



CrI.O.P.No.20527 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.06.2023

CORAM :

THE HONOURABLE Mr. JUSTICE **SUNDER MOHAN**

CrI.O.P.No.20527 of 2021

and

CrI.M.P.Nos.11158 & 11160 of 2021

1.Chakkaravarthy

2.Mani @ Manikandan

3.Perumal

.. Petitioners

Vs.

1.The State by
Inspector of Police,
Central Crime Branch,
Anti-land Grabbing Special Cell 24 Wing,
Vepery, Chennai-600 007.
[Crime No.133 of 2014]

2.M.Rajesh

..Respondents

PRAYER : Criminal Original Petition has been filed under sections 482 of Criminal Procedure Code to call for the records pending on the file of the District Munsif cum Judicial Magistrate, Madavaram in C.C.No.474 of 2020 and quash the said criminal proceeding pending on the file of the



CrI.O.P.No.20527 of 2021

District Munsif cum Judicial Magistrate, Madavaram in C.C.No.474 of 2020.

For Petitioners : Mr.V.Parthiban
For R1 : Mr.A.Damodaran
Additional Public Prosecutor
For R2 : M/s.Nathan & Associates

ORDER

The petition is to quash the final report for the alleged offences under Sections 120(B), 406, 420, 467 & 468 r/w.34 IPC.

2. It is alleged in the final report that the defacto complainant acquired a property by virtue of a Will dated 17.03.1972. It is alleged in the final report that the disputed property belonged to the Great Grandfather of the defacto complainant. He had executed a Will in respect of 12 cents on 17.03.1972 in favour of his grandfather Krishnanappan and remaining 12 cents of the said property in favour of the defacto complainant's father Manoharan in the year 1974. Thereafter, on 30.08.1977, the great Grandfather had cancelled the earlier Will and executed a Will in favour of one Babu Naikker, who is the brother of



Crl.O.P.No.20527 of 2021

Krishnanappan Naikker and thereafter, he had cancelled the Will on 07.11.1977. The petitioners suppressing the facts that the Will dated 30.08.1977 was cancelled by a subsequent Will and had executed a partition deed amongst themselves claiming themselves to be entitled to the property as the legal heirs of the said Babu Naikker.

3. Mr.V.Parthiban, learned counsel for the petitioner would submit that the reading of all the Wills would show that the earlier Wills executed in favour of the grandfather and father of the defacto complainant were also cancelled; that the petitioners under the bonafide belief that they were entitled half share had executed a partition deed amongst themselves on 11.02.2014; and that they had not forged any document or made any false representation to the defacto complainant and hence the case is covered by the Judgment of the Hon'ble Apex Court in *Mohammed Ibrahim vs. State of Bihar* reported in (2009) 8 SCC 751; that admittedly, the petitioners had not forged any document and; that the offence under Section 468 of IPC is not made out.



4. The learned counsel for the defacto complainant per contra, would submit that the petitioners were aware of the fact that the Will executed in favour of their father was cancelled subsequently. Suppressing the said fact, they had executed the partition deed only with a view to grab the property. The said partition deed is not valid and is an attempt to create encumbrance and to cause inconvenience to the defacto complainant.

5. The learned Additional Public Prosecutor reiterated the submissions of the defacto complainant and would submit that the case has adjudicated only by the trial Court and this Court may not entertain the quash petition.

6. This Court finds that admittedly the grandfather of the defacto complainant and the petitioners' grandfather are brothers. The Will executed in favour of the father and grandfather of the defacto complainant was cancelled and a Will was executed in favour of the father of the petitioners. Subsequently, that Will also got cancelled. The



question is as to whether by virtue of the execution and the cancellation of Will, the parties are entitled to equal share or the earlier Wills would get revived has to be adjudicated only before the Civil Court.

7. Be that as it may. Even assuming that the petitioners had made a false claim of title and executed a partition deed amongst themselves, there is no forgery or deception practised on anybody much less the defacto complainant. The observations of the Honourable Supreme Court in ***Mohammad Ibrahim vs. The State of Bihar (cited supra)*** 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



WEB COPY



CrI.O.P.No.20527 of 2021

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



WEB COPY



CrI.O.P.No.20527 of 2021

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.”

8. For the above said reasons, the impugned prosecution as



CrI.O.P.No.20527 of 2021

WEB COPY

against the petitioners is liable to be quashed and hence quashed. The Criminal Original Petition is allowed. Consequently, the connected miscellaneous petitions are closed.

30.06.2023

Internet : Yes/No

Index: Yes/No

rpl

To

1.The District Munsif cum Judicial Magistrate, Madavaram.

2.The Inspector of Police,
Central Crime Branch,
Anti-land Grabbing Special Cell 24 Wing,
Vepery, Chennai-600 007.

3.The Public Prosecutor,
High Court of Madras,
Chennai.

SUNDER MOHAN, J.



WEB COPY



Crl.O.P.No.20527 of 2021

rpl

Crl.O.P.No.20527 of 2021

30.06.2023