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Crl OP No.5792 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Criminal Original Petition No.5792 of 2021

and

Crl.M.P.No. 3798 of 2021

A.Shanthi

... Petitioner/5th Accused

Versus

1.State by

The Inspector of Police
Central Crime Branch,
Chennai.
(Crime No.234/2019)

... 1st Respondent / Complainant

2.T. Rajendran

... 2nd Respondent /Defacto Complainant

PRAYER : Criminal Original Petition has been filed under Section 482 of the Criminal Procedure Code seeking to call for the records relating to the Crime No.234/2019 on the file of the fist respondent Police and quash the same as far as the petitioner is concerned.

For Petitioner : Mr.I.Abrar Mohamed Abdullah

For R1 : Mr.Leonard Arul Joseph Selvam
Government Advocate (Crl. Side)

For R2 : No appearance



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ORDER

This Criminal Original Petition has been filed to quash the FIR against the petitioner who is arrayed A5 in the FIR.

2. The allegation in the FIR is that the petitioner had falsely claimed title over the land belonging to the Corporation in respect of 12.5 cents in Survey No.T.S.13 Periyakoodal village, Aminjikarai Taluk; that the petitioner's father had illegally claimed title over the said property and had filed Civil Suits and obtained decrees fraudulently; that the land shown as suit property in the said suits did not match with the patta number of the land claimed by the petitioner; that the Tahsildar and other Revenue Officials have helped the petitioner to create documents and files to grant patta wrongly in favour of the petitioner in respect of lands belonging to the Corporation; and that the petitioner has committed the offences. under Sections 419, 465, 467, 468, 471 and 34 of IPC.

3. The learned counsel for the petitioner would submit that even if the entire allegations in the FIR are taken to be true, none of the offences alleged are made out; that there is no allegation in the FIR to show that



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the petitioner had forged any document. Admittedly, the petitioner had obtained a patta, which according to the respondent is a patta granted by the Revenue Officials without verifying the records. That would not amount to forgery. In fact the petitioner had filed a Suit in CS No.116 of 2020 before this Court against the Corporation and this Court had granted an interim order in OA No.160 of 2020 granting an order of Status quo until further orders. The learned counsel further submitted that the petitioner's father property was acquired by the Government and the petitioner had been requesting the Government for assignment of this land which was in his possession for a very long time in exchange of the property that was acquired from her father. Since the issue is civil in nature, the petitioner prayed for quashing the impugned FIR.

4. The learned Additional Public Prosecutor had submitted that there are allegations in the FIR against the petitioner for cheating and forgery; that the allegations have to be investigated and the FIR cannot be quashed at the very initial stage; and that the property of the Corporation is sought to be grabbed by the petitioner and others in collusion with the Revenue Officials and hence prayed for dismissal of the petition.



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5. Though notice was sent to the second respondent the said notice was returned with an endorsement 'refused'.

6. This Court finds that the allegation against the petitioner is that she had acquired the property by virtue of the Settlement Deed dated 24.09.2008 which was executed by her father. Based on the Settlement Deed, she had applied for patta and the Revenue Officials without verifying the records and in order to help the petitioner had wrongly given a patta by creating a file and documents in support of the petitioner. There is nothing in the impugned FIR to show that the petitioner had forged any document. It is a case of taking the help of Government authorities to obtain a patta without any supporting documents. There is no allegation that there was forgery of any patta or other documents of title. In the absence of the same, the offence of forgery would not be made out. This position is well settled. The Hon'ble Supreme Court in *Mohammed Ibrahim and Others v. State of Bihar and another*, reported in (2009) 8 SCC 751, held that a false claim of title by itself would not amount to forgery. The relevant portions of the judgment is extracted below:



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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.

7. Further as regards the offence of cheating the Hon'ble Supreme Court held in the same judgment as follows:

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.



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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. "

8. There is no allegation in the impugned FIR that the petitioner had deceived any person and made him deliver any property etc. to attract the offence of cheating or cheating by impersonation. Further there is also a civil suit pending in this Court as regards the very same property. In such circumstances the impugned FIR would be an abuse of process of law against the petitioner. Therefore, the impugned FIR as



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against the petitioner alone is quashed and the Criminal Original Petition is allowed. Consequently, the connected miscellaneous petition is closed.

16.03.2023

jv

Index: Yes/No
Speaking Order / Non-Speaking Order
Neutral Citation: Yes / No

To

1. The Inspector of Police
Central Crime Branch,
Chennai.
2. The Public Prosecutor
High Court of Madras
Chennai – 600 104.



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SUNDER MOHAN, J

jv

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