



Crl.O.P.No.19106 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 28.03.2023

Pronounced on : 06.04.2023

CORAM

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.O.P.No.19106 of 2019

and

Crl.M.P.No.9750 of 2019

Rathnakumar

...Petitioner

Vs.

1. Inspector of Police,
Singarapettai Police Station
Krishnagiri District.
(Crime No.71 of 2018)

2.Suseela

...Respondents



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PRAYER: Criminal Original Petition has been filed under Section 482 of the Criminal Procedure Code, to call for the records in connection with entire records relating to C.C.No.151 of 2019 on the file of the learned Judicial Magistrate, Uthangarai in so far as the petitioner is concerned and quash the same.

For Petitioner : Mr.S.Saisankar

For R1 : Mr.A.Damodaran
Additional Public Prosecutor

For R2 : M/s.S.Archana
for Mr.M.Velumurugan

ORDER

The petition has been filed to quash a final report in CC No.151 of 2019 on the file of the learned Judicial Magistrate, Uthangarai for the offences under Sections 465, 468, 471 and 420 of I.P.C. The petitioner is arrayed as A10 in the said complaint.

2.It is alleged in the complaint that A1 to A9 and A11 are relatives; that in O.S.No.154 of 2010 on the file of Sub Court, Krishnagiri, the second respondent



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obtained a decree that she is entitled to 1/7th share in the disputed property; that one Vijayalakshmi, one of the co-sharers as per the decree had executed a Will in favour of one T.K.Jayaraman and T.K.Purushothaman (A1) on 04.02.2013; that on 23.10.2013, A1 executed a Settlement Deed in favour of A2 to A9, in respect of entire property in Survey No.90/6 measuring 1.74 acres in Uthangarai Village though he was not entitled to the entire property as per the Will; that once again on 20.03.2014, A1 and the deceased Jayaraman had entered into a Partition Deed making it appear that they had title over the entire extent of property in Survey No.28/1 measuring 2.60 acres and Survey No.28/4 measuring 6.44 acres; that on 14.08.2015, A11 had executed a Sale Deed in favour of the petitioner herein in respect of land in Survey Nos.72/1 measuring 1.49 Acre, 92/1A measuring 2.44 acre and Survey No.93/1 measuring 0.23 cent, though she had no right over the property; that A11 had sold another extent of land measuring 6.44 acres in Survey No.28/4 in favour of A10 on 07.03.2016; that A1 had sold land measuring 2.64 acre in Survey No.28/1 in favour of the petitioner even though he had no valid title.



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3.Mr.S.Saisankar, the learned counsel for the petitioner would submit that the allegations are false. The petitioner had nothing to do with the alleged offences, if any, committed by the other accused. He is a bonafide and innocent purchaser of the property for consideration. In any event, the learned counsel for the petitioner would submit that the other accused even assuming had made a false claim of title and sold the property to him, he would only be a victim and not an accused and hence, prayed for quashing of the impugned final report. The learned counsel also relied upon the Judgment of the Hon'ble Supreme Court in *Mohammed Ibrahim and others vs. State of Bihar and another* reported in *(2009) 8 SCC 761*.

4.Mr.A.Damodaran, the learned Additional Public Prosecutor, appearing for the first respondent submitted that allegations in the impugned final report has to be adjudicated only during trial and there are materials available to show that the petitioner is also aware that the other accused did not have any right over the property.



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5.M/s.S.Archana, the learned counsel appearing for the de-facto complainant/second respondent reiterated the submissions of the learned Additional Public Prosectuor and submitted that the other accused had falsely claimed title over the property. The question whether the petitioner is an innocent purchaser or was hand in glove with the other accused has to be adjudicated only during trial and hence, prayed for dismissal of the quash petition.

6.This Court on reading of the impugned final report finds that it is a case where there is no allegation of forgery. Admittedly, the other accused had allegedly falsely claimed title over the property and sold the property in favour of the petitioner. The facts of this case is squarely covered by the Judgment of Hon'ble Supreme Court in ***Mohammed Ibrahim and others vs. State of Bihar and another*** reported in **(2009) 8 SCC 761**, wherein, the Hon'ble Supreme Court held that a sale deed executed by making a false claim of title would not amount to making a false document. The relevant observations are extracted hereunder :

“16. There is a fundamental difference between a person executing a sale deed claiming that the property conveyed is his



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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."



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7.As regards cheating, the Hon'ble Supreme Court observed that the buyer from the vendor who claims false title only has to be considered as the deceived person. However, if he is also shown as an accused, the persons who claim the actual title over the property cannot said to be deceived. The de-facto complainant cannot be said to be deceived in order to constitute the offence under Section 420 IPC. The relevant observations of the Hon'ble Supreme Court (in the case cited supra) in this regard is as follows:

“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 is 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



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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.”

The above observations squarely applies to the facts of the instant case. Neither the offence of forgery nor the offence of cheating is made out. Hence, the impugned final report is liable to be quashed as against the petitioner.

8. With the above observations, the Criminal Original Petition is allowed. Consequently, the connected miscellaneous petition is closed.

06.04.2023

dk/ay

NCC : Yes/No

Index : Yes/No

Speaking / Non-Speaking Order

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- To
- 1.The Inspector of Police
Singarapettai Police Station
Krishnagiri District.
 2. The Judicial Magistrate,
Uthangarai.
 - 3.The Public Prosecutor
High Court of Madras
Chennai – 600 104.

SUNDER MOHAN. J,
dk/ay

Pre Delivery Order in
Crl.O.P.No.19106 of 2019



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and

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