



Crl.O.P.No.1630 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2023

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THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.O.P.No.1630 of 2021
and
Crl.M.P.Nos.957 & 958 of 2021

1.E.N.Madeswaran
2.E.N.Chandrasekaran

... Petitioners

Vs.

1. The State Rep. by
The Inspector of Police,
Anti-Land Grabbing Special Cell,
Namakkal,
(Crime No.29/2011)

2. T.Premkumar

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code seeking to call for the records relating to the Criminal Case in C.C.No.35 of 2020 on the file of the Ld.Judicial Magistrate, Paramathi, quash the same by allowing this Criminal Original Petition.

For Petitioners : M/s.N.Manoharan

For Respondent : Mr.A.Damodaran, Addl. Public Prosecutor [R.1]
: Mr.M.Johncaleb [R.2]



ORDER

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The Petition is to quash the final report for the alleged offences under Sections 417, 420, 468, 471, 506(ii) read with Section 109 IPC and Section 82 of the Registration Act.

2. It is alleged in the final report that A.1 and A.2 are brothers; that A.3 is the purchaser of the properties and A.4 is the brother of the accused A.3; that A.3 and A.4 are the petitioners before this Court; that as per the registered Will dated 30.07.1985, the properties of one Karuppan was bequeathed to his grandsons, namely, Vijaya Kumar, Prem Kumar, Gobi David @ Gabriel and Peter @ Victor; that during the lifetime of Karuppan he sold the property in Survey No.191/1 and the remaining properties in Survey Nos.189/1B, 190/1B and 190/1E devolved upon his grandsons as per the Will; that A.1 and A.2 in order to create an encumbrance in the said property had sold the property measuring an extent of 4.25 acres in Survey Nos.189/1B, 190/1B and 190/1E to the 1st petitioner herein; and that the claim of title over the property by A.1 and A.2 was contrary to the registered Will executed by the said Karuppan and thus, guilty of the aforesaid offences.



3.(a) Mr.N.Manoharam, learned counsel for the petitioners submitted that A.1 and A.2 had acquired the property by virtue of an oral partition held during the lifetime of the said Karuppan in the year 1985. The certified copy of the said Will would show that the properties that were bequeathed was only in Survey No.191/1, measuring an extent of 3.32 acres. Even that property was sold during the lifetime of the testator, Karuppan. Though initially the will purported to bequeath all the properties. However, the sentence which stated that the other properties are also bequeathed was struck off as is clear from the certified copy of the Will obtained from the Registrar's Office. In any case, the learned counsel submitted that even assuming the 2nd respondent's case is true, it is a case of false claim of title and therefore, the case would be covered by the Judgement of the Hon'ble Supreme Court reported in **(2009) 8 SCC 751 - Mohammed Ibrahim and Others Vs. State of Bihar and Another.**

3(b). The learned counsel further submitted that the alleged transactions took place in the year 2006, whereas the FIR which culminated the impugned final report was lodged in the year 2011. The delay would show that the 2nd respondent's motive is to arm twist the petitioner and hence prayed for quashing of the impugned final report.



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4. The learned counsel for the 2nd respondent submitted that though the original complaint was that his uncle had executed a sale deed in favour of A.3 and A.4 in order to create an encumbrance in the property, he found out subsequently that A.1 and A.2 shown in the impugned final report have actually impersonated his uncles and sold the property. He produced an Adhar Card showing the father's name of A.1 as one Francis. The learned counsel, therefore, submitted that it is not a case of false claim of title and there is impersonation which has to be adjudicated only before the Trial Court.

5. Since, the learned counsel had made a submission which was contrary to his own case in the FIR, this Court directed the learned Additional Public Prosecutor to verify as to whether there is any impersonation in this case. The learned Additional Public Prosecutor on instructions submitted that the respondent police had verified and found that Karuppan had changed his name as Francis and the 1st accused A.1 and A.2 have been showing their father's name as Karuppan in some places and Francis in certain other places and therefore, there is no impersonation in this case. He further submitted that it is a case of the petitioners having



purchased the property from A.1 and A.2, who falsely claimed title over the property contrary to the Will executed by their father.

6. This Court on perusal of the impugned final report finds that the case of the 2nd respondent that there was impersonation is not correct. Firstly, because it is contrary to his own case and in an attempt to sustain the impugned final report, the 2nd respondent sought to introduce a new case. The respondent police have verified and found that there was no impersonation in the case and the father of the first two accused is Karuppan alias Francis. Therefore, this Court finds that the allegation of impersonation as against the A.1 and A.2 is a desperate attempt to sustain the impugned final report. As regards the allegation in the final report, this Court finds that A.1 and A.2 had claimed title over the property which allegedly belonged to the 2nd respondent and his brother by virtue of a Will. The allegations at best would show that they had falsely claimed title over the property. This Court would not go into the question of whether by the Will the testator bequeathed the property in favour of the 2nd respondent. It is for the Civil Court to consider that issue. On the admitted facts, this case is covered by the judgment of the Hon'ble Apex Court reported in ***(2009) 8 SCC 751- Mohammed Ibrahim and Others Vs. State***



of Bihar and Another. The relevant observations are as follows:-

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“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.

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



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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."

Therefore, this Court finds that the impugned prosecution as against the petitioner is an abuse of process of law and hence liable to be quashed.

7. Accordingly, the Criminal Original Petition stands allowed.

Consequently, the connected Miscellaneous Petitions are closed.

27.04.2023

Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No
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To

1. The Inspector of Police,
Anti-Land Grabbing Special Cell,
Namakkal.
2. The Judicial Magistrate, Paramathi.



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SUNDER MOHAN. J,

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