



Crl.O.P.No.15614 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.06.2023

CORAM:

THE HON'BLE MR.JUSTICE **SUNDER MOHAN**

Crl.O.P.No.15614 of 2021

and

Crl.M.P.Nos.8511 and 8514 of 2021

1. N.Moorthy
2. M.Manjula

... Petitioners

Vs.

1. State Represented by,
The Inspector of Police,
Anti Land Grabbing Cell,
Thiruvallur.

2. A.Velankanni

... Respondents

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records in C.C.No.95 of 2021 pending on the file of the learned Judicial Magistrate, Thiruvallur-II and to quash the same against the petitioners.



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For Petitioner : Mr.R.Rajkumar
For Respondents :
For R1 : Mr.A.Damodaran
Additional Public Prosecutor
For R2 : No Appearance

ORDER

The Petition is to quash the final report for the alleged offences under Sections 420, 467, 468, 471, 120 (b), 506(1), 34 of IPC.

2. It is alleged in the final report that A1 had sold the property to the de facto complainant and thereafter, executed power of attorney in favour of A2/first petitioner herein and on the strength of the said power of attorney, A2 had executed a Sale Deed in favour of A3/second petitioner herein.

3. The learned counsel for the petitioners would submit that they are the bonafide purchasers for valid consideration and they have nothing to do with the alleged offences committed by A1; that on coming to know that A1 had sold the property to the defacto complainant, they had executed a Deed of Cancellation on 11.11.2011, in respect of power of attorney as well as



consequential sale deed; that in case, they have not committed cheating or the offence of forgery as alleged in the final report, even assuming that A1 had made a false claim of title and sold the properties to A2; that the case would be covered by the Judgement of the Hon'ble Apex Court in ***Mohammed Ibrahim vs. State of Bihar*** reported in **(2009) 8 SCC 751**. Hence, he prayed for quashing of the final report.

4. Learned Additional Public Prosecutor would submit that there are allegations in the impugned final report to suggest that A2 and A3 had knowledge of the fact that A1 had sold the property to the defacto complainant; that merely because they had cancelled the sale deed cannot absolve them of the offences.

5. Though notice was served on the de facto complainant/second respondent, none has entered appearance on her behalf.

6. This Court, finds that the allegations against A1 is that after selling the property to the defacto complainant, he had executed a power of attorney in favour of A2, who in turn, executed sale deed in favour of A3.



7. It is the case of false claim of title by A1. The petitioners/A2 and A3 have not neither forged any documents nor have deceived the de facto complainant. The Judgment of the Hon'ble Supreme Court in ***Mohammed Ibrahim vs. 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 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.

“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.

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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8. Further, this Court finds that the petitioners have also cancelled the documents expected in their favour and hence, the defacto complainant has not suffered any loss.

9. For all the above reasons, this Court, is of the view that the impugned final report as against the petitioners/A2 and A3 are liable to be quashed. Hence, this Criminal Original Petition is allowed. Consequently, the connected Miscellaneous Petitions are closed.

21.06.2023

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

rgm

To

1. The Judicial Magistrate,
Thiruvallur-II.
2. The Public Prosecutor
High Court of Madras,
Chennai – 600 104.
3. The Inspector of Police,
Anti Land Grabbing Cell,
Thiruvallur.



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SUNDER MOHAN, J

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