



Crl.O.P.No.7344 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2023

CORAM:

THE HONOURABLE MR. JUSTICE **SUNDER MOHAN**

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and

Crl.M.P.No.4888 of 2021

- 1.Tharaja Beevi
- 2.Rathinasabapathi (Rathinam)
- 3.Nadanasabapathi
- 4.Abdul Basheer
- 5.A.Mohamed Yunus
- 6.Dhianlludha
- 7.Kalilur Rahman
- 8.Rajendran
- 9.Veerappan
- 10.Sundar
- 11.Kuppammal
- 12.Balasubramaniyan

...Petitioners

-Vs-

- 1.State rep. by Inspector of Police
Chidambaram Town Police Station,
Cuddalore District.
(Crime No.320 of 2021)

- 2.Basudeen

... Respondents

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records relating to the Crime No.320 of 2021 on the file of the 1st respondent and to quash the same.



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For Petitioners : Mr. Kumar Talrejan
for I. Abrar Md Abdullah
For R1 : Mr. A. Damodaran
Addl. Public Prosecutor
For R2 : Mr. Adinarayana Rao

ORDER

This Criminal Original Petition has been filed seeking to quash the FIR in Crime No.320 of 2021 on the file of the 1st respondent, for the alleged offences under Sections 420 and 406 IPC.

2.It is alleged in the FIR that the petitioners had sold the property consisting of three schedules of property comprised in S.Nos.83/2, 81/2, 82/1 to an extent of 0.63 acre, 2.04 acres and 0.38 acre respectively in favour of the defacto complainant in the year January 1989 through a Power of Attorney; that the petitioners through the very same Power of Attorney had executed sale deed in respect of property comprised in S.No.82/1 measuring 0.38 acres in favour of third parties in April 1989 and thereafter, the said property was transferred to various persons



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through sale deeds. It is further alleged that the defacto complainant approached the Registration Authorities and the Registration Authorities found that since the petitioners had already transferred the properties in favour of the defacto complainant, subsequent sales made to the third parties are not valid. Hence, the petitioners had committed the aforesaid offences.

3.The learned counsel for the petitioners, however would submit that even assuming that all the allegations in the impugned FIR are accepted to be true, the alleged offences are not made out. The transactions had taken place in the year 1989. Whereas, the impugned complaint was lodged in the year 2021. The petitioners and the defacto complainant are closely related to each other. The defacto complainant is the nephew of the first petitioner. The defacto complainant was aware of the transactions as he had developed the adjacent property and he cannot claim ignorance of the alleged transactions. The subsequent registrations have all been canceled by the Registration Authority. In any case, the allegations would neither attract the offences of Sections 406 or 420 IPC. Hence, he prayed for quashing of the impugned proceedings.



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4.The learned counsel for the defacto complainant and the learned Additional Public Prosecutor appearing for the 1st respondent, on the other hand, submitted that after having executed the sale deed in favour of the defacto complainant, the conduct of the petitioners in executing another sale deed in favour of third parties in respect of a portion of the property sold to the defacto complainant would attract the offences alleged.

5.The learned Additional Public Prosecutor would further submit that the matter has to be investigated by the respondent police and the investigation cannot be scuttled at this stage. The learned Additional Public Prosecutor further submitted that since the impugned FIR discloses the alleged offences, it cannot be quashed merely because it is civil in nature.

6.This Court on perusal of the allegations in the FIR finds that the petitioners have executed sale deeds in respect of the property which has been already sold to the defacto complainant. They have no right to do so. The Registration Authority has also canceled the sale deeds executed by the petitioners and the subsequent transactions.

7.However, the question is whether they have committed the



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offences alleged in the FIR. The offences alleged are Sections 406 and 420 IPC. In order to attract offence under Section 406 IPC, there must be entrustment of property and misappropriation of the same. The sale made by the petitioners by falsely claiming title over the property cannot said to be misappropriation. They have not been entrusted with the property by the defacto complainant. It is not the case of the defacto complainant that subsequent to the purchase, he had entrusted the property to the petitioners. Hence, the offence under Section 406 IPC is not made out.

8.As regards the offence under Section 420 IPC, the Hon'ble Supreme Court in ***Mohammad Ibrahim vs. The State of Bihar (2009) 8 SCC 751***, had held that false claim of title and executing documents of sale would not amount to cheating the rival claimant to the property.

9.In the instant case, the subsequent purchasers are not the complainants. The complaint is by the rival claimant and the observations made by the Hon'ble Supreme Court in ***Mohammad Ibrahim vs. The State of Bihar (cited supra)*** would squarely apply to the facts of this case. The relevant observations are as follows:

16. There is a fundamental difference between a person executing a



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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.



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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.

...

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.”



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10.The act of the petitioners in executing sale deed in favour of third parties after they had sold it to the defacto complainant may not be justified. However, the said act does not attract the alleged offences in view of the dictum of the Hon'ble Supreme Court in ***Mohammad Ibrahim vs. The State of Bihar (cited supra)***. That apart, this Court finds that the complaint was lodged 32 years after the alleged occurrence. Hence this Court is inclined to allow this quash petition.

11.For all the above reasons, the impugned FIR in Crime No.320 of 2021 on the file of the 1st respondent is quashed. Accordingly, this Criminal Original Petition is allowed. Consequently, connected Criminal Miscellaneous Petition is closed.

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smv

Internet: Yes

Index : Yes/No

Speaking/Non Speaking order



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To,

- 1.The Inspector of Police
Chidambaram Town Police Station,
Cuddalore District.
- 2.The Public Prosecutor
High Court of Madras.



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SUNDER MOHAN,J.

smv

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