



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CRL.O.P.[MD].No.2412 of 2020

and

CRL.M.P.[MD]Nos.1248 and 1249 of 2020

WEB COPY

1.Rajalakshmi

2.Rajendran

... Petitioners / Accused Nos.1 & 2

Vs.

S.P.V.Kasirajan

... Respondent / Complainant

PRAYER : Criminal Original Petition filed under Section 482 of Cr.P.C. to call for the records relating to the private complaint in C.C.No.1428 of 2019 on the file of the Judicial Magistrate Court No.6, Madurai and quash the same as illegal.

For Petitioners : Mr.K.S.Durai Pandian

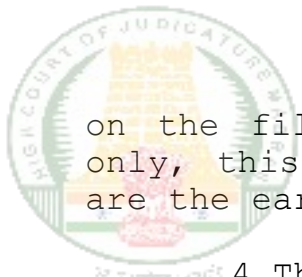
For Respondent : Mr.V.S.V.Venkateshwaran

ORDER

This Criminal Original Petition has been filed to quash the private complaint, which is taken on file in C.C.No. 1428 of 2019 by the learned Judicial Magistrate No.VI, Madurai for the offences punishable under Sections 406, 420, 467, 471 and 120(b) of IPC.

2.The crux of the allegation in the private complaint is that an extent of 49 ½ cents originally owned by one Meenal, in which she sold 37 ½ cents to one Ramalingam and in respect of remaining 12 cents, she had given a gift deed to her daughter, namely, Manjula. Thereafter, the said Manjula has executed a power of attorney in favour of the defacto complainant on 28.11.2008. Pursuant to the said power of attorney, the property has been transferred in the name of the defacto complainant's wife on 06.03.2010. Whereas, the father of the first accused has purchased 12 cents on 17.11.1995 from one Pazir Ahamed, thereafter, he executed a gift deed in favour of his daughter / 1st accused herein on 24.02.2009. Hence, it is the contention of the defacto complainant that the accused created false documents for sale of the property and also mutated the revenue records. Hence, he sought to prosecute the accused for the offences punishable under Sections 406, 420, 467, 471 and 120(b) of IPC.

3.The learned counsel appearing for the petitioners submitted that this case is nothing but abuse of process of law and the defacto complainant has already filed a suit in O.S.No.443 of 2009



on the file of District Munsif Court, Thirumangalam. Thereafter only, this private complaint is filed and in fact the petitioners are the earlier purchaser in the year 1995 itself.

4. The learned counsel appearing for the respondent would submit that the accused have created false documents and mutated the revenue records, which requires detailed trial, hence opposed to quash the private complaint. According to him, four boundaries mentioned in the sale deed is also not correct.

5. At the outset, a perusal of other allegations in the private complaint makes it very clear that the accused have dealt with their property purchased in the year 1995, whereas the defacto complainant claims to have purchased the property in the same survey number in the year 2010 and the allegation in the complaint further indicates that the main dispute is with regard to the identity of the properties.

6. In such view of the matter, the person on the strength of the sale deed had executed the document to third party. Such act can never be considered as a creation of false document and no allegation is made to the effect that the defacto complainant is cheated by the accused by executing such document.

7. 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

<https://hcservices.ecourts.gov.in/hcservices/> 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."

8. From the above judgment and based on the aforesaid facts, this Court is of the view that this is a fit case, where the criminal prosecution is to be quashed. Accordingly, the private complaint in C.C.No.1428 of 2019 on the file of the learned Judicial Magistrate No.VI, Madurai, is quashed as against the petitioners herein.

9. Accordingly, this Criminal Original Petition stands allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Myr

To

1. The Judicial Magistrate No.VI,
Madurai.

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

+1CC to M/s.K.S.DURAIPANDIYAN, Advocate (SR-10140[F] dated 04/03/2022)

+1 CC to M/s.V.S.V.VENKATESHWARAN, Advocate (SR-9987[F] dated 04/03/2022)

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