



Crl OP No. 1872 / 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON : **18.04.2023**

PRONOUNCED ON : **25.04.2023**

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Criminal Original Petition No. 1872 of 2021

and

Crl.M.P. No. 1068 of 2021

1. H.H Pooyam Thirunal Gowri Parvathi Bai
2. H.H Ashwathi Thirunal Gowri Lakshmi Bai
3. H.H Ashwathi Thirunal Rama Varma
4. H.H Moolam Thirunal Ramavarma
5. H.H Avittam Thirunal Adhitya Varma ... Petitioners

Versus

1. The State of Tamil Nadu,
Represented by its Inspector of Police,
Central Crime Branch, Team 16-A,
Vepery, Chennai – 600 007.
2. L.J Singaravelan ... Respondents

PRAYER : Criminal Original Petition filed under Section 482 of the Criminal Procedure Code seeking to call for the records of C.C. No. 5075 of 2020, on the file of the C.C.B. & C.B.C.I.D. Metropolitan Magistrate Court, Egmore, Chennai and to quash the same as an abuse of process.



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For Petitioner : Mr. V. Raghavachari, Senior Counsel
for M/s.Kingsly Solomon.

For Respondents : Mr. A. Damodaran,
Additional Public Prosecutor for R1.

Mr. E. Om Prakash, Senior Counsel
for M/s.Pradeep Raj for R2.

ORDER

The petition is to quash the final report for the alleged offence under Sections 420, 423, 465, 467, 468, 471, 120(b) of the Indian Penal Code.

2. It is alleged in the final report that the defacto complainant is the Senior Vice President of a company by the name M/s.Hotel Snow White Pvt. Ltd.; that one Sarath Kakumanu is the director of 17 companies, including the company by name M/s.Pan Resorts Ltd.; that those 17 companies purchased 1/18th undivided share each in the property bearing Plot No.1 Lattice Bridge Road, Urur Village, Padmanabha Nagar, Adayar, Chennai – 600020; that the said companies thus owned 17/18 undivided share in Plot No.1; that the said M/s.Pan Resorts Limited which is a sister company of M/s.Hotel Snow White Pvt. Ltd., had entered into an agreement of sale for purchase of Plot No.2 measuring of



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110 cents; that pursuant to the agreement the defacto complainant's company purchased 2/9th share in the property bearing Plot No.2 from two members of Travancore Raja family to which the petitioners belong; that the remaining seven family members including the petitioners did not register the property in favour of the defacto complainant; that the said Pan Resorts Limited filed a Suit in C.S. No. 632 of 1997 before this Court for specific performance; that while the Suit was pending, one B.R.Raam Prabhu Raj (A1) got separate power of attorney deeds executed in his favour by A3 to A7 in respect of their share in Plot No.2 and also with regard to 1/18th share in Plot No.1; that by using the said power had executed a sale deed dated 09.10.2012 in favour of A2 (A1's father) in respect of the undivided share in Plot No.2 by showing that there was a 33 feet width pathway to Plot No.2 through Plot No.1, thereby reducing the total extent of land in Plot No.1 from 171 cents to 146 cents; that A1 and A2 had created such a sale deed with an intention to grab the property belonging to the seventeen companies who are the sister companies of the defacto complainant; and thus committed the offences alleged.

3. (a)Mr. V. Raghavachari, learned Senior Counsel for the



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petitioners, submitted that the impugned final report is nothing but an abuse of process of law. The allegations, even if accepted to be true would not constitute any of the offences alleged. The allegation is that the first and second accused, by misusing the Power of Attorney executed by the petitioners had created a document making it appear that there is a pathway running through Plot No.1 to reach Plot No.2 thereby reducing the size of Plot No.1. This allegation at best, would show that A1 and A2 had created a document to show that there was a pathway. Even according to the final report, there is no allegation that any of the accused forged any document. The execution of a document by falsely claiming title over the property for pathway or otherwise would not amount to creating a false document. There is no allegation that the defacto complainant was deceived. The Judgment of the Hon'ble Supreme Court in *Mohammed Ibrahim and Others vs. State of Bihar and Another* reported in *(2009) 8 Supreme Court Cases 751*, would squarely apply to the facts of the instant case. The petitioners belong to the members of the Travancore Raja family, and the impugned final report against the petitioners is an abuse of the process of law.

(b) The learned Senior Counsel further submitted that in any case,



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the allegations are false. The agreement of sale entered into between the members of the Royal Family and Pan Resorts Limited in respect of Plot No.2 contains an annexure, which has been filed by the defacto complainant in the documents relied upon by him. The annexure to the said agreement is a lay out plan containing Plot No.2 and a pathway to Plot No.2 running through Plot No.1. This agreement belies the defacto complainant's case that there is no pathway and that it was falsely created by A1 and A2.

(c) The learned Senior Counsel further submitted that the said company by the name M/s.Pan Resorts Limited, had filed C.S. No.632 of 1997 for Specific Performance of the agreement dated 03.08.1994 in respect of an undivided share in Plot No.2 as against the petitioners and others. The said Suit was dismissed by this Court by Judgment dated 01.10.2011. M/s.Pan Resorts Limited have challenged the said Judgment before this Court in O.S.A. No. 277 of 2013. The defacto complainant has raised the very same issue as to whether there is a pathway through Plot No.2 running through Plot No.1 before this Court in the said appeal. Since this Court is seized of the issue, the impugned proceedings on the basis of the same allegations, which do not attract any of the offences, are



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liable to be quashed.

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4. Mr. E. Om Prakash, learned Senior Counsel for the second respondent/defacto complainant, submitted that A1 and A2, with an intention to grab the property belonging to the seventeen companies, have created a false document to make it appear that there is a pathway running through Plot No.1 to Plot No.2. By creating such a false document, the first and second accused have reduced the size of Plot No.1 to 146 cents as against its actual size of 171 cents. The learned Senior Counsel, therefore, submitted that since the dishonest intention is clear from the above acts, the matter has to be adjudicated only before the trial Court. The learned Senior Counsel further submitted that merely because there is a Civil Suit pending in this Court, it would not obliterate the offences committed by the accused 1 and 2. Hence, he prayed for the dismissal of the quash petition.

5. The learned Additional Public Prosecutor appearing for the first respondent reiterated the submissions made by the learned Senior Counsel for the defacto complainant and prayed for the dismissal of the quash petition.



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6. It is seen from the impugned final report that the petitioners are arraigned as A4 to A8. The defacto complainant, through various companies, had purchased 17 / 18th shares in Plot No.1. Plot No.1 measures 171 cents. In respect of Plot No.2, two members of the Royal Family, out of nine, had executed the sale deed in favour of M/s.Pan Resorts Limited. Since the remaining seven members did not execute the sale deed, the said M/s.Pan Resorts Limited filed a Suit for specific performance in C.S. No. 632 of 1997 before this Court. The said Suit was dismissed on 01.10.2011. M/s.Pan Resorts Limited have filed O.S.A. No. 277 of 2013 before this Court, and the same is pending. Admittedly, the ground raised in the said appeal *inter alia* is that there is no pathway to Plot No.2 running through Plot No.1. The allegation in the impugned final report, even if accepted to be true, only shows that A1 had made a false claim in the sale deed executed by him as agent of the petitioners that there was a pathway running to Plot No.2 through Plot No.1. The allegations would not attract any of the offences alleged. The facts of the case is covered by the Judgment of the Hon'ble Supreme Court in ***Mohammed. Ibrahim and Others vs. State of Bihar and Another*** reported in (2009) 8 Supreme Court Cases 751. The relevant



observations are extracted 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 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.

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.”

In the instant case, admittedly, except for alleging that A1 and A2 had falsely claimed that there was a pathway in the sale deed, there is no allegation of deception practised on the defacto complainant to attract the offence of cheating. Hence, the offences under Sections 420, 465, 467, 468 and 471 of the Indian Penal Code are not made out in the facts of the case. The observations made in ***Mohammed Ibrahim's case*** extracted above squarely apply to the instant case as regards the aforesaid offences.

7. The ingredients of the offence under Section 423 of the Indian Penal Code are that;

- a) a person must dishonestly or fraudulently;
- b) sign, execute or becomes a party to any deed;
- c) which purports to transfer or subject to any charge any property, or any interest therein, and;
- d) which contains false statement relating to the consideration or relating to the person or persons for whose use or benefit it is really intended to



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operate;

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In the instant case, there is no allegation that any false statement relating to consideration was made, which is an essential ingredient for attracting the offence under Section 423 of the Indian Penal Code.

8. That apart, it is seen that the plan annexed to the agreement of sale entered into by Pan Resorts Limited and members of the Royal Family on 03.08.1994 shows that there was a pathway. However, that issue is not before this Court. This Court is referring to the said fact only for the limited purpose of showing that the allegation cannot be the subject matter of prosecution. This issue, anyway, is pending before the Division Bench of this Court in the Original Side Appeal, as observed earlier. The respondent police cannot enter into a civil dispute which is pending adjudication in O.S.A. No. 277 of 2013 before this Court. That apart, the offences are not made out for the reasons stated above.

9. Hence, the impugned final report as against the petitioners cannot be sustained and hence is liable to be quashed.

10. Accordingly, this Criminal Original Petition is allowed by



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quashing the proceedings in C.C. No. 5075 of 2020, on the file of the
C.C.B. & C.B.C.I.D. Metropolitan Magistrate Court, Egmore, Chennai in
so far as the petitioners are concerned. Consequently, the connected
Miscellaneous Petition is closed.

25.04.2023

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No



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SUNDER MOHAN, J

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To

1. The Inspector of Police,
Central Crime Branch, Team 16-A,
Vepery, Chennai – 600 007.
2. The Metropolitan Magistrate,
C.C.B & C.B.C.I.D. Cases,
Egmore, Chennai.
3. The Additional Public Prosecutor,
High Court of Madras,
Chennai.

Crl.O.P. No.1872 of 2021
and
Crl.M.P. No. 1068 of 2021

Dated: 25.04.2023