IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2023

CORAM:

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

Crl.OP.No.18019 of 2019
and
Crl.MP.Nos.9070 & 9072 of 2019

Sridaran ... Petitioner

Vs.

1.State rep by
The Inspector of Police,
Chennai CCB,
CCB-II Police Station,
Chennai
(crime No.3 of 2019)

2.Nandhakumar ... Respondents

PRAYER:

Criminal original petition is filed under Section 482 of Cr.P.C. to call for the records and to quash the FIR No.3 of 2019 dated 02.01.2019 on the file of the Inspector of Police, Chennai CCB-II Police Station and proceedings and investigation thereunder as abuse of process of law.

For Petitioner : Mr.Lakshmanan T.V.

For Respondents
For R1 : Mr.L.Baskaran,
Government Advocate(crl.side)

For R2 : Mr.P.R.Raman,
Senior Counsel
for Mr.C.Seethapathy

ORDER

This Criminal Original Petition has been filed to quash the proceedings in crime No.3 of 2019 on the file of the first respondent registered for the offences under Sections 465, 468, 471 & 34 of IPC as against the petitioner and others.

2. The second respondent lodged complaint before the first respondent alleging that he is the Director of M/s.JG Shelters, previously known as JG Glass Industries (Madras) Private Limited and purchased a property by the registered sale deed dated 20.07.1970 vide document No.2878 of 1970 to an extent of 9 acres 15 ½ cents. Out of the total extent, 36 cents were part of the total extent comprised in survey No.39/2 and 39/3 (in respect of the land comprised in survey No.39/3 – 24 cents and survey No.39/2 – 12 cents, in total 36 cents), in which for 17 cents of land, forged documents were created by one, late Karuna, late Sankarrajan and his wife SR.Selvi, Sridharan

and Subramani Achari. On receipt of the said complaint, the first respondent registered FIR in crime No.3 of 2019 for the offence under Sections 465, 468, 471 r/w 34 of IPC.

3. The learned counsel for the petitioner would submit that the petitioner is arrayed as second accused. He purchased the land from M/s.VDG.Sankarrajan and SR.Selvi by the registered sale deed dated 22.03.2007 vide document No.1647 of 2007. Even according to the second respondent, there were two sale deeds in the year 1997 executed by one, G.Karuna in favour of VDJ.Sankarrajan and SR.Selvi, the vendors of the petitioner. The petitioner was not even in the picture in the year 1996 and 1997. He came into picture only in the year 2007 by purchasing the said land admeasuring 17 cents. He is a bonafide purchaser and he is nothing to do with the alleged occurrence. In fact, during the investigation, it was found that in the year 1997, late VDJ. Sankarrajan and his wife i.e. the first accused by the registered sale deed dated 09.06.1997 vide document No.2179 purchased to an extent of 2280 sq.ft. in survey No.39/2B and it did not have any previous valid document. They also purchased another property to an extent of 4275 sq.ft. comprised in survey No.39/3 by the sale deed dated 04.02.1996 purchased by

one, G.Karuna registered vide document No.6636 of 1996. The said Karuna by the sale deed dated 25.05.1997 vide document No.1340 of 1997 sold out the property in favour of VDG.Sankarrajan and his wife Selvi to an extent of 5141 sq.ft. The purchasers i.e. VDG.Sankarrajan and wife SR.Selvi had given power for the total extent of 7349 sq.ft. in favour of one, Sivakumar by the registered power of attorney vide document No.149 of 2007. The power of attorney executed sale deed in favour of the petitioner on 22.03.2007 registered vide document No.1647 of 2007. Therefore, no question of forgery or fabrication of any document committed by the petitioner. He is a bonafide purchaser and he has nothing to do with the allegations made in the FIR. There is absolutely no prima facie to make out a case to attract offence under Sections 465, 468, 471 & 34 of IPC against the petitioner.

4. The learned Senior Counsel appearing for the second respondent submitted that all the persons with common intention to grab the property, encumbered the property by registered sale deeds. The defacto complainant is the original owner of the property and he had purchased the said property to a total extent admeasuring 9 acre 15 ½ cents including the subject property by registered sale deed dated 20.07.1970 vide document No.2878 of 1970. The

petitioner without even verifying the encumbrance certificate, only with intention to grab the property, registered sale deed in his name. Therefore, he is not a bonafide purchaser. That apart, it is only an FIR and it cannot be quashed on its threshold as the same has to be investigated in depth to unearth truth.

5. The learned Government Advocate(crl.side) appearing for the first respondent also submitted that there are totally three accused in which petitioner is arrayed as A2. Though the petitioner is one of the purchasers of the said property, he also colluded with other accused persons and created encumbrance over the property by registering sale deeds. So far, the first respondent has examined so many witnesses and they are about to file final report.

6. Heard, the learned counsel appearing on either side.

7. There are totally three accused, in which the petitioner is arrayed as the second accused. The property admeasuring 9 acres and 15 ½ cents comprised in various survey numbers including survey No.39/2 and 39/3 was purchased by the second respondent by the registered sale deed dated

20.07.1970 vide document No.2878 of 1970. Whereas on perusal of records revealed that property comprised in survey No.39/3 to an extent of 4275 sq.ft. originally belonged to one, Balaram Maistry. After his demise, his legal heirs i.e. his wife Muniammal and daughter Thottammal are in possession and enjoyment of the said property. The said Balaram had purchased the said property by the registered sale deed vide document No.8 of 1985 dated 23.03.1985. The said Balaram Maistry purchased the said property from one, Chinnamurugan @ Patchai Miligai on 29.03.1968 vide document No.605 of 1968 and by another sale deed dated 02.04.1968 vide document No.657 of 1968. The legal heirs of the said Balaram Maistry had executed sale deed in favour of one, G.Karuna in respect of the property comprised in survey No.39/3 to an extent of 4275 sq.ft vide document No.6636 of 1996 dated 04.12.1996. In turn, the said G Karuna had executed sale deed in favour of VDG.Sankarrajan and SR.Selvi on 25.04.1997 registered vide document No.1340 of 1997. He had executed for the land admeasuring 5141 instead of 4275 sq.ft.. The said VDG.Sankarrajan and Selvi also purchased another property to an extent of 2150 sq.ft. comprised in survey No.39/2B from Balkis, Jamrudh, Sahira and Noor Mohammed by the registered sale deed dated 09.07.1997 vide document No.2179 of 1997. In turn, they had executed power of attorney in favour of one, B.Sivakumar vide document No.149 of 2007 in respect of both the properties. The power of attorney, by the registered sale deed dated 22.03.2007, had executed sale deed in favour of the petitioner vide document No.1647 of 2007 for the total extent of 7349 sq.ft. comprised in survey No.39/3 and 39/2B situated at Jamin Pallavaram, Chennai.

8. After purchase of the said property, the petitioner assessed the said property for property tax as early as on 26.10.2007 itself. He obtained planning permission to put up construction on 04.04.2012 from the authority concerned. Thereafter, he had availed loan by depositing the title deeds on 24.08.2016 to avail loan to an extent of 24 crores 30 lakhs. While being so, now the second respondent lodged complaint alleging that all the accused persons forged and fabricated documents in order to grab the property.

9. It is relevant to rely upon the judgment of the Hon'ble Supreme Court of India in the case of ***Mohammed Ibrahim and Others vs. State of Bihar and another*** reported in ***(2009) 8 SCC 751***, wherein it is held 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 bonafide 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. Section 420 IPC

18. Let us now examine whether the ingredients of an offence of cheating are made out. The essential ingredients of the 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.

19. To constitute an offence under section 420, there should not only be cheating, but as a consequence of such cheating, the accused should have dishonestly induced the person deceived

(i) to deliver any property to any person, or

(ii) to make, alter or destroy wholly or in part a valuable security (or anything signed or sealed and which is capable of being converted into a valuable security).

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.*

10. In the case on hand, it is not the case of the second respondent that any of the accused tried to deceive him either by making 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 second respondent allege that the petitioner pretended to be the complainant while executing the sale deeds. Therefore, it cannot be said that the execution of sale deeds in favour of the petitioner by reason of being the purchaser, or by reason of being the witness, scribed and stamp vendor in regard to the sale deeds, deceived the second respondent in any manner.

11. Therefore, the above judgment is squarely applicable to the case on hand. Further, there is absolutely no prima facie made out to even register FIR for offences under Sections 465, 468, 471 & 34 of IPC as against the

petitioner. 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 is not execution of a false document as defined under section 464 of the Code. It is also relevant to extract the provision 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 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.

12. 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 as narrated above. The petitioner is the third purchaser of the subject property. Admittedly, the petitioner is no way connected with the other accused persons except the vendor purchaser relationship. Therefore, the impugned FIR is nothing but clear abuse of process of law against the petitioner. As such, it cannot be sustained as against the petitioner and it is liable to be quashed.

13. Accordingly, the entire proceedings in crime No.3 of 2019 on the file of the first respondent is quashed as against the petitioner alone and this criminal original petition is allowed. Consequently, connected miscellaneous petitions are closed.

16.11.2023

Index :Yes/No
Internet : Yes/No
Speaking order/non-speaking order
lok

G.K.ILANTHIRAIYAN, J.

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To
1.The Inspector of Police,
Chennai CCB,
CCB-II Police Station,
Chennai
2.The Government Advocate,
High Court of Madras

Crl.OP.No.18019 of 2019

16.11.2023