BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.03.2022

CORAM:
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR
CRL.O.P.[MD].No.732 of 2020
and
CRL.M.P.[MD]Nos.298 and 299 of 2020

1.Peter
2.K.R.Chandrasekaran
3.Boomi ... Petitioners / Accused 9 to 11

-Vs-

1.The State rep.by
Inspector of Police,
District Crime Branch,
Dindigul.
(Crime No.46 of 2016) ... 1st Respondent / Complainant

2.Muthusamy ... 2nd Respondent / 1st Informant

PRAYER : Criminal Original Petition filed under Section 482 of Cr.P.C. to call for the records in C.C.No.31 of 2019 on the file of the Special Court for Exclusive Trial of Land Grabbing Cases, Madurai and quash the same as against this petitioners.

For Petitioner : Mr.K.Vinayagan

For R1 : Mr.M.Sakthi Kumar,
Government Advocate

For R2 : Mr.C.M.Arumugam

ORDER

This Criminal Original Petition is filed to quash the proceedings in C.C.No.31 of 2019 on the file of the Special Court for Exclusive Trial and Land Grabbing Cases, Madurai.

2.The allegation in the First Information Report indicates that the petitioners 1 and 2 are the brothers and the property in question belongs to their maternal grandmother, namely, Pechiammal. She had four sons and two daughters. Out of four male legal heirs, two of them died. The petitioners are claiming right to one of the female legal heir of the said Pechiammal. Their case is that A1 is the son of one of the daughters of the said Pechiammal, A2 is the mother of A1 and A3 is the father of A1. A4 is the daughter of A5 and A6 is the daughter of A3. A7 and A8 are the sons of one another male sons of Pechiammal. A9 is the document writer, A10 is the Sub-Registrar, A11 is the purchaser of the property.

3.The crux of the allegation in the First Information Report indicates that as if the petitioners 9 to 11 herein and others by creating false documents, have sold the property for which the Sub-Registrar also registered the document. The First Information Report has been lodged against all the accused persons.

4.It is relevant to note that to attract the offence under Section 468 of IPC, it must be shown that the accused had created false documents. The very case itself indicates that some of the legal heirs have sold the property, claiming to their own. Such eventuality will not lead to a situation that they created false documents. Therefore, merely some of the co-owners have dealt with the property, the offences alleged in the First Information Report would not be attracted.

5.In this regard, it is useful to refer the judgment of the Hon'ble Apex Court in the case of ***Mohammed Ibrahim and others Vs. State of Bihar and another*** reported in (***2009) 8 SCC 751.*** The relevant portion of the said judgment is extracted hereunder:-

> *"14.An analysis of section 464 of Penal Code shows that it divides false documents into three categories:*
>
> *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.*
>
> *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.*
>
> *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.*
>
> *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 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.*
>
> *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.

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).

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.

A clarification

23.When we say that execution of a sale deed by a person, purporting to convey a property which is not his, as his property, is not making a false document and therefore not forgery, we should not be understood as holding that such an act can never be a criminal offence. If a person sells a property knowing that it *does not belong to him, and thereby defrauds the person who purchased the property, the person defrauded, that is the purchaser, may complain that the vendor committed the fraudulent act of cheating. But a third party who is not the purchaser under the deed may not be able to make such complaint."*

6.Considering the same, merely the property was dealt with by some of the sharers, such act would not fall within the ambit of creating false documents. Accordingly, this Criminal Original Petition stands allowed and the proceedings in C.C.No.31 of 2019 on the file of the Special Court for Exclusive Trial of Land Grabbing Cases, Madurai, is quashed against the petitioners 9 to 11. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Crl side)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Myr

To

1.The Special Court for Exclusive
Trial of Land Grabbing Cases,
Madurai.

2.The Inspector of Police,
District Crime Branch,
Dindigul.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

CRL.O.P.[MD].No.732 of 2020
03.03.2022

RK(18/03/2022) 4P 4C