IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.08.2022

CORAM:

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

CRL.O.P.No.11889 of 2022 and
CRL.M.P.No.6712 of 2022

Kumar Praveen Mehta ... Petitioner

Versus

1.State rep by,
Inspector of Police,
Central Crime Branch,
18^{th} team/24^{th} team,
Vepery,
Chennai -600 007.

2.Dr.V.P.R.Varadarajan, M.B.B.S.,
No 94, Dr Natesan Salai,
Mylapore,
Chennai 600 004. ... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records connected with the CC No 4 of 2022, pending on the file of the Court, Land Grabbing Court II Allikulam Court Complex, Chennai-3 and to quash the same.

For Petitioner	:	Mr.B.Kumar, Senior Counsel for Mr.R.Loganathan
For R1	:	Mr.E.Raj Thilak, Additional Public Prosecutor

For R2 : Mr.R.Vivekanandan for
Mr.G.Ilamurugu

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ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.4 of 2022, on the file of the Special Court No.II for Exclusive Trial of Land Grabbing Cases, Allikulam, Chennai, for offence under Sections 420, 465, 468, 471 r/w 120(b) of IPC.

2.The petitioner is the 2nd accused in C.C.No.4 of 2022 on the file of the Special Court No.II for Exclusive Trial of Land Grabbing Cases, Allikulam, Chennai. The case of the 2nd respondent/defacto complainant emanates from the sequence of events narrated below. The 2nd respondent's father Dr.Rama Pandiyaraj was the original owner of the property measuring 1.04 acres, out of which 2 grounds and 1613 sq.ft. is the area in dispute. The 2nd respondent in his complaint, dated 02.04.2012 with the Commissioner of Police, Egmore has alleged that A3 along with one Kantha Praveen Mehta/A1 and Kumar Praveen Mehta/petitioner/A2 conspired and fabricated documents in order to grab this property of 2 grounds and 1613 sq.ft. Further, one Adalarasan had fabricated a power of attorney in the year 2004-2005 for the said 2 grounds and 1613 sq.ft. and obtained a patta in C.A.37/04/05 in the name of Kantha Praveen Mehta/A1. Based on the 2^{nd} respondent's complaint on this, the patta was cancelled by the District Collector in the year 2011. In the meanwhile, Kantha Praveen Mehta/A1 made a confirmation deed of "an oral settlement" of the said property to her son Kumar Praveen Mehta, the petitioner herein in the year 2010 and document No.2019 of 2010 states that the oral settlement was as early as in the year 1987. Based on this confirmation deed, the property measuring 2 grounds and 1613 sq.ft., was sold to one A3 through a registered sale deed, dated 18.08.2010, vide document No.6083 of 2010 on the file of the Sub Registrar Office, Saidapet. On the complaint of the 2^{nd} respondent, a case in Crime No.384 of 2012, for offence under Sections 420, 465, 468 and 471 r/w 120(b) of IPC was registered against Kantha Praveen Mehta/A1, Kumar Praveen Mehta/petitioner/A2 and Chellappa/A3. On completion of investigation, charge sheet has been filed before the trial Court and the same has been taken on file as C.C.No.4 of 2022.

3.The learned Senior Counsel appearing for the petitioner would submit that the very issue whether the sale executed in favour of A3 by the petitioner was decided by this Court in Crl.O.P.No.570 of 2013, dated 17.07.2018 and held that the 2nd respondent is attempting to grab the property, which was already been sold by his father in the year 1961 and that the allegations of the 2nd respondent of forgery and impersonation has no iota of truth in it. As against the order of this Court, dated 17.07.2018 in Crl.O.P.No.570 of 2013, the 2nd respondent approached the Hon'ble Apex Court in S.L.P(Crl.)No.7930 of 2018 and the same was dismissed on 13.09.2019. The learned Senior Counsel would further submit that merely levelling a charge of conspiracy without mentioning how, where, why and which of the conspirators hatched the conspiracy and for what purpose, or circumstances warranting an inference of existence of a conspiracy, is not enough to bring the petitioner to face a trial in a criminal court.

4.He would further submit that to constitute an offence of cheating, two ingredients have to be satisfied [1] to deceive a person either by making a false or misleading representation or by any other action and [2] fraudulently or dishonestly inducing any person to deliver any property or to consent to the retention thereof by any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit and that since in the instant case, there are no ingredients to attract Section 420 of the Indian Penal Code against the present petitioner, he cannot be prosecuted for the said offence. Hence, he prayed for quashing of the proceedings against the petitioner.

5.The learned counsel for the 2nd respondent/defacto complainant contended that originally, the property was sold by the father of the 2nd respondent to the mother of the petitioner/A1. Thereafter, some portion of the property was acquired by the Tamil Nadu Housing Board. He further contented that a perusal of the statement of the witnesses clearly indicates the offence committed by the accused and therefore, the proceedings against the petitioner cannot be quashed.

6.Heard the submissions of the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the 1st respondent and the learned counsel for the 2nd respondent and perused the various important documents produced before this Court.

7.When this Court posed a question, how the offence is attracted even the entire materials taken on face value? the learned counsel for the 2nd respondent is not able to answer for it.

8.It is not disputed that in the year 1961, the property was sold by the father of the 2nd respondent to the mother of the petitioner/A1. It appears that the petitioner on the strength of oral settlement, has dealt with the property. It is relevant to note that merely believing to be an owner of the property and executing some documents, will not amount to the offence of forgery or cheating. It is also relevant to note that in the 1961 document, the 2nd respondent was also eo-nominee party. Though it is stated that some portion of the property was already acquired by the Tamil Nadu Housing Board and money has been deposited in the Court, that may not be a germane for consideration for the issues particularly with regard to the charges framed against the petitioner. Even assuming that the petitioner without any title, has dealt with the property, that will not amount to creation of false document or forgery etc.

9.It is relevant to refer the judgment of the Hon'ble Apex Court in the case of "***Mohammed Ibrahim and other Versus State of Bihar and another reported in [2009] 8 Supreme Court Cases 751***" and the relevant portion is extracted as follows:-

> "*17. The allegations in the complaint do not also made out the ingredients of an offence under section 504 of the Penal Code. Section 504 refers to intentional insult with intent to provoke breach of peace. The allegation in the complainant is that when he enquired with accused 1 and 2 about the sale deeds, they asserted that they will obtain possession of land under the sale deeds and he can do whatever he wants. The statement attributed to appellants 1 and 2, it cannot be said to amount to an*

"insult with intent to provoke breach of peace". The statement attributed to accused, even if it was true, was merely a statement referring to the consequence of execution of the sale deeds by first appellant in favour of the second appellant.

Section 464 IPC deals with making of false and the same 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 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 practiced upon him, he does not know the contents of the document or electronic record or the nature of the alteration.

[Note: The words `digital signature' wherever it occurs were substituted by the words `electronic signature' by Amendment Act 10 of 2009]."

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.*

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 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 practiced upon him, know the contents of the document or the nature of the alteration."

10.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 authorized 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.

11.Considering the above judgment, it is clear that none of the allegations and materials unearthed by the prosecution to show that there was falsification of the record or that any cheating has taken place when the person has bonafidely executed the document. Such an act will never fall within an ambit of any of the Sections framed by the prosecution. Hence, this Court finds that allowing the petitioner to face the ordeal of trial is nothing but an abuse of process law.

12.Accordingly, this Criminal Original Petition is allowed and the proceedings in C.C.No.4 of 2022, on the file of the Court, Land Grabbing Court No.II, Allikulam Court Complex, Chennai is quashed against the petitioner/A2. Consequently, the connected Miscellaneous Petition is closed.

08.08.2022

Index: Yes/No
Internet: Yes/No

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To

1.The Special Court No.II for Exclusive Trial of Land Grabbing Cases,
Allikulam, Chennai.

2.The Inspector of Police,
Central Crime Branch,
18th team/24th team,
Vepery,
Chennai -600 007.

3.The Pubic Prosecutor,
High Court, Madras.

N.SATHISH KUMAR, J.

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<u>CRL.O.P.No.11889 of 2022</u>

<u>08.08.2022</u>