BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRL.O.P.(MD)No.16629 of 2018
and
Crl.M.P(MD)No.7373 of 2018
and
Crl.O.P(MD)No.19557 of 2018
and
Crl.M.P(MD)Nos.7374, 8875, 8876 of 2018

Crl.O.P(MD)No.16629 of 2018:

1.Gnanayutham Joseph
2.G.J.Ebinezar

... Petitioners/Accused Nos.1 & 2

Vs.

1.The Superintendent of Police,
Thoothukudi District,
Thoothukudi.

2.The Additional Superintendent of Police,
Prohibition and Excise,
Thoothukudi. ... Respondents

3.The Inspector of Police,
Maignanapuram Police Station,
Tuticorin District,
Crime No.235/2014. ... Respondent / Complainant

Dharmaraj(died)

4.Salamon
5.Sundar Singh
... Respondents 4 & 5

(R-4 & R-5 impleaded as per the order of this Honourable Court dated 15.03.2022 in Crl.M.P(MD)No.345 of 2022 in Crl.O.P(MD)No.16629 of 2018 by GJJ)

PRAYER : Criminal Original Petition filed under Section 482 of Cr.P.C.,to call for the records relating to the impugned final report pending on the file of the learned Judicial Magistrate, Sathankulam in C.C.No.02 of 2018 dated 10.12.2017 and quash the same as illegal as insofar as the petitioners are concerned.

For Petitioners : Mr.V.Angusamy
For R-1 to R-3 : Mr.Sakthikumar
Government Advocate(Crl.)
For R-5 and R-6 : Mr.S.T.Sasidharan Tamilkani

Crl.O.P(MD)No.19557 of 2018:
S.Saravanan ... Petitioner/Accused No.5
Vs.

1.State Represented by
The Inspector of Police,
Meignanapuram Police Station,
Thoothukudi District.
(Crime No.235 of 2014) ... 1st respondent / Complainant

2.K.Ponnusamy
Inspector of Police,
Meignanapuram Police Station,
Thoothukudi District. ... Investigation Officer

3.S.Dharmaraj ... 3rd respondent/Defacto complainant

PRAYER : Criminal Original Petition filed under Section 482 of Cr.P.C.,to call for the records and quash the charge sheet in C.C.No.02 of 2018 on the file of the learned Judicial Magistrate, Sathankulam, Thoothukudi District as against the petitioner herein.

For Petitioner	: Mr.K.Veilmuthu
For R-1	: Mr.Sakthikumar Government Advocate(Crl.)
For R-2	: No Appearance
For R-3	: Mr.S.T.Sasidharan Tamilkani

COMMON ORDER

These Criminal Original Petitions have been filed to quash the proceedings in C.C.No.02 of 2018 pending on the file of the learned Judicial Magistrate, Sathankulam, Thoothukudi District.

2. There are totally five accused persons in this case and the petitioners are A-1, A-2 and A-5. The allegation that has been made in

the final report is that the defacto complainant and A-1 are brothers. A property was owned by the father Arokia Samuel in Survey No.286/7 measuring an extent of 3.95 cents and there was also a house constructed bearing Door No.6/107. After the demise of Arokia Samuel, there was no partition. The grievance of the defacto complainant is that A-1 had executed a settlement deed in favour of A-2, who is the son of A-1 through a document dated 07.10.2014 and had settled an extent of 2.52 cents. According to the defacto complainant, it amounts to creation of false document and cheating and on that ground, the final report has been laid against the accused persons. A-5 has been added as an accused on the ground that he was the Sub-Registrar who had registered the document.

3. This Court heard the learned counsel appearing on either side and carefully went through the materials placed before this Court.

4. In the considered view of this Court, the present case is a text book case for abuse of process of criminal law. According to the defacto complainant, A-1 had created a false document by executing a

settlement deed in favour of his son A-2. In order to constitute an offence of forgery, it must be first established that a false document was created by the accused persons.

5. It must be borne in mind that if there is no creation of false document, then automatically the offence of forgery must fall. This issue is no longer *res integra* and it has been substantially dealt with by the Apex Court in **Mohammed Ibrahim and others Vs. State of Bihar and another** reported in **2009 (8) Supreme Court Cases - 751**. The relevant portions in the judgment are 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.

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."

6. It will also be relevant to take note of the judgment of the Apex Court in **Sheila Sebastian Vs. R.Jawaharaj and another** reported in **2018 (7) Supreme Court Cases - 581**. The relevant portions in the judgment are extracted hereunder :-

> "21. It is observed in the case Md. Ibrahim and Ors. vs. State of Bihar and Anr., (2009) 8 SCC 751 that- (SCC P.756, para 14)
>
> "14.....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."
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> 22. In Md. Ibrahim (supra), this Court had the occasion to examine forgery of a document purporting to be a valuable security (Section 467, IPC) and using of forged document as genuine (Section 471, IPC). While considering the basic ingredients of both the offences,this Court observed that to attract the offence of forgery as

defined under Section 463, IPC depends upon creation of a document as defined under Section 464, IPC. It is further observed that mere execution of a sale deed by claiming that property being sold was executant's property, did not amount to commission of offences punishable under Sections 467 and 471, IPC even if title of property did not vest in the executant.

23. The Court in Md. Ibrahim (supra) observed that: (SCC P.757, Paras 16-17)

"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 bona fide 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."

24. In Mir Nagvi Askari vs. Central Bureau of Investigation, (2009) 15 SCC 643, this Court, after analysing the facts of that case, came to

observe as follows: (SCC P.687, Para 164)

> "164.A person is said to make a false document or record if he satisfies one of the three conditions as noticed hereinbefore and provided for under the said section. The first condition being that the document has been falsified with the intention of causing it to be believed that such document has been made by a person, by whom the person falsifying the document knows that it was not made. Clearly the documents in question in the present case, even if it be assumed to have been made dishonestly or fraudulently, had not been made with the intention of causing it to be believed that they were made by or under the authority of someone else. The second criteria of the section deals with a case where a person without lawful authority alters a document after it has been made. There has been no allegation of alteration of the voucher in question after they have been made. Therefore, in our opinion the second criteria of the said section is also not applicable to the present case. The third and final condition of Section 464 deals with a

document, signed by a person who due to his mental capacity does not know the contents of the documents which were made i.e. because of intoxication or unsoundness of mind, etc. Such is also not the case before us. Indisputably therefore the accused before us could not have been convicted with the making of a false document.

25. Keeping in view the strict interpretation of penal statute i.e., referring to rule of interpretation wherein natural inferences are preferred, we observe that a charge of forgery cannot be imposed on a person who is not the maker of the same. As held in plethora of cases, making of a document is different than causing it to be made. As Explanation 2 to Section 464 further clarifies that, for constituting an offence under Section 464 it is imperative that a false document is made and the accused person is the maker of the same, otherwise the accused person is not liable for the offence of forgery.

26. The definition of "false document" is a part of the definition of "forgery". Both must be

> read together. 'Forgery' and 'Fraud' are essentially matters of evidence which could be proved as a fact by direct evidence or by inferences drawn from proved facts. In the case in hand, there is no finding recorded by the trial Court that the respondents have made any false document or part of the document/record to execute mortgage deed under the guise of that 'false document'. Hence, neither respondent no.1 nor respondent no.2 can be held as makers of the forged documents. It is the imposter who can be said to have made the false document by committing forgery. In such an event the trial court as well as appellate court misguided themselves by convicting the accused. Therefore, the High Court has rightly acquitted the accused based on the settled legal position and we find no reason to interfere with the same."

7. It is clear from the above judgments that in order to constitute the offence of creation of false documents, it must be established that the accused persons had made or executed a document claiming to be someone else or he was authorized by someone else (in

short impersonation) or he altered or tampered with a document (forgery) or he obtained the document by practicing deception, or from a person, who is not in a control of his senses.

8. When the above test is applied to the facts of the present case, it is seen that the settlement deed executed by A-1 in favour of A-2 cannot by any stretch be called as a false document. If it is not a false document, then the offence of forgery is not made out. There is no question of cheating that is involved in this case since A-1 has not executed settlement for the entire property. If according to the defacto complainant, he is entitled to a share in the property, he has to initiate proceedings for partition and division of property and for allotment of his share in the property. Without opting for this relief, the defacto complainant has unnecessarily set the criminal law in motion. It is quite unfortunate that a Sub-Registrar has been added as an accused in this case only on the ground that he had registered the document. He has been added by taking advantage of Section 109 of I.P.C., as if he has abetted the crime.

9. In the considered view of this Court, the continuation of the proceedings against the accused persons clearly amounts to an abuse of process of Court and the same requires the interference of this Court under Section 482 Cr.P.C. This Court is inclined to interfere with the proceedings not only against the petitioners, but also against A-3 and A-4 who were witnesses to the document.

10. In view of the above discussion, the proceedings in C.C.No.02 of 2018 pending on the file of the Judicial Magistrate, Sathankulam, is hereby quashed in its entirety and accordingly, both the Criminal Original Petitions are allowed. Consequently, connected Miscellaneous Petitions are closed.

03.11.2022

Index: Yes/No
Internet: Yes/No
pm

To

1.The Judicial Magistrate,
Sathankulam.

2.The Superintendent of Police,
Thoothukudi District,
Thoothukudi.

3.The Additional Superintendent of Police,
Prohibition and Excise,
Thoothukudi.

4.The Inspector of Police,
Maignanapuram Police Station,
Tuticorin District,

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

N.ANAND VENKATESH, J.

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Crl.O.P.(MD)Nos.16629 and 19557 of 2018

03.11.2022