



Crl.O.P.No.19802 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2023

CORAM:

THE HONOURABLE MR. JUSTICE **SUNDER MOHAN**

Crl.O.P.No.19802 of 2021

and

Crl.M.P.Nos.10801 & 10802 of 2021

S. Jayaraman

...Petitioner / A1

-Vs-

1. State Rep. by
The Inspector of Police,
Central Crime Branch – Team 25,
Anti-Land Grabbing Cell,
Vepery,
Chennai.

2.S. Kanagaraj @ S. K. Raju

... Respondent

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records in C.C.No.1119 of 2020 on the file of the Judicial Magistrate No.I, Alandur and to quash the same.

For Petitioner : Mr. R. John Sathyan,
Senior Counsel

For R1 : Mr. A. Damodaran
Addl. Public Prosecutor

For R2 : Mr. S. N. Arunkumar



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ORDER

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This Criminal Original Petition has been filed seeking to quash the impugned proceedings in C.C.No.1119 of 2021 on the file of the Judicial Magistrate Court - III, Alandur, filed for the alleged offences under Sections 447, 120(B), 467, 34, 506(i), 465, 468 and 471 of IPC.

2.It is alleged in the final report that the petitioner / A1 had purchased the property measuring 2400 Sq.Ft., bearing plot No.80 in an unapproved layout. Thereafter, pursuant to the approval for the layout the plot number was renumbered as 69. The petitioner had sold the said plot to A2 by Document No.4127 of 1988 on the file of the Sub-Registrar Office, Pallavaram. Thereafter, in the year 1998, a Rectification Deed was executed between A1 and A2 showing the plot number as 70. That subsequently, A2 had executed a Sale Deed in favour of A3 by Document No. 437 of 1999 and that since the Rectification Deed and the subsequent sales made by the accused was with intent to grab the property belonging to the defacto complainant, the FIR, which has culminated in the impugned final report, was lodged.



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3.Mr. R. John Sathyan, learned Senior Counsel appearing for the petitioner submitted that the petitioner had sold the property in the year 1988 and since, the purchaser found discrepancy in the plot number, he sought for rectification and he had executed the Rectification Deed in the year 1998. Thereafter, the property was sold to A3 and the subsequent purchasers are in occupation of the property for the past 25 years after making construction. The impugned complaint is essentially a dispute over a property between the defacto complainant and the accused and sought to be projected as a case of forgery. Admittedly, there is no forgery of documents. A Rectification Deed changing the plot number would not amount to forgery. At best, it could only be a false claim of title, even if the allegations are accepted to be true and the case is covered by the judgment of the Hon'ble Supreme Court in ***Mohammad Ibrahim vs. The State of Bihar (2009) 8 SCC 751.***

4.The learned counsel for the 2nd respondent and the learned Additional Public Prosecutor submitted that the rectification deed was executed only to grab the property belonging to the defacto complainant and since there are allegations in the impugned final report, the same has



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to be decided only during the course of trial and hence the final report cannot be quashed.

5.This Court finds that the admitted facts are that the property was originally numbered as plot No. 80 measuring 2400 sq.ft. Thereafter, it was numbered as 69 pursuant to the approval granted by the CMDA. The petitioner had sold the property in the year 1988. He is alleged to have executed a Rectification Deed in 1998 by changing the plot number as 70 instead of 69. The impugned final report has been filed based on the FIR was lodged in the year 2016. This Court on the admitted fact finds that none of the offences alleged in the final report are made out. The petitioners are in occupation, admittedly, ever since the date of Sale Deed in 1999. Hence, the offence of 447 IPC cannot said to be made out.

6.As regards the offences under Sections 465, 467, 468 and 471 IPC, the judgment of the Hon'ble Supreme Court in ***Mohammad Ibrahim vs. The State of Bihar (cited supra)*** would squarely apply to the facts of this case. The relevant observations are as follows:



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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.*



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“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.



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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.”



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7. Even assuming that the allegations are true that the petitioner along with the other accused wrongly claimed title over the plot number 70 instead of 69, the above extracted observations in the judgment of the Hon'ble Supreme Court in ***Mohammad Ibrahim vs. The State of Bihar*** (*cited supra*) would make it clear that it would not amount to forgery. The other allegations with regard to threat would not constitute the offence of criminal intimidation and this Court had repeatedly held that mere words would not constitute criminal intimidation, unless there is real threat. Further it is also stated that the defacto complainant had also filed a Civil Suit in O.S.No.15 of 2019 on the file of the District Court, Chengalpet, to declare that he is the absolute owner of the property as against A3.

8. Therefore, for the above reasons, this court is of the view that the impugned final report is not sustainable and same is liable to be quashed. Hence the Criminal Original Petition is allowed. Consequently, connected Criminal Miscellaneous Petitions are closed.

20.06.2023

smv
Internet: Yes
Index : Yes/No
Speaking/Non Speaking order



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WEB COPY To,

- 1.The Inspector of Police,
Central Crime Branch – Team 25,
Anti-Land Grabbing Cell,
Vepery,
Chennai.
- 2.The Judicial Magistrate No.I, Alandur.
- 3.The Public Prosecutor,
High Court of Madras.



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SUNDER MOHAN,J.
smv

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