



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2023

CORAM

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.O.P.No.25082 of 2019

And

Crl.M.P.No. 13381 of 2019

1. S.Sugumar
 2. A.H.Shagabudeen
 3. A.H.Mohammed Farook
 4. Najumunisa
- ... Petitioners/Accused Nos. 3 to 5
& 7

Vs

1. The State Rep. By the
The Inspector of Police
District Crime Branch
Villupuram,
Villupuram District.
 2. Thamimul Ansari
- ...1st Respondent/Complainant
... 2nd Respondent/Defacto
Complainant

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records pending on the file of the first respondent police, namely, Inspector of Police, District Crime Branch, Villupuram, Villupuram District in Crime No.4 of 2019 and to quash the criminal proceedings.

For Petitioners : Mr. M.Machavatharan



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For 1st Respondent : Mr.A.Damodaran
Additional Public Prosecutor

For 2nd Respondent : No appearance

ORDER

This Petition is to quash the FIR in Cr.No. 4 of 2019 under Sections 120-B, 423, 467, 468, 471 of IPC.

2. It is alleged in the FIR that the land measuring 0.25 cents in S.No. 344/7 in kottakuppam Village, Vanur Taluk, Villupuram District belong to the defacto complainant and six others. However, suppressing the fact that the land belongs to seven persons, the first accused had executed a power of attorney claiming exclusive title in favour of the second accused; the said power of attorney was executed in France and the adjudication was done in India before the Sub Registrar, Tindivanam; that without valid title, the accused 1 and 2 sold the properties in favour of the third to seventh accused.

3. The learned counsel for the petitioners would submit that the petitioners are subsequent purchasers and have nothing to do with the alleged dispute between the defacto complainant and the first accused and others. Even if the first accused and second accused have made a false claim



of title to the property, the petitioners cannot be held liable for the offences of forgery or for offences under Section 423. They are purchasers for valuable consideration. The learned counsel submitted that the facts of the case would squarely be covered by the Judgment of the Hon'ble Apex Court in **(2009) 8 SCC 751 [Mohammed Ibrahim & Others Vs. State of Bihar & Another]**.

4. The learned Additional Public Prosecutor would submit that the allegation is that the first accused had falsely claimed title over the entire extent of property when the property belonged to six others. He had executed power of attorney in favour of the second accused and the petitioners are the subsequent purchasers.

5. This Court on reading of the impugned FIR finds that the allegations suggest that the first accused by making a false claim of title had executed power of attorney in favour of the second accused. The second accused had sold the property in favour of the petitioners. There is no allegation of forgery. Hence, the offence under Sections 467, 468 & 471 of IPC are not made out. It is also not the case of fraudulent execution of sale deed containing false statement for consideration.



6. The Judgment of the Hon'ble Apex Court in **(2009) 8 SCC 751**

[Mohammed Ibrahim & Others Vs. State of Bihar & Another] squarely applies to the facts of the case. The relevant portions are extracted hereunder:-

“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.”

7. In view of the same, this Criminal Original Petition is allowed and the FIR in Cr.No. 4 of 2019 pending on the file of the first respondent is quashed in so far as the petitioners are concerned. Consequently, connected Civil Miscellaneous Petition is closed.

05.04.2023

vsg

Index: Yes/No



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Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No



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SUNDER MOHAN. J.

vsg

To

1. The Inspector of Police
District Crime Branch
Villupuram,
Villupuram District.
2. The Public Prosecutor,
Madras High Court, Chennai.

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