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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 06.01.2022

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THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Crl.O.P.Nos.2561, 1731 & 2632 of 2017
&
Crl.M.P.Nos.1872, 1234, 1235 & 1813 of 2017

Khader
Manager,
M/s.Masclimeijer Aromatics Private Limited,
Pallavaram, Chennai - 600 0043. .. Petitioner/ Accused 5
in Crl.O.P.No.2561 of 2017
S.Mohammed Sheriff
S/o.Late S.M.Abdul Kahder .. Petitioner/ Accused 4
in Crl.O.P.No.1731 of 2017
A.Ramamoorthy
S/o. Anjaneya Naicker .. Petitioner/ Accused 1
in Crl.O.P.No.2632 of 2017

Vs.

1. State through
The Inspector of Police, Team II,
Central Crime Branch, Vepary,
Chennai - 600 007. ... Respondent/ complainant
in all Crl.O.Ps
2. C.D.Meiyappan ... Respondent/ de-facto complainant
in all Crl.O.Ps

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C to call for the records in C.C.No.1187 of 2013 pending on the file of the learned Judicial Magistrate, Alandur, Chennai and quash the same.

For Petitioners : Mr.M.Yuvaraj
in Crl.O.P.No.2561 of 2017

: Mr.G.Ravikumar
in Crl.O.P.No.1731 of 2017

: Mr.AR.L.Sundaresan
Senior Counsel
for Ms.A.L.Ganthimathi in
Crl.O.P.No.2632/17



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For Respondents: Mr.S.Vinoth Kumar
Government Advocate (Crl.side) for R1

: Mr.N.R.Elango
Senior Counsel
for Mrs. Aruna Elango for R2

COMMON ORDER

These Criminal Original Petitions have been filed to quash the final report filed in C.C.No.1187 of 2013 pending on the file of the learned Judicial Magistrate, Alandur, Chennai for the offences under Sections 120-B, 465, 467, 468, 471 and Section 420 of I.P.C.

2. The crux of the allegation in the final report filed against the petitioners is as follows:

The land in question measuring to an extent of 5.28 acres originally owned by the petitioner's father C.T.Devaraj situate in S.Nos.399/2, 399/3 and 399/5 by virtue of his purchase in the year 1959 and 1961. When the matter stood thus, the accused, who were originally arrayed as A1 to A5 (since deceased), with an intention to grab the property, created false documents and obtained a patta in the year 1992. Thereafter, they sold an extent of 84.5 cent to A1 through their Power Agent, who has been arrayed A2 and Accused 3 and 4 stood as witnesses to the above documents. Accused 5 and 6 are subsequent purchasers of the above property from A1. The case of the prosecution is that all the accused have conspired together and committed offences punishable under Sections 120-B, 465, 467, 468, 471 and Section 420 of I.P.C.

3. The learned senior counsel appearing for the petitioners mainly submitted that even from the prosecution case it could be seen that A1 is the purchaser of the property in the year 1995 from one Grace Theoplus and others, who are originally arrayed as A1 to A5 in the year 1995 and the complaint has been filed in order to give a colour of criminality to the entire dispute, which is civil in nature. The very purchase of the property on the basis of the title deed stood in the name of A1 and others also cannot be found fault with. Absolutely, there is no evidence to show that the petitioners have involved in creating false documents thereby committed forgery and that apart, there is no evidence to establish the offence under Section 420 IPC and fabrication of documents and further submitted that the entire prosecution is nothing but motivated, the learned senior counsel sought to quash the final report.



4. On the contrary, the learned senior counsel for the respondent mainly submitted that the patta itself was obtained by Grace Theoplus in the year 1992 by fabricating the revenue records and in pursuant to the same, the property has been dealt in favour of A1 and A1 sold the same to A5 and A6 and Accused 3 and 4 stood as witnesses in both the documents. Statement recorded by the prosecution clearly indicates that A1 has stated to have been admitted the creation of documents and therefore, submitted that this is a fit case where the trial has to see its logical end and there are materials to proceed against the accused and hence, opposed for quashing the proceedings.

5. In 1992 SUPP (1) SUPREME COURT CASES - 335 STATE OF HARYANA AND OTHERS Vs. BHAJAN LAL AND OTHERS, the Hon'ble Apex Court has set out the following guidelines for quashing the complaint:-

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings



and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

6. Considering the above settled principle when the entire materials collected by the prosecution is taken in its face value, the same do not constitute an offence still forcing the parties to undergo the ordeal of trial cannot be permitted. When the prosecution itself indicates that criminal colour has been given to a civil dispute, such prosecution cannot be allowed in the eye of law. A perusal of the crux of the final report same indicates that as if originally A1 to A5 (died), have obtained a patta from the Tahsildar in the year 1992. It is the contention of the prosecution that obtaining the patta in their names itself amount to forgery. Such contention cannot be accepted in the eye of law. To attract the offence of forgery, there must be evidence to show that false documents have been created by the accused to attract offence under Section 464 of IPC and the same should be established by the prosecution. Only when a person makes a document, signs and seals as that of others, it can be said that false documents have been made. In this regard, learned counsel referred to a judgment of Hon'ble Supreme Court in Mohammed Ibrahim and Others Vs. State of Bihar and Another reported in (2009) 8 SCC 751. In the said judgment in Paragraph 12 Hon'ble Supreme Court has held as follows:

'12. Section 464 defining "making a false document" 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

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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.

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

7. It is not the case of the prosecution that any of the revenue documents have been created or forged by these accused. The only allegation against the petitioners is that they obtained patta on the strength of their possession and not on the basis of title. Mere obtaining patta on the basis of possession, at no stretch of imagination, can be construed as forgery to attract offence of forgery or making a false document, pursuant to the patta obtained in the year 1992. Present A1 purchased the property in the year 1995. Therefore, it may be a defective title, mere purchase of the property or selling the property as his own property also does not attract the offence of forgery. This has been held by Hon'ble Supreme Court in paragraphs 16 and 17 of its judgment referred above, which read as follows:



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"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."

8. Further, Accused 3 and 4 are mere witnesses to the document executed by A1 in favour of A2, A5 and A6. Therefore, they being witnesses to the documents executed by the person claiming to be the owner of the property, their act cannot be construed to mean that they also committed an offence of forgery and making false documents. Considering the above stated position, this Court is of the view that though there may be defective title, their act will not amount to forgery or creating a false document. Further, there are also no materials available to constitute offence under Section 420 IPC. It is not the case of the prosecution that the accused have induced or deceived any person.

9. Considering the entire prosecution case and settled position of law, this Court is of the view that this is a fit case where this Court can exercise its power under Section 482 of Cr.P.C and quash the final report.

10. Accordingly, these Criminal Original Petitions are



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allowed and the case in C.C.No.1187 of 2013 is quashed as against these petitioners/accused 1, 4 and 5 alone. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-V)

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Sub Assistant Registrar

gpa/gba

To

1.Judicial Magistrate, Alandur,
Chennai.

2.The Inspector of Police, Team II,
Central Crime Branch, Vepary,
Chennai - 600 007.

3.The Public Prosecutor
Madras High Court
Chennai - 104.

+2cc to M/s.A.L.Ganthimathi, Advocate, S.R.No.1026, 1027
+3cc to M/s.S.Aruna Elango, Advocate, S.R.No.2074
+2cc to Mr.G.Ravikumar, Advocate, S.R.No.1000
+2cc to Mr.M.Yuvaraj, Advocate, S.R.No.999

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RSV(CO)
CB(01/02/2022)