



Crl.O.P.No.2846 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.04.2023

CORAM

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.O.P.No.2846 of 2021

and

Crl.M.P.Nos.1589 & 1591 of 2021

Santha @ Saraswathi

... Petitioner

Vs.

1.The State

Rep. by the Inspector of Police,
District Crime Branch
Salem District.

2. P.Sundaramoorthy

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code seeking to call for the records pertaining to the case in C.C.No.98/2020 on the file of the Judicial Magistrate Court No.VI at Salem and quash the same.

For Petitioners : M/s.R.Jayaprakash

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

: No appearance [R.2]



ORDER

The petition is to quash the final report filed for the offences under Section 120(b), 468, 471 & 420 IPC read with Section 109 IPC.

2. It is alleged in the final report that the petitioner herein who is the sister of the de facto complainant, by falsely claiming 1/3rd share in the disputed property, had executed a sale deed in favour of A.2; that the de facto complainant is absolutely entitled to the property by virtue of a settlement deed executed by his mother in his favour.

3. The learned counsel for the petitioner would submit that the allegation even if accepted to be true does not attract any of the offences. There is no allegation of forgery. Admittedly, the petitioner is the sister of the 2nd respondent and she is entitled to 1/3rd share in the property. Even assuming that she had executed a sale deed by falsely claiming title over the property, the said offences are not made out.

4. The learned Additional Public Prosecutor would submit that dispute is between the 1st accused and the 2nd respondent who are closely



related to each other. The question of whether the petitioner has falsely claimed 1/3rd share in the property and executed a sale deed in favour of A.2 has to be adjudicated only during the trial. Hence, he prayed for dismissal of this quash petition.

5. Though notice was served on the 2nd respondent, none had entered appearance on his behalf.

6. This Court on perusal of the impugned final report finds that this is a case of property dispute between the petitioner and the de-facto complainant. The petitioner is the sister of the de-facto complainant. It is a case of the de-facto complainant that he and his father are entitled to the disputed property and the petitioner has no right in the property. This Court finds that the facts of the case are squarely 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.*** The relevant observations made in the said Judgment is extracted hereunder for better understanding:-



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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



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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



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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.”

7. It is further seen that a civil suit was filed by the 2nd respondent in OS.No.222 of 2016, on the file of the IV Additional District Munsif Court, Salem seeking for a declaration, that the sale deeds in favour of the petitioner and others as null and void and for permanent injunction against the petitioner and the legal heirs of A.2. The said suit was decreed ex-parte by the judgement dated 25.06.2019. In such circumstances, this Court is of the view that the impugned proceeding as against the petitioner is an abuse of process of law and liable to be quashed.

8. In the instant case, this Court finds that the purchaser of the



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property is also an accused. Therefore, there is no question of deception practiced by the petitioner. Admittedly, the petitioner has not forged any document. The false claim of title by the petitioner will not amount to creating a false document. Hence, this Court is inclined to quash the proceeding as against the petitioner.

9. Accordingly, the Criminal Original Petition stands allowed. Consequently, the connected Miscellaneous Petitions are closed.

18.04.2023

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

1.The Inspector of Police,
District Crime Branch
Salem District.

2.The Judicial Magistrate Court No.VI at Salem.



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SUNDER MOHAN. J,

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