IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.09.2023

Coram:

The Hon'ble Mr.Justice V.SIVAGNANAM

Crl.O.P.No.5180 of 2021

1.D.Radha

2.P.Gajavalli

3.R.Suguna

4.E.Renganayagi

5.Ezhumalai

...Petitioners

Versus

1.The State
The Inspector of Police,
Kancheepuram Police Station,
Kancheepuram.

2.P.Imrathchand Kothari

...Respondents

This Criminal Original Petition is filed under Section 482 of Cr.P.C praying to call for the records of C.C.No.46 of 2020 on the file of the Judicial Magistrate-I, Kancheepuram dated 16.02.2016 and to quash the same as an abuse of process of law.

For Petitioners	:	Mr.Avinash Wadhuvani for M/s.V.Srimathi
For Respondent – 1	:	Mr.L.Baskaran, Government Advocate (Crl.Side)
For Respondent – 2	:	Mr.S.Prabhu

ORDER

This criminal original petition has been filed by the petitioners seeking to quash the case in C.C.No.46 of 2020 on the file of learned Judicial Magistrate-I, Kancheepuram.

2. The brief facts of the case are as follows:

The petitioners 1 to 4 are the daughters of one Mr.Punniyakotti Naicker. The said Punniyakotti Naicker died on 04.04.2009 and after his death, the petitioners 1 to 4 had filed a partition suit in O.S.No.218 of 2012 before the Sub Court, Kancheepuram and the same is pending. While so, the petitioners 1 to 4 vide Mortgage Deed dated 18.08.2015, mortgaged their undivided 5/12th share with respect to the family properties comprised in S.Nos.28/1A, 28/2A1, 28/2A3 & 36/2A measuring to a total extent of 5.21 Acres situated at Vishnukanchi Village, Kancheepuram Taluk, Kancheepuram District (hereinafter referred to as 'subject properties'), to the 5th petitioner for a sum of Rs.2,00,000/-. While so, the four persons Gopal (1st defendant in O.S.No.218 of 2012), Balu (3rd defendant in O.S.No.218 of 2012), Sujatha (7th defendant in O.S.No.218 of 2012) & Karpagam (wife of 4th defendant in O.S.No.218 of 2012) had colluded with the 2nd respondent to sell the subject properties. On 31.07.2015, the said Gopal, Balu, Sujatha & Karpagam had executed a General Power of Attorney in favour of the 2nd respondent. Thereafter, the 2nd respondent lodged a complaint against the petitioners on 11.01.2016. On the basis of complaint given by the 2nd respondent, the 1st respondent police had registered the FIR in Crime No.6 of 2016 against the petitioners for the offence under Sections 420, 465, 468 & 471 of I.P.C. After the completion of investigation in Crime No.6 of 2016, the 1st respondent police had filed the final report before the learned Judicial Magistrate No.I, Kancheepuram which was taken on file in C.C.No.46 of 2020. Hence, the petitioners have filed the present petition before this Court.

3. The learned counsel for the petitioners drew the attention of this Court to the complaint filed by the 2nd respondent/de-facto complainant, wherein, it is stated that one Punniyakotti vide Will dated 05.09.2001, bequeathed the subject properties to his six sons viz., Gopal, Gurusamy (deceased), Balu, Balaji, Udayakumar and Senthilkumar and after the demise of said Punniyakotti, his six sons vide Partition Deed dated 16.04.2012, shared the subject properties among them. Thereafter, on 31.07.2015, the said Gopal, Balu, Sujatha (wife of deceased Gurusamy) & Karpagam (wife of deceased Balaji) had appointed the 2nd respondent/complainant as General Power of Attorney to their share of 3 Acres 48 Cents in the subject properties. While so, the petitioners 1 to 4 who are no way connected to the subject properties had executed a fake Mortgage Deed dated 18.08.2015 in favour of the 5th petitioner for a sum of Rs.2,00,000/- and thereby, created encumbrance in the subject properties which are belonged to the 2nd respondent/de-facto complainant.

3.1. Further, the learned counsel submitted that the petitioners 1 to 4 had filed a suit in O.S.No.218 of 2012 before the Sub Court, Kancheepuram for partition of subject properties and the defendants in the said suit are their co-sharers. He also submitted that the 2nd respondent/de-facto complainant has filed a false complaint against the petitioners. The petitioners 1 to 4 have not created any fake document. Therefore, the learned counsel prayed this Court to quash the case in C.C.No.46 of 2020 on the file of learned Judicial Magistrate-I, Kancheepuram.

3.2. In support of his submissions, the learned counsel has relied on the judgment passed by the Hon'ble Supreme Court in the case of ***Mohammed Ibrahim & Ors. Vs. State of Bihar & Anr. reported in (2009) 8 SCC 751***. The relevant portion of the said judgment reads as follows:

> *"**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.*

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.

19. *To constitute an offence under Section 420, there should not only be cheating, but as a consequence of such cheating, the accused should have dishonestly induced the person deceived*

(i) to deliver any property to any person, or

(ii) to make, alter or destroy wholly or in part a valuable security (or anything signed or sealed and which is capable of being converted into a valuable security).

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.*

22. *As the ingredients of cheating as stated in Section 415 are not found, it cannot be said that there was an offence punishable under Sections 417, 418, 419 or 420 of the Code.*

23. *When we say that execution of a sale deed by a person, purporting to convey a property which is not his, as his property, is not making a false document and therefore not forgery, we should not be* *understood as holding that such an act can never be a criminal offence. If a person sells a property knowing that it does not belong to him, and thereby defrauds the person who purchased the property, the person defrauded, that is, the purchaser, may complain that the vendor committed the fraudulent act of cheating. But a third party who is not the purchaser under the deed may not be able to make such complaint. "*

4. The learned Government Advocate (Crl.Side) appearing for the 1st respondent police submitted that the case in C.C.No.46 of 2020 on the file of learned Judicial Magistrate No.1, Kancheepuram is pending trial and the same has been posted to 29.09.2023.

5. The learned counsel appearing for the 2nd respondent/de-facto complainant submitted that though the subject properties are not belonged to the petitioners 1 to 4, they claim that they have 5/12th share in the subject properties. He further submitted that the original sharers viz., Gopal, Balu, Balaji, Udhayakumar, Senthilkumar, Sujatha (wife of deceased Gurusamy), Mohanakrishnan (son of deceased Gurusamy), Mahalakshmi (1st daughter of deceased Gurusamy) & Gomanthi (2nd daughter of deceased Gurusamy) had got their share in the subject properties vide Partition Deed dated

16.04.2012. He further submitted that the petitioners 1 to 4 who have no share in the subject properties executed a fake Mortgage Deed in favour of 5th petitioner and created encumbrance in the subject properties which are belonged to the 2nd respondent/de-facto complainant. Therefore, the learned counsel prayed this Court to dismiss the present petition.

6. Heard the learned counsel for the petitioners and the learned Government Advocate (Crl.Side) appearing for the 1st respondent police as well as the learned counsel appearing for the 2nd respondent/de-facto complainant.

7. From a perusal of the materials placed before this Court, it is seen that the petitioners are accused in C.C.No.46 of 2020 on the file of learned Judicial Magistrate No.1, Kancheepuram. The allegation against the petitioners is that the petitioners 1 to 4 have no share in the subject properties, but, they claim that they have 5/12th share in the subject properties. That apart, the petitioners 1 to 4 have mortgaged their undivided 5/12th share in the subject properties to the 5th petitioner for a sum of

Rs.2,00,000/- by way of fake Mortgage Deed dated 18.08.2015 and created encumbrance in the subject properties which are belonged to the 2nd respondent/de-facto complainant.

8. At this juncture, this Court feels that it would be pertinent to discuss about the judgment relied by the learned counsel for the petitioners. In the case of ***Mohammed Ibrahim & Ors. Vs. State of Bihar & Anr. reported in (2009) 8 SCC 751,*** the Hon'ble Apex Court had held that if a person sells a property knowing that it does not belong to him and thereby, defrauds the person who purchased the property, the person defrauded, that is, the purchaser, may complain that the vendor committed the fraudulent act of cheating. But, a third party who is not the purchaser under the deed may not be able to make such complaint.

9. As far as this case is concerned, the petitioners 1 to 4 have mortgaged their undivided 5/12th share in the subject properties to the 5th petitioner and not to the 2nd respondent/de-facto complainant. So, as per the principle laid down by the Hon'ble Apex Court in the case of ***Mohammed***

Ibrahim & Ors. Vs. State of Bihar & Anr. reported in (2009) 8 SCC 751, the 5th petitioner (mortgagee) only can lodge a complaint that the petitioners 1 to 4 had cheated him and the 2nd respondent/de-facto complainant cannot lodge any complaint against the petitioners 1 to 4 since he is only a Power of Attorney to the subject properties.

10. Considering the submissions made by the learned counsel on either side and also, taking note of the fact that the ingredients required for the offence under Sections 420, 465, 468 & 471 of I.P.C are not made out against the petitioners, this criminal original petition is allowed and the case in C.C.No.46 of 2020 on the file of learned Judicial Magistrate No.1, Kancheepuram is hereby quashed.

11.09.2023

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Index: Yes/No
Speaking Order (or) Non-Speaking Order

To
1.The Judicial Magistrate No.1,
Kancheepuram.

2.The Public Prosecutor,
High Court, Madras.

V.SIVAGNANAM, J.

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Crl.O.P.No.5180 of 2021

11.09.2023