



Crl.O.P.No.8204 of 2021

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.06.2023

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THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.O.P.No.8204 of 2021

and

Crl.M.P.No.5413 of 2021

1.M.Sarojni
2.Manickam @ Ayyasamy
3.M.Prabu

... Petitioners

Vs.

S.Karthik Balaji

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code to call for the records of the case in C.C.No.886 of 2021 on the file of the Judicial Magistrate, No.1, Coimbatore.

For Petitioner : Mr.P.Sidharthan

For Respondent : No Appearance



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ORDER

The petition is to quash the private complaint filed for the alleged offences under Sections 120(b), 420, 468, 471 read with Section 511 IPC.

2.It is alleged in the private complaint that the petitioners were tenants under the complainant; that the complainant had filed a suit O.S.No.1759 of 1996 on the file of the Principal District Munsif, Coimbatore and the learned Principal District Munsif had decreed the suit in favour of the complainant; that the petitioners had neither handed over possession nor paid the rent in terms of the decree; that while so, the petitioners had obtained a patta in respect of the property by falsely claiming title over the property; and that they had also filed a suit O.S.No.2505 of 2014 on the file of the II Additional District Munsif, Coimbatore praying for a declaration of title and the said suit was dismissed for default.

3.The learned counsel for the petitioners submitted that there is a dispute with regard to the property between the petitioners and the complainant. It is no doubt true that they are tenants under one portion of



the property and the property claimed by the petitioners is different from the property leased out to the petitioners. The proceedings are pending before the Civil Court and hence the impugned complaint is nothing but an abuse of process of law. The learned counsel further submitted that it is not alleged in the complaint that the petitioner had forged any document or had made any false representation to the complainant so as to attract the offences under Sections 468 and 420 IPC. The learned counsel further submitted that this case is covered by the Judgement of the Hon'ble Apex Court reported in **(2009) 8 SCC 751 - Mohammed Ibrahim and Others Vs. State of Bihar and Another.**

4.Though notice was sent and served on the respondent and the name of the counsel is printed in the cause list, today when the matter is called there is no representation for the respondent. There was no representation for the respondent even on the earlier hearings (i.e;) on 21.04.2023 and on 08.06.2023.

5.This Court finds that the only allegation in the complaint is that the petitioners were tenants in the property and thereafter, claimed title over the



property falsely. It is the case of the petitioners that the property in which they were tenants is different from the property that they claimed. Be that as it may. This Court finds that the facts of the case are squarely covered by the judgement of the Hon'ble Supreme Court reported in **(2009) 8 SCC 751 - Mohammed Ibrahim and Others Vs. State of Bihar and Another**. The relevant observations made in the said Judgment is extracted hereunder for better understanding:-

“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



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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.

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.”

6. The petitioners had admittedly not forged any document nor cheated the de facto complainant. The allegation as stated earlier is that they falsely claimed title to the property.



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7. In view of the above observations of the Hon'ble Supreme Court, this Court is inclined to quash the impugned complaint. Hence, the impugned complaint is quashed. Accordingly, the Criminal Original Petition stands allowed. Consequently, the connected Miscellaneous Petition is closed.

15.06.2023

Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No
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To,

The Judicial Magistrate, No.1, Coimbatore.



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SUNDER MOHAN. J,

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