IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2023

CORAM:

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

Crl.O.P.No.22802 of 2014
and
M.P.Nos.1 and 2 of 2014

1. A.S.Angammal
2. P.Sengodan
3. T.S.Muralidharan
4. Murugavel ...Petitioners

-Vs-

1. The Inspector of Police,
   District Crime Branch,
   Namakkal District.

2. Nagappan ... Respondents

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C to call for the records relating to in C.C.No.11 of 2014 on the file of Judicial Magistrate, Thiruchengode and quash the same.

For Petitioners : Mr.Vikram Veerasamy
for M/s.P.T.Ramadevi

For R1 : Mr.L.Baskaran
Government Advocate (Crl.Side)

For R2 : Mr.D.Gopal

ORDER

This Criminal Original Petition has been filed calling for the records relating to C.C.No.11 of 2014 on the file of Judicial Magistrate, Thiruchengode and to quash the same.

2. Heard the learned counsel on either side and perused the materials available on record.

3. The case of the prosecution is that the father of the defacto complainant one Rangappa Naicker owned a property to an extent of 8.17 acres comprised in S.No.47, situated at Tho.Goundampalayam, Thiruchengode. He derived title to the said property in respect of 2.24 acres by antecedent property and to an extent of 5.93 acres purchased by him by the registered sale deed vide Document No.1055 of 1933. He had one daughter and two sons, viz., Chinnammal, Nagappan and Rangasamy. After his demise, the second respondent and his brother partitioned the property by way of a partition deed dated 22.05.1992 registered vide Document Nos.1513 and 1514 of 1992. As per the partition deed, the second respondent was allotted 4.8 ½ acres and his

brother was allotted 4.8 ½ acres. After partition, an extent of 3.08 acres was purchased by the second respondent's father-in-law from the second respondent's brother Rangasamy and the remaining extent of one acre of land was purchased by the second respondent by a registered sale deed. Thereafter, the first accused had purchased an extent of 3.08 ½ acres land from the father-in-law of the second respondent by a registered sale deed dated 19.10.2006 vide Document No.5007 of 2006. After purchase, the second respondent owned total land ad-measuring 5.08 acres. While being so, A3 to A6, as if they are also the legal heirs of the second respondent's father Rangappa Naicker, had executed a Power of Attorney in favour of A7, who is none other than the staff of the first accused in respect of the entire extent of the property viz. 8.17 acres, on 16.07.2010 vide Document No.1483 of 2010. In the said Power of Attorney, A3 had been clearly mentioned as daughter of Rangappa Naicker. Once again, A3 had executed a sale deed to an extent of 1.96 acres, as if she has 1/3rd share, in favour of the 8th accused by a registered sale deed dated 31.08.2010 vide Document No.8250 of 2010. In the said sale deed, the third accused had mentioned that she is the grand daughter of Rangappa Naicker. In turn, the 8th accused had executed a sale deed dated

11.11.2010, registered vide Document No.10379 of 2010 in favour of the first accused. A8 is none other than the staff of the first accused. In respect of the land ad-measuring 1.96 acres, once again, the third accused executed another sale deed in favour of A9, who is none other than the Manager of the first accused to an extent of 75 cents by registered sale deed dated 15.05.2012 vide Document No.3057 of 2012 in which also it is mentioned as if the third accused is the grand daughter of the said Rangappa Naicker. Hence, the complaint.

4. There are totally 10 accused, in which the petitioners are arrayed as A1, A2, A9 and A10. On the complaint, the first respondent registered an FIR in Crime No.5 of 2013 for the offences under Sections 120(b), 417, 419, 467, 468, 471, 423, 447 and 506(ii) IPC and Section 82 of the Registration Act, 1908. After completion of investigation, the first respondent filed a final report for the offences under Sections 120(b), 417, 419, 467, 468, 471, 447 and 506(ii) IPC and Section 82 of the Registration Act, 1908 and the Trial Court had taken cognizance in C.C.No.11 of 2014.

5. The learned counsel for the petitioners would submit that the petitioners are bonafide purchasers of the property; mere execution of sale deed would not amount to forgery or falsification of records and therefore, no offence is made out as against the petitioners. Further, the petitioners never committed any cheating in order to execute a sale deed in their favour. They purchased the property from three accused, who also claims to be the legal heir of the said Rangappa Naicker. In fact, the defacto complainant failed to file any suit for declaration declaring that the said property belongs to him. Further, after purchase of the property from the second respondent, an appeal was filed before the Revenue Divisional Officer claiming patta in respect of the subject property and the same was also rejected by an order dated 10.04.2013. Therefore, there is a title dispute. Only after declaration of title, they can challenge the sale deed executed in favour of the petitioners.

6. In support of his contention he relied upon the Judgment of the Hon'ble Supreme Court of India reported in ***2009 8 SCC 751*** in the case of ***Mohammed Ibrahim and others Vs State of Bihar and another,*** in which, the Hon'ble Supreme Court of India held that to constitute an

offence under Section 420 IPC, there should not only be cheating, but as a consequence of such cheating, the accused should have dishonestly induced the person deceived. It was further held that the 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.

7. Whereas, in the case on hand, the second respondent is not a vendor or purchaser of the property. The petitioners are subsequent purchasers and they have never induced the second respondent to receive any property. Therefore, according to the learned counsel for the petitioners the offence under Section 420 IPC is not at all attracted as against the petitioners.

8. He also relied upon the Judgment of this Court in ***Crl.O.P.No.4238 of 2020*** dated ***07.06.2022*** and this Court held as follows:-

> *"5. Now the petitioners are facing charges for the offences under Sections 120B, 417, 467, 468, 471, 420, 423 of IPC and Section 82(d) of the Indian Registration Act, 1908. The power of*

attorney dated 17.04.1990 was executed by 11 persons in favour of one, Venkatachalam who is arrayed as 7th accused / third petitioner herein. He executed sale deed in favour of the petitioners 4 to 6 herein on 15.09.1993. Thereafter, they executed sale deed in favour of the petitioners 7 to 9 herein. Mere execution of sale deeds will not come under the definition of 'false document' as defined under Section 464 of IPC. The term forgery used in Sections 467 and 471 is defined under Section 463 of IPC. It is relevant to extract the provisions under Section 464 of IPC hereunder:

> ***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 electronic signature on any electronic record;*
>
> *(d) makes any mark denoting the execution of a document or the authenticity of the electronic signature, with the intention of causing it to be believed that such document or part of document, electronic record or electronic 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*
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> *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 electronic signature either by himself or by any other person, whether such person be living or dead at the time of such alteration; 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 electronic 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.*

6. It is also relevant to extract the provision under Section 420 of IPC hereunder:

> ***420. Cheating and dishonestly inducing delivery of property.****—Whoever cheats and thereby dishonestly induces the*

person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Therefore, the offence under Section 420 of IPC is not at all made out as against the petitioners, since the petitioners neither made any dishonest nor any fraudulent representation to the second respondent.

7. It is observed in the case of ***Md.Ibrahim &Ors Vs. State of Bihar &Anr*** *reported in* ***2009 (8) SCC 751****, as follows:*

14. .... a person is said to have made a "false document", if

(i) he made or executed a document claiming to be someone else or authorised by someone else; or

(ii) he altered or tampered a document; or

(iii) he obtained a document by practicing deception, or from a person not in control of his senses.

Therefore, making of sale deeds would not constitute forgery within the meaning of Section 463.

8. It is laid down in the case of ***Devendra & Ors Vs. State of U.P. & another*** *reported in* ***2009 (7) SCC 495*** *as follows:*

Making of any false document, in view of the definition of `forgery' is the sine qua non therefor. What would amount to making of a false document is specified in Section 464 thereof. What is, therefore, necessary is to execute a document with the intention of causing it to be believed that such document inter alia was made by the authority of a person by whom or by whose authority he knows that it was not made.

9. The execution of a sale deed by a person which is not his, as his property, is not making a false document and therefore no forgery and such act never be a criminal offence. Further, in fact the term 'fraud' is not defined in IPC. The definition of 'fraud' is that deliberate, deception, treachery or cheating intended to gain advantage. Under Section 17 of the Contract Act defines 'fraud' with reference to a party to a contract. The expression 'defraud' involves two elements i.e. deceit and injury to the person deceived. Therefore, by merely alleging or showing that a person acted fraudulently, it cannot be assumed that he committed an offence punishable under the Code or any other law, unless that fraudulent act is specified to *be an offence under the Code or other law. In this regard, the learned counsel for the petitioner also relied upon the judgment in the case of* ***Md.Ibrahim & Ors Vs. State of Bihar &Anr*** *reported in* ***2009 (8) SCC 751****, wherein the Hon'ble Supreme Court of India held as follows:*

> *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.*

10. If at all the second respondent and other legal heirs have right over the subject property, he has to work out his remedy before the civil court. In fact, he also filed suit in OS.No.467 of 2018 on the file of the II Additional District Court, Tiruppur for partition in respect of the subject property. However, he failed to seek any relief to annul the sale deeds which were executed on the strength of the power of attorney. That apart, there is absolutely no explanation for the belated complaint, that too after 95 years. Admittedly, the second respondent is not in possession and enjoyment of the subject property. On perusal of the records produced by the petitioners such as patta, chitta, adangal, kist receipts, etc. would reveal that they are in possession and enjoyment of the subject property. Further, even according to the second respondent, his great grandfather purchased only to an extent of 2.90 acres out of 11.60 acres comprised in SF.No.947 situated at Kandiyan Koil Village. Therefore, no sub-division was made after purchase of the property admeasuring 2.90 acres. In this regard, the learned counsel for the petitioners relied upon the judgment in the case of ***M/S Thermax Ltd. & Ors Vs. K.M.Johny & Ors*** *reported in* ***2011 (13) SCC 412****, wherein the Hon'ble Supreme Court of India held as follows:*

> *34. .... if there is a flavour of civil nature, the same cannot be agitated in the form of criminal proceeding. If there is huge delay and in order to avoid the period of limitation, it cannot be resorted to as criminal proceeding.*

> *36. ... inasmuch as the dispute arose out of a contract and a constituted remedy is only before a Civil Court, the Magistrate ought to have appreciated that Respondent No.1 was attempting to use the machinery of the criminal courts for private gains and for exerting unjust, undue and unwarranted pressure on the appellants in order to fulfill his illegal demands and extract undeserving monetary gains from them."*

9. Insofar as the offence under Section 120 B IPC is concerned, the learned counsel for the petitioner also relied upon the Judgment of this Court rendered in ***Crl.O.P.(MD).No.6423 of 2016 dated 05.10.2018,*** wherein it was held that to constitute the offence of criminal conspiracy, the conspiracy must relate to the commission of the offence. In this case, it has already been found that the execution of the sale deed will not constitute the offence and therefore, the offence of criminal conspiracy will also automatically fall.

10. As stated supra, the third accused without any title over the property, along with A4 to A6 had executed a Power of Attorney in favour of the 7th accused on 16.07.2010 registered vide Document No.1483 of 2010. In fact, in the said Power of Attorney, she was shown as daughter of Rangappa Naicker. As per the partition deeds dated 22.05.1992 registered vide Document Nos.1513 and 1514 of 1992, there are three legal heirs of Rangappa Naicker, viz., Chinnammal, Nagappan

and Rangasamy. Subsequently, the share of Rangasamy was purchased by the second respondent as well as his Father-in-law. In fact, the first accused had purchased a property to an extent of 3.08 acres from the father-in-law of the second respondent by a registered sale deed dated 09.10.2006 registered vide Document No.5007 of 2006. In the said sale deed, they categorically mentioned about the pathway by citing the partition deed dated 22.05.1992 registered vide Document No.1514 of 1992. Thus, it is crystal clear that the accused had knowledge about the partition deed executed between the second respondent and his brother and sister. The said partition deeds were also acted upon. Thereafter, for the very same property, which was subjected for partition between the second respondent and his brother, the third accused along with A4 to A6 had executed a Power of Attorney that too for the entire extent of the property viz., 8.17 acres. The petitioners 1 and 2, being neighbours of the said property, having purchased a part of the property from the father-in-law of the second respondent, offered to purchase the share of the second respondent. The second respondent refused to sell his share. Therefore, all the accused conspired together as if the third accused is the legal heir of the said Rangappa Naicker, executed Power of Attorney for the entire extent of the property that too without any title over the property. Further, A8 to A10 are also the staffs of the first accused. In order to attract the offence of conspiracy, the sale deeds which were executed in favour of A8 and A9 are very clear. Thereafter, both the accused had executed sale deeds in favour of the first accused.

11. Therefore, the petitioners are the master brain behind the entire crime. In order to deceive the property, they only induced the third accused and executed Power of Attorney, as if the third accused had title over the property and thereafter, the sale deed was executed in favour of A8 and A9. Subsequently, A8 and A9 executed sale deed in favour of the first accused. Therefore, it is clear that all the accused persons conspired together to grab the property and in that process, they had executed so many sale deeds from person to another person.

12. Though it seems to be a title dispute, the third accused failed to prove her legal heirship as she herself claims to be the legal heir who executed a Power of Attorney and the subsequent sale deed. The fate of the Power of Attorney executed by A3 to A6 also is now under question.

Therefore, the petitioners failed to make out a ground to quash the entire proceedings. Hence, the Judgments relied upon by the learned counsel for the petitioners are not helpful to the case on hand.

13. In this regard, it is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in ***Crl.A.No.579 of 2019*** dated ***02.04.2019*** in the case of ***Devendra Prasad Singh Vs. State of Bihar & Anr.,*** as follows:-

> *" 12.So far as the second ground is concerned, we are of the view that the High Court while hearing the application under Section 482 of the Cr.P.C. had no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their statements and, therefore, there was no prima facie case made out against respondent No.2. In our view, this could be done only in the trial while deciding the issues on the merits or/and by the Appellate Court while deciding the appeal arising out of the final order passed by the Trial Court but not in Section 482 Cr.P.C. proceedings.*
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> *13.In view of the foregoing discussion, we allow the appeal, set aside the impugned order and restore the aforementioned complaint case to its original file for being proceeded with on merits in accordance with law.*

14. Recently, the Hon'ble Supreme Court of India dealing the very same issue in ***Crl.A.No.1572 of 2019*** dated 17.10.2019 in the case of ***Central Bureau of Invstigation Vs. Arvind Khanna,*** as follows:

"19. After perusing the impugned order and on hearing the submissions made by the learned senior counsels on both sides, we are of the view that the impugned order passed by the High Court is not sustainable. In a petition filed under Section 482 of Cr.P.C., the High Court has recorded findings on several disputed facts and allowed the petition. Defence of the accused is to be tested after appreciating the evidence during trial. The very fact that the High Court, in this case, went into the most minute details, on the allegations made by the appellant-C.B.I., and the defence put-forth by the respondent, led us to a conclusion that the High Court has exceeded its power, while exercising its inherent jurisdiction under Section 482 Cr.P.C.

20.In our view, the assessment made by the High Court at this stage, when the matter has been taken cognizance by the Competent Court, is completely incorrect and uncalled for."

15. Further the Hon'ble Supreme Court of India also held in the order dated ***02.12.2019*** in ***Crl.A.No.1817 of 2019*** in the case of ***M.Jayanthi Vs. K.R.Meenakshi & anr,*** as follows:

"9. It is too late in the day to seek reference to any authority for the proposition that while invoking the power under Section 482 Cr.P.C for quashing a complaint or a charge, the Court should not embark upon an enquiry into the validity of the evidence available. All that the Court should see is as to whether there are allegations in the complaint which form the basis for the ingredients that constitute certain offences complained of. The Court may also be entitled to see (i) whether the preconditions requisite for taking cognizance have been complied with or not; and (ii) whether the allegations contained in the complaint, even if accepted in entirety, would not constitute the offence alleged.

....

13. A look at the complaint filed by the appellant would show that the appellant had incorporated the *ingredients necessary for prosecuting the respondents for the offences alleged. The question whether the appellant will be able to prove the allegations in a manner known to law would arise only at a later stage..................."*

The above judgments are squarely applicable to this case and as such, the points raised by the petitioners are mixed question of facts and it cannot be considered in a quash petition filed under Section 482 Cr.P.C.

16. The provisions of inherent jurisdiction under Section 482 Cr.P.C can be invoked only to meet out the ends of justice and to prevent the abuse of process of law.

17. In view of the above, this Court is not inclined to quash the proceedings in C.C.No.11 of 2014 on the file of the learned Judicial Magistrate, Thiruchengode. It is also made clear that any of the observations made by this Court would not influence the Trial Court in the conduct of the Trial.

18. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous petitions are closed.

17.10.2023

Internet: Yes
Index : Yes/No

Speaking/Non Speaking order
mn

G.K.ILANTHIRAIYAN. J,

mn

To

1. The Judicial Magistrate, Thiruchengode.
2. The Inspector of Police,
   District Crime Branch,
   Namakkal District.

3. The Public Prosecutor,
   High Court, Madras.

Crl.O.P.No.22802 of 2014
and
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