IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No. 6005 of 2021
and
Crl.M.P.No.3933 of 2021

1.Irusayee
2. Mades
3. T.Natarajan ... Petitioners

Vs.

1.State Rep by
The Inspector of Police,
Attaiyampatti Police Station,
Salem District.

2. V.Kuppusamy ... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records relating to the impugned FIR in Crime No.97 of 2021 on the file of the 1st respondent and quash the same by allowing this Criminal Original Petition.

For Petitioner : Mr.M.Ganesh

For Respondents

For R1 : Mr.A.Gopinath
Government Advocate (Crl. Side)
For R2 : No appearance

ORDER

This petition has been filed to call for the records relating to the impugned FIR in Crime No.97 of 2021 on the file of the 1st respondent and quash the same

2. The case of the prosecution is that, the subject properties are ancestral properties of the 2nd respondent's father Late Mr.Vaithi and his two brothers. Initially, his father filed a suit in O.S.No.393 of 1962 for partition and the same was decreed by a judgment dated 25.07.1963. However, it was not acted upon. Thereafter, 2nd respondent filed a suit for partition in O.S.No.1270 of 1996 on the file of the learned Additional District Munsif Judge, Salem and it was decreed by a judgment dated 31.08.1999. 2nd respondent's paternal uncles namely Elumalai and Palaniappan died. Thereafter, their sister Arayee sold 80 cents in favour of the second respondent. Hence, A1 and A2 namely sisters of the 2nd respondent filed a suit in O.S.No.168 of 2010 before the Principal Sub Court, Salem claiming 2/6th share in the ancestral property and the same was decreed by a judgment dated 12.09.2011. Thereafter, A1 and A2 filed applications in I.A.No.61 of 2011 for passing of final decree. While pending final decree proceedings, A1 and A2 sold a portion of the suit properties to A3 by a registered sale deed dated 05.03.2013. Hence, the 2nd respondent lodged a

complaint. On receipt of the complaint, 1st respondent registered an FIR in Crime No.97 of 2021 for the offences under Sections 420, 467 and 468 of IPC.

3. The learned counsel for the petitioner would submit that, initially 2nd respondent lodged a complaint and the same was enquired and closed. Subsequently, he filed a petition before the learned Judicial Magistrate No.4, Salem seeking direction under Section 156(3) of Cr.P.C. The learned Magistrate directed the respondent police to register the FIR. Based on the direction, 1st respondent registered the FIR. He further submitted that the entire allegations made in the complaint are not at all attracted any offences under Sections 420, 467 and 468 of IPC. A1 and A2 are coparceners by their birth. They also obtained decree in respect of 2/6th share in the subject property. After the decree, they sold out their share in favour of the 3rd accused by a registered sale deed dated 05.08.2013. Though, the properties were not demarcated, they sold the properties of their share and it is hit by *lis pendens.* A transfer *pendente lite* is not illegal ipso jure but remains subservient to the pending litigations. Therefore, the lis pendens does not annul the conveyance by a party to the suit. Mere pendency of a suit does not prevent one of the parties from dealing with the properties constituting the subject matter of the suit. Therefore, no ingredient is available in order to attract the offence under Section 468 of IPC.

The alleged sale deed will not come within the purview of "fraud or creating of a false documents". A1 and A2 have right over their property, since they are coparceners. The condition precedent to attract the offence under Sections 468 and 467 of IPC is forgery. Even according to the second respondent, petitioners neither created any documents not committed any impersonation. Therefore, the alleged sale deed dated 05.03.2013 could not come under the purview of the "false documents" as defined under Section 464 of IPC. If the documents executed by the petitioners are not false documents, there is no forgery. If there is no forgery, then neither section 468 of IPC nor Section 467 of IPC is attracted. Unless the allegations made in the complaint constitutes the offence under Section 464 of IPC, the entire FIR cannot be sustained for further investigation. Further, the allegations made in the FIR do not make out the offence under Section 420 of IPC, since it is not the case of the 2^{nd} respondent that the petitioners tried to deceive him either by making a false or misleading representation or by any other action or omission.

4.The perusal of the judgement relied by the **Hon'ble Supreme Court of**

India in **Thomson Press (India) Ltd Vs. Nanak Builders & Investors (P) Ltd.,** in **Civil Appeal No.1518 of 2013** dated 21.02.2013, wherein it is held that, A transfer pendete lite is not illegal ipso jure but remains subservient to the pending litigation. While interpreting Section 52 of the Transfer of Property Act, it is observed that “The words “so as to affect the rights of any other party thereto under any decree or order which may be made therein", make it clear that the transfer is good except to the extent that it might conflict with rights decreed under the decree or order. Section 52 does not render transfers affected during the pendency of the suit void but only render such transfers subservient to the rights as may be eventually determined by the Court. Section 52 does not render transfers affected during the pendency of the suit void but only render such transfers subservient to the rights as may be eventually determined by the Court. .The mere pendency of a suit does not prevent one of the parties from dealing with the property constituting the subject-matter of the suit. The section only postulates a condition that the alienation will in no manner affect the rights of the other party under any decree which may be passed in the suit unless the property was alienated with the permission of the court.”

5. Thus, the transactions between the A1, A2 and A3 is not void, but

remains subservient to the pending litigations. Admittedly, partition suit was decreed and accordingly, 2/6th share was allotted in favour of the petitioners. While pending final decree proceedings, A1 and A2 sold a portion of the suit properties to A3, in respect of their share alone. Therefore, no offence is made out as alleged by the 2nd respondent as against the accused persons.

6. It is relevant to extract Section 464 of Indian Penal Code.

"464. Making a false document.--A person is said to make a false document or false electronic record---

First.--Who dishonestly or fraudulently -

(a) makes, signs, seals or executes a document or part of a document;

(b) makes or transmits any electronic record or part of any electronic record;

(c) affixes any digital signature on any electronic record;

(d) makes any mark denoting the execution of a document or the authenticity of the digital signature, with the intention of causing it to be believed that such document or a part of document, electronic record or digital signature was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or Secondly.--Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with digital signature either by himself or by any other person, whether such person be living or dead at the time of such

alternation; or Thirdly.--Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his digital signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration.

Explanation 1 - A man's signature of his own name may amount to forgery.

Explanation 2 - The making of a false document in the name of a fictitious person, intending it to be believed that the document was made by a real person, or in the name of a deceased person, intending it to be believed that the document was made by the person in his lifetime, may amount to forgery.

[Note: The words `digital signature' wherever it occurs were substituted by the words `electronic signature' by Amendment Act 10 of 2009]."

7. The condition precedent for an offence under Sections 467 and 471 is forgery. The condition precedent for forgery is making a false document. This case does not relate to any false documents. Therefore, the question is whether A1 and A2 in executing sale deed purporting to sell their share in favour of A3 cannot be said to have made false documents, in collusion with A3. Therefore, the sale deed does not fall under the category of false documents.

8. Further, the ingredients of the offence under Section “420 of IPC” is 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;*
> *(iii) such act or omission causing or is likely to cause damage or harm to that person in body, mind, reputation or property*

Therefore, to constitute an offence under Section 420 of IPC, there should not only be cheating, but as a consequence of such cheating, the accused should have dishonestly induced the person deceived to deliver any property to any person or to make, alter or destroy wholly or in part a valuable security. When a sale deed is executed conveying their share, it may be possible for the 3rd accused under such sale deed to allege that the vendor has cheated him by making false representation of ownership and fraudulently induced him to part with the sale consideration. In this case, complainant is not a purchaser and he is a co-sharer of certain portion of the property. Therefore, the offence under Section 420 of IPC is not at all made out as against the petitioners.

9. Therefore, the pendency of the FIR in Crime No. 97 of 2021 would

not serve any purpose, since no offence under Sections 420, 467 and 468 of IPC is made out against the petitioners. Thus, the FIR cannot be sustained against the petitioners and it is liable to be quashed.

10. Accordingly, this Criminal Original Petition stands allowed and as a sequel, the proceedings in Crime No.97 of 2021, on the file of the first respondent police is hereby quashed as against the petitioners. Consequently, connected miscellaneous petition is closed.

04.10.2023

Internet : Yes / No
Index : Yes / No
Speaking / Non Speaking order
Sma

To
1. The Inspector of Police,
Attaiyampatti Police Station,
Salem District.

2. The Public Prosecutor,
Madras High Court.

G.K.ILANTHIRAIYAN, J.

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