BEFORE THE MADURAI BENGH OF MADRAS HIGH COURT
DATED: 28.02.2022
CORAM
THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN
Crl.O.P(MD)Nos.17682 of 2021 & 3893 of 2022
and
Crl.M.P(MD)Nos.9637 of 2021 & 2841 of 2022

Crl.O.P(MD)No.17682 of 2021:-

1.Visahan
2.C.Suganya
3.P.Chinnasamy ... Petitioners/Accused Nos.1 to 3

Vs.

1.The State represented by,
The Inspector of Police,
District Crime Branch Police Station,
Madurai.
In Crime No.19 of 2021. ... 1st Respondent/Complainant

2.Lavanya ... 2nd Respondent/
Defacto Complainant

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records in Crime No.19 of 2021 on the file of the first respondent, dated 24.08.2021 and quash the same as illegal with regard to the petitioners alone.

For Petitioners : Mr.N.Ananthapadmanabhan

For R - 1 : Mr.R.M.Anbunithi
Additional Public Prosecutor

For R - 2 : Mr.S.Muneeswaran

Crl.O.P(MD)No.3893 of 2022:-

S.Justin Manikandan ... Petitioner/Accused No.6

Vs.

1.The State through
The Inspector of Police,
District Crime Branch,
Madurai.
In Crime No.19 of 2021. ... 1st Respondent/Complainant

2.S.Lavanya ... 2nd Respondent/Defacto Complainant

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records and quash the proceedings of the FIR in Crime No.19 of 2021, dated 24.08.2021 on the file of the first respondent insofar as the petitioner is concerned.

For Petitioner : Mr.K.Jeyamohan

For R - 1 : Mr.R.M.Anbunithi
Additional Public Prosecutor

COMMON ORDER

These Criminal Original Petitions have been filed to quash the F.I.R registered in Crime No.19 of 2021 registered for the offences under Sections 120B, 420, 465, 468 and 471 of I.P.C on the file of the first respondent.

2. Since the issues involved in the petitions are one and the same, both the Criminal Original Petitions were taken up together and disposed of by this common order.

3. The petitioners in Crl.O.P(MD)No.17682 of 2021 are arraigned as Accused Nos.1 to 3 and the petitioner in Crl.O.P(MD)No.3893 of 2022 is arraigned as Accused No.6.

4. The case of the prosecution and findings in Crl.O.P(MD)No.17682 of 2021 are as follows:-

4.1. The second respondent/defacto complainant lodged a complaint, who is none other than the own sister of the first petitioner/first accused alleging that she executed a release deed in respect of her ancestral properties, which was acquired by her father in favour of her mother and the first petitioner in the year 2002. Subsequently, the second respondent unilaterally cancelled the said release deed. In pursuant to the cancellation of the release deed, patta which was mutated in the name of the second respondent/second accused was cancelled by the appropriate authority and joint patta was issued in favour of the first petitioner and second respondent by proceedings, dated 26.07.2021. However, the first petitioner executed a gift settlement deed in respect of the very same properties in favour of his wife, namely, the second petitioner herein by settlement deed, dated 27.07.2021 with the help of the third petitioner and other accused persons and committed the offences under Sections 120B, 420, 465, 468 and 471 of I.P.C.

5. Heard the learned counsel appearing for the petitioners, the learned Additional Public Prosecutor appearing for the first respondent and the learned counsel appearing for the second respondent and perused the materials available on record.

6. The second respondent filed a counter-affidavit denying all the averments made in the affidavit filed in support of the petition.

7. On a perusal of the records revealed that the second respondent herein executed a release deed in respect of her share in favour of her mother and the first petitioner with regard to the subject property. However, after a lapse of 18 years, that too, unilaterally cancelled the deed of release on 14.02.2020, which was registered as Document No.3 of 2020. Further, there was no notice to the first petitioner and he was not a party to the cancellation of release deed executed by the second respondent herein. In fact, the registering authority also without issuance of any notice to the parties to the release deed, registered the cancellation of release deed. The registering authority has no power and jurisdiction to register any deed of cancellation unilaterally. That apart, the Revenue Divisional Officer cancelled the patta without giving an opportunity of hearing to the first petitioner by an order, dated 26.07.2021.

8. While being so, the second respondent lodged the present complaint alleging that the first petitioner executed settlement deed in favour of his wife, namely, the second petitioner with the help of other accused persons. There is absolutely no basis for registration of F.I.R in the absence of cognizance criminal offence, since it is a complete civil dispute between the brother and sister with regard to the property, that too, the second respondent executed the cancellation of release deed and the same got registered without any knowledge and without any notice to the first petitioner herein. The question of relinquishment and the legality of subsequent cancellation of the same by the same person has to be challenged before the civil Court and not by the criminal Court. Thus, it is clear that the intention of the second respondent is only to harass the petitioners under threat of the criminal prosecution. There is no impersonation, fraud or forgery committed by any of the accused as alleged in the F.I.R. Therefore, the registration of F.I.R is nothing but only to wreck vengeance on the petitioners and it is clear abuse of process of law. It leads to miscarriage of justice, if it is permitted to continue for further investigation.

9. The case of the prosecution and findings in Crl.O.P(MD)No.3893 of 2022 are as follows:-

9.1. The petitioner is arraigned as sixth accused, who is the registering authority, who registered the settlement deed executed by the first petitioner in favour of the second petitioner in Crl.O.P(MD)No.17682 of 2021. The first petitioner executed the settlement deed in favour of the second petitioner in pursuant to the relinquishment deed, namely, the release deed, executed by the second respondent in favour of the first petitioner and his mother. After the demise of his mother, he executed the settlement deed in favour of the second petitioner. Therefore, the petitioner herein, when he was working as Sub-Registrar, discharged his duty in his official capacity. The public servant may not be unnecessarily harassed on a complaint of an unscrupulous person, it is obligatory on the part of the executive authority to protect him. He roped in a criminal case for performing his duty.

10. On a perusal of Section 52 of the Registration Act, 1908, it is found that the Registering Officer has not been mandated to verify the title and the ownership of the person, who alienates the property. He is just to bound to register the document, if the document is effected with the stamp duty levied on the document and the registration charges. It is relevant to extract Section 52 of the Registration Act, which read as follows:-

> *"52.Duties of registering officers when document presented.-*
>
> *(1)(a) The day, hour and place of presentation, the photographs and fingerprints affixed under section 32-A and the signature of every person presenting a document for registration shall be endorsed on every such document at the time of presenting it; and*
>
> *(b)a receipt for such document shall be given by the Registering Officer to the person presenting the same;*
>
> *(1-A) Subject to the provisions contained in section 62, where any document not being of the class specified in the rules made under sub-section (3) is admitted to registration, it shall, without unnecessary delay, be copied in the appropriate book according to the order of its admission.*
>
> *(1-B) Subject to the provisions contained in 8 section 62 and in the rules made under sub-sections (3) and (4) and under section 89-A, where any document of the class specified in the rules made under sub-section (3) is admitted to registration, a true copy there of shall, without unnecessary delay, be filed in the appropriate book according to the order of its admission.*
>
> *(2) All such books shall be authenticated at such intervals and in such manner as is from time to time prescribed by the Inspector General.*
>
> *(3)The State Government may, from time to time, specify by rules the classes of documents in respect of which true copies shall be filed in the appropriate book under sub-section (1-B).*
>
> *(4)The true copy referred to in sub-section (1-B) shall be neatly handwritten, printed, typewritten,*

lithographed or otherwise prepared in accordance with such rules as may be made in this behalf.

(5)The provisions of this Act shall, in their application to the classes of documents specified in the rules made under sub-section (3), have effect subject to the modification set out in the Schedule."

Thus, the Registration authority cannot sit over the document presented for registration questioning the title and ownership of the persons, who execute the documents. The petitioner herein has simply discharged his official function in his capacity as Registering authority. Therefore, inclusion of the registering authority as one of the accused in this case is concerned is an abuse of process of law.

11. In this regard, it is relevant to rely upon the Judgment reported in ***(2009) 8 SCC 751 - Mohammed Ibrahim and others Vs. State of Bihar and another***, wherein the Honourable Supreme Court of India held as follows:-

"13.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.

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.

15.The sale deeds executed by first appellant, clearly and obviously do not fall under the second and third categories of `false documents'. It therefore remains to be seen whether the claim of the complainant that the execution of sale deeds by the first accused, who was in no way connected with the land, amounted to committing forgery of the documents with the intention of taking possession of complainant's land (and that accused 2 to 5 as the purchaser, witness, scribe and stamp vendor colluded with first accused in execution and registration of the said sale deeds) would bring the case under the first category.

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. Section 420 IPC 13.*

18. Let us now examine whether the ingredients of an offence of cheating are made out. The essential ingredients of the offence of "cheating" are as follows: (i) deception of a person either by making a false or misleading representation or by dishonest concealment or by any other act or omission; (ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived; and (iii) such act or omission causing or is likely to cause damage or harm to that person in body, mind, reputation or property.

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).

20. When a sale deed is executed conveying a property claiming ownership thereto, it may be possible for the purchaser under such sale deed, to allege that the vendor has cheated him by making a false representation of ownership and fraudulently induced him to part with the sale consideration. But in this case the complaint is not by the purchaser. On the other hand, the purchaser is made a co-accused.

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.*

22. As the ingredients of cheating as stated in section 415 are not found, it cannot be said that there was an offence punishable under sections 417, 418, 419 or 420 of the Code.

The Honourable Supreme Court of India and this Court repeatedly held that the complainants are not attempting to give the cloak of a criminal offence to the matters which are essentially and purely civil in nature, obviously either to apply pressure on the accused to harassment. Further, held that the criminal Courts should ensure that proceedings before it are not used for settling scores or to pressurize parties to settle civil disputes.

12. It is also relevant to cite the judgment of the Honourable Supreme Court reported in ***1992 Supplement 1 SCC 335 - State of Haryana and others Vs. Bhajan Lal and others***, para 102 which enumerates 7 categories of cases where power can be exercised under Section 482 of Cr.P.C is extracted as follows:-

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised:

(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 Act concerned (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 Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fides 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."

Considering the aforesaid Judgment, the FIR itself is nothing but clear abuse of process of law and the same is liable to be quashed.

13.In view of the above, the entire issues are civil in nature and there is no iota of evidence to constitute any of the offences registered by the first respondent in Crime No.19 of 2021. The entire complaint is nothing but abuse of process of law and it cannot be sustained against any of the accused.

14.Accordingly, these Criminal Original Petitions stand allowed and as a sequel, the FIR registered against the petitioners in Crime No.19 of 2021 on the file of the first respondent is hereby quashed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

ps

Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The Inspector of Police,
District Crime Branch Police Station,
Madurai.

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

+1 CC to M/s.APN LAW ASSOCIATES, Advocate (SR-9054[F])
+2 CC to Mr.K.JEYAMOHAN, Advocate SR.No. 9085 & 9055

Order made in
Crl.O.P(MD)Nos.17682 of 2021 & 3893 of 2022
28.02.2022

SR(CO)
TR(30.03.2022) 10P 6C