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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2023

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

CRL.O.P.No.4121 of 2021
and
CRL.M.P.Nos.2610 & 2611 of 2021

1. Susil Lalwani
2. Sanjay @ Sanjaykumar ..... Petitioners

Vs

1. State rep by
The Inspector of police,
Central Crime Branch – II,
Team – I,
Anti Landing Grabbing Cell,
Egmore, Chennai – 600 008.

2. P.Balaraman (Died)
3. B.Subash
(R3 impleaded as per the Court order
dated 18.04.2023 in Crl.M.P.No.
5498 of 2023 in Crl.O.P.No.4121 of 2021) ..... Respondents

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records relating to the case in C.C.No.3 of 2021 on the file of the Judicial Magistrate, Alandur and quash the same.

For Petitioner	: Mr.N.Manoharan
For R1	: Mr.A.Gopinath Government Advocate (Criminal Side)
For R2	: Mr.P.V.Sudakar

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ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.3 of 2021 on the file of the Judicial Magistrate, Alandur.

2. Heard the learned counsel appearing on either side and perused the materials available on record.

3. The respondent owned a house at Medavakkam Village, Tambaram Taluk. He decided to sell the same in order to purchase three separate flats to settle to his three sons. Therefore, in the month of August 2004, he approached the accused through his son to sell his property. The accused stated that only by written agreement executed by the defacto complainant, it will be sold out. Believing the said word, the defacto complainant went to the place of the accused on 24.08.2004 and signed in three agreements for three floors as instructed by the accused. Thereafter, in terms of agreement, they used the signature of the petitioner and thereby prepared a power of attorney in favour of the second accused and got registered. In turn, the second accused executed a sale deed in favour of the first accused, who is none other than his own

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brother, by a registered sale deed dated 28.12.2006. ON 03.08.2010, the accused came to the petitioner's property and threatened him to vacate the subject property. Then only the defacto complainant came to know about the sale of the property. Hence, the complaint.

4. On receipt of the said complaint, the first respondent registered FIR in Crime No.119 of 2012 for the offence under Sections 406, 420, 468, 471 r/w. 34 of IPC. After completion of investigation, the first respondent filed final report and the same has been taken cognizance by the Trial Court in C.C.No.3 of 2021 on the file of the Judicial Magistrate, Alandur.

5. The learned counsel appearing for the petitioners would submit that there are totally two accused and the petitioners are arrayed as A1 and A2. No offence is made out as against the petitioner. Even according to the defacto complainant, he came to the Registrar Office and executed a power of attorney in favour of the second respondent. Thereafter, he was not paid any sale consideration and without his consent, the power agent executed a sale deed in favour of the first petitioner. Both the sale deeds were registered on the same day and the

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second respondent also did not deny his signature. Therefore, the petitioners never fabricated any documents and forged the signature of the defacto complainant. The sale consideration of Rs.7,15,500/- was duly paid by the second respondent and the same was acknowledged by him. After execution of sale deed in favour of the first petitioner, the entire revenue records were mutated in his name and patta in Patta No.3185, dated 23.06.2009 was also issued. The property was also assessed to tax in the name of the first petitioner. The power of attorney as well as the sale deed are duly reflected in the Encumbrance Certificate. Therefore, no offence is made out as against the petitioners.

6. In support of his contention, he relied upon the Judgment of the Hon'ble Supreme Court of India reported in ***2009) 8 Supreme Court Cases 751*** in the case of ***Mohammed Ibrahim and others Vs. State of Bihar and another,*** in which the Hon'ble 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*

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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.

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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

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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

7. He also submitted that in the power of attorney, the second respondent's son stood as one of the witness. Therefore, they had

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knowledge about the execution of power of attorney in favour of the second respondent. The second respondent is not illiterate. He is a retired Chief Auditor of Chief Accountant General Office. Therefore, he knows what is the document executed in favour of the second respondent.

8. A perusal of the records reveals that the second respondent owned the subject property. He intended to sell the property and approached the first accused. He wanted to execute the agreement. In the name of agreement for sale, the second respondent signed the documents, later it was registered as power of attorney, that too in favour of the second accused. In turn, the second accused executed a sale deed in favour of the first accused.

9. A perusal of the sale deed also reveals that the total sale consideration for the property is mentioned as Rs.7,15,500/-. The house property is situated at Medavakkam admeasuring 2385 sq.ft. According to the second respondent, the sale consideration is also very low and a prudent man would not agree for the said amount to sell the entire property. In fact, the first accused assured that he would sell the property for a sum of Rs.5 Crores. That apart, in the name of agreement for sale,

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the first accused induced the second respondent to sign in the documents and executed power of attorney in favour of the second accused. That apart, they induced the second respondent to sign in the blank papers and they granted receipt, as if the sale consideration of Rs.7,15,500/- was paid to the second accused, after execution of sale deed in favour of the first accused. Therefore, there are ingredients to attract the offences as alleged by the prosecution. The above Judgment is not applicable to the case on hand, since the petitioners dishonestly or fraudulently made the second respondent to execute the documents with an intention of causing it to be believed that such document was made or executed by some other person, by whom or by whose authority he knows it was not made or executed.

10. In the case on hand, the accused, in the name of agreement for sale, got executed a power of attorney that too in favour of the second accused. Further, in order to attract the offences under Section 420 of IPC, the essential ingredients are that deception of a person either by making false or misleading representation or by dishonest concealment or by any other act or omission. Further, fraudulent or dishonest inducement of that person to either deliver any property or to consent to

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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 such act or omission causing or is likely to cause damage or harm to that person in body, mind, reputation or property.

11. In the case on hand, petitioners, dishonestly induced the second respondent and received him to execute document in the name of agreement for sale with intention to grab the property. Therefore, all the offences are clearly made out as against the petitioners. Further, the ground raised by petitioners are mixed question of fact and it cannot be considered.

12. In this regard, it is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in ***Crl.A.No.579 of 2021*** dated ***02.04.2021*** in the case of ***Devendra Prasad Singh Vs. State of Bihar & Anr.,*** as follows:-

> *" 12.So far as the second ground is concerned, we are of the view that the High Court while hearing the application*

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under Section 482 of the Cr.P.C. had no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their statements and, therefore, there was no prima facie case made out against respondent No.2. In our view, this could be done only in the trial while deciding the issues on the merits or/and by the Appellate Court while deciding the appeal arising out of the final order passed by the Trial Court but not in Section 482 Cr.P.C. proceedings.

13.In view of the foregoing discussion, we allow the appeal, set aside the impugned order and restore the aforementioned complaint case to its original file for being proceeded with on merits in accordance with law.

13. Recently, the Hon'ble Supreme Court of India dealing the very same issue in ***Crl.A.No.1572 of 2021*** dated 17.10.2021 in the case of ***Central Bureau of Invstigation Vs. Arvind Khanna,*** held as follows:

"19. After perusing the impugned

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order and on hearing the submissions made by the learned senior counsels on both sides, we are of the view that the impugned order passed by the High Court is not sustainable. In a petition filed under Section 482 of Cr.P.C., the High Court has recorded findings on several disputed facts and allowed the petition. Defence of the accused is to be tested after appreciating the evidence during trial. The very fact that the High Court, in this case, went into the most minute details, on the allegations made by the appellant-C.B.I., and the defence put-forth by the respondent, led us to a conclusion that the High Court has exceeded its power, while exercising its inherent jurisdiction under Section 482 Cr.P.C.

20.In our view, the assessment made by the High Court at this stage, when the matter has been taken cognizance by the Competent Court, is completely incorrect and uncalled for."

14. Further the Hon'ble Supreme Court of India also held in the order dated ***02.12.2021*** in ***Crl.A.No.1817 of 2021*** in the case of ***M.Jayanthi Vs. K.R.Meenakshi & anr,*** held as follows:

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"9. It is too late in the day to seek reference to any authority for the proposition that while invoking the power under Section 482 Cr.P.C for quashing a complaint or a charge, the Court should not embark upon an enquiry into the validity of the evidence available. All that the Court should see is as to whether there are allegations in the complaint which form the basis for the ingredients that constitute certain offences complained of. The Court may also be entitled to see (i) whether the preconditions requisite for taking cognizance have been complied with or not; and (ii) whether the allegations contained in the complaint, even if accepted in entirety, would not constitute the offence alleged.

....

13. A look at the complaint filed by the appellant would show that the appellant had incorporated the ingredients necessary for prosecuting the respondents for the offences alleged. The question whether the appellant will be able to prove the allegations in a manner known to law would arise only at a later stage..................."

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The above judgments are squarely applicable to this case and as such, the points raised by the petitioners are mixed question of facts and it cannot be considered in a quash petition under Section 482 Cr.P.C.

15. That apart, the provisions of inherent jurisdiction under Section 482 Cr.P.C can be invoked only to meet the ends of justice and to prevent the abuse of process of law.

16. In view of the above discussions, this Court is not inclined to quash the proceedings in C.C.No.3 of 2021 on the file of the Judicial Magistrate, Alandur. Accordingly, this Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petitions are closed.

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Index:Yes/No
Internet:Yes/No

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2.The Inspector of police,
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