Ex.P.1 to Ex.P.23. On the side of the accused, the first petitioner himself examined as R.W.1 and also marked documents as Ex.P.1 to Ex.P.7. On a perusal of oral and documentary evidences, the trial Court found them guilty for the offence under Sections 465 & 468



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r/w. 109 of IPC and convicted the first petitioner under Sections 465 & 468 of IPC and sentenced him to undergo rigorous imprisonment for a period of two years for each offence and a fine of Rs.2,000/- for each offence, in default three months simple imprisonment and also convicted the second petitioner for the offences under Sections 465, 468 r/w 109 of IPC and sentenced her to undergo rigorous imprisonment for a period of two years for each offence and fine of Rs.2,000/- for each offence, in default three months simple imprisonment and the sentences shall run concurrently. Aggrieved by the same, the accused preferred an appeal and the appeal was also dismissed by confirming the conviction and sentence imposed by the trial Court. Hence, this revision.

5. The learned Senior counsel appearing for the petitioners submitted that the offence under Section 465 would not at all attracted as against the petitioners. The defacto complainant has no title over the property. He is claiming the said property under the revenue patta and the revenue patta is not the title document. Whereas the petitioners have title over the property to execute the settlement deed. In fact, the first



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petitioner executed the settlement deed in favour of the second petitioner.

At the time of execution of settlement deed, the settlee did not present at the time of registration of the documents. Therefore, if at all any charges would attract, only as against the first petitioner alone and not as against the second petitioner. The second petitioner had no knowledge about the execution of the settlement deed. Though the petitioner had marked Ex.R.1 to Ex.R.7, none of the documents were considered by the both the Courts below. In support of his contention, he relied upon the following judgments :-

***i) CDJ 2009 SC1773 – Md.Ibrahim & ors Vs. State of Bihar
& anr***

ii) CDJ 2018 SC 526 – Sheila Sebastian Vs. R.Jawaharaj & ors

iii) Crl.O.P.(MD)No.11638 of 2019 dated 16.09.2019 –

Murugesan and ors Vs. State and anr.

6. Per contra, the learned counsel appearing for the second respondent/defacto complainant submitted that the petitioners are habitual offenders and the first petitioner was already detained under Act 14 of 1982. He committed similar type of offences by cheating poor farmers by grabbing their properties. The first petitioner has no title over



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the property and without any title, he executed the settlement deed in favour of the second petitioner, who is none other than his own wife. Therefore, she had knowledge that the first petitioner has no title over the property and any right whatever else. Even then, she abetted the first petitioner while executing of deed of settlement. Therefore, both were committed the offence and both the Courts below rightly convicted them for the offences under Section 465, 468 r/w.109 of IPC.

6.1. In fact, P.W.1 proved his title over the property by marking Ex.P.2 to Ex.P.9 and also Ex.P16 to Ex.P.23. Those documents are speaks about the possession and enjoyment over the subject property. At any point of time, the first petitioner has no title or right over the property. Therefore the offences under Sections 465, 468 r/w 109 of IPC are clearly attracted as against the petitioners and therefore, they were rightly convicted by the Courts below. Therefore, he prayed to dismiss the present revision.



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7. The learned Government Advocate (Crl.Side) appearing for the first respondent/Police submitted that in order to bring the charges to home, the prosecution had examined P.W.1 to P.W.17 and marked Ex.P.1 to Ex.P.1 to Ex.P.23. Though the petitioners were marked documents as Ex.R.1 to Ex.R.7, those were not at all connected to the subject property. Both the Courts below rightly convicted them and it doesn't require any interference from this Court. Therefore, he prayed for dismissal of the present revision.

8. Heard Mr.B.Kumar, learned Senior Counsel appearing for the petitioner, Mr. A.Nagarajan, learned counsel appearing for the second respondent and Mr.A.Gopinath, learned Government Advocate (Crl.Side) appearing for the first respondent/Police.

9. The brief case of the prosecution is that the first petitioner without any title over the property comprised in Survey Nos.604/3, 604/1, 604/2, 604/6, 605/7, 762/3-A, 650, 651, 652, 660/1, 660/3 ad measuring 15.53 acres situated at Mookandapalli Village, executed



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settlement deed which was marked as Ex.P.13 in favour of the second petitioner. Originally the said property owned by the second respondent and hence he lodged complaint which was marked as Ex.P.1. The second respondent was examined as P.W.1 and in order to prove the title over the property, all the relevant documents were marked through P.W.1.

10. The second petitioner is none other than the wife of the first petitioner. Therefore, the second petitioner had knowledge that the first petitioner had no title over the property. The learned Senior Counsel vehemently contended that the petitioners had not committed any offence as alleged by the prosecution. Even according to the prosecution, the first petitioner executed settlement deed in favour of the second petitioner only in respect of his ancestral property. The defacto complainant failed to prove the title over the property in his favour. The petitioners produced Ex.D.1 to Ex.D.6 to show that the subject property covered under the settlement deed belonged to their ancestors. They also filed suit which are pending between them in respect of title over the property. Therefore, the entire allegations are civil in nature and no offence is made out as against the petitioners.



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11. The only point for consideration is that whether the petitioners have committed the offence of forgery by executing settlement deed?

12. The first petitioner was examined as D.W.1 and he admitted that the father of P.W.2 is Ramareddy and the father of the said Ramareddy is Chunnappa Reddy. He further admitted that whatever the property coming from their family is not connected with the first petitioner's property. Further the property which is claimed by P.W.1 is also not connected with their property. The first petitioner also claimed the subject property as he is the adopted son of one Munireddy. However, the first petitioner failed to produce any piece of evidence to show that he is the adopted son of the said Munireddy. The petitioner did not even produce any document to show that they are in possession and enjoyment of the subject property. However, P.W.1 proved that he is in possession and enjoyment of the subject property and they have title over the property. Therefore, the first petitioner executed settlement deed in favour of the second petitioner without any title over the said property.



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13. Though the first respondent/police charged the petitioners for the offences under Sections 465, 467, 468, 471 and 420 of IPC, the petitioners were convicted by both the Courts below for the offences under Sections 465 and 468 r/w 109 of IPC. It is relevant to extract the offence under Section 463 of IPC as follows :-

“463. Forgery.— 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.”

The act of forgery is done infurtherence with an intention to deceive any persons right. The defraud involves two conceptions namely infringement of some legal right possessed by him but not necessarily deprivation of property. In this case, the first petitioner executed the settlement deed viz., Ex.P.13 with intention to defraud the original owners of the property and the second petitioner had acted upon such an



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instrument and on the strength of the said settlement deed, she filed suit as against the defacto complainant and others for declaration and consequential prayers.

14. In fact only after registration of FIR, the second petitioner filed civil suit as against P.W.1 in respect of the subject property that too on the strength of the settlement deed, which was marked as Ex.P.13. Thus it is clear that the first petitioner without any title over the property executed settlement deed in favour of the second petitioner and she claimed title over the property on the strength of the settlement deed.

15. The learned Senior Counsel appearing for the petitioners relied upon the judgement reported in **CDJ 2009 SC1773** in the case of **Md.Ibrahim & ors Vs. State of Bihar & anr** which held as follows:-

“10. An analysis of section 464 of Penal Code shows that it divides false documents into three categories:

10.1) 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



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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.

10.2) 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.

10.3) 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.”

16. He also relied upon the judgment reported in **CDJ 2018 SC 526** in the case of **Sheila Sebastian Vs. R.Jawaharaj & ors**, in which the Hon'ble Supreme Court of India held that while considering the basic ingredients of the offences under Sections 467 and 471 of IPC, to attract the offence of forgery as defined under Section 463 of IPC depends upon creation of a document as defined under Section 464 of IPC. Mere execution of a sale deed by claiming that property being sold was



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executant's property, did not amount to commission of offences punishable under Sections 467 and 471 of IPC even if title of property did not vest in the executant. Further held that 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 authorized by someone else. Therefore, execution of such document is no execution of a false document as defined under Section 464 of IPC. 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 IPC would attract.

17. Whereas in the case on hand, the first petitioner with intention to cause damage to the defacto complainant executed the settlement deed viz., Ex.P.13 in favour of the second petitioner and thereby committed forgery. Therefore, the above judgments are not helpful to the case on hand, since the prosecution had proved its case beyond any doubt and both the Courts below rightly convicted the petitioners for the offences under Sections 465, 468 r/w 109 of IPC and this Court finds no infirmity or illegality in the impugned order.



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18. While pending this revision, the petitioners sought time for amicable settlement by way of cancelling the settlement deed. After preparing the Cancellation of Settlement Deed, the petitioners are not inclined to cancel the settlement deed as such the negotiation failed between them. That apart, the sentence imposed by the Courts below is not suspended till today. The Interim protection was granted by this Court for one week only. Even then, the petitioners failed to surrender so far. The first respondent also did not take any steps to secure them to serve remaining period of sentenced.

19. In view of the above discussion, the conviction and sentence imposed on the petitioners in C.A.No.45 of 2010 dated 03.04.2018 on the file of the learned Additional District Judge, Hosur, Krishnagiri District, confirming the judgment in C.C.No.43 of 2008 dated 06.08.2010 on the file of the learned Judicial Magistrate No.2, Hosur, are hereby confirmed. The trial Court is directed to take steps to secure the petitioners for the purpose of sentencing them to undergo the remaining period of



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conviction. It is also directed that the period of sentence already undergone by the petitioners, if any, shall be given set off, as required under Section 428 Cr.P.C.

20. Accordingly, the Criminal Revision Petition stands dismissed. Consequently, connected miscellaneous petitions are closed.

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Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order

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To

1. The Additional District Judge,
Hosur, Krishnagiri District
2. The Judicial Magistrate No.2,
Hosur.
3. The Sub Inspector of Police,
Mathirgiri Police Station,
Hosur Taluka,
Krishnagiri District.
4. The Public Prosecutor,
Madras High Court,
Chennai.



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G.K.ILANTHIRAIYAN, J

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Crl.R.C.No.798 of 2018 and
Crl.M.P.Nos.9073 to 9075 of 2018

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