IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.07.2023

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.Nos.958 of 2022 & 18164 of 2021
and Crl.M.P.Nos.367 of 2022 & 9996 of 2021

1.A.Muthukumar
2.J.Navin ... Petitioners in Crl.O.P.No. 958 of 2022

1.M.Ganesa Naicker
2.G.Gajemdram ... Petitioners in Crl.O.P.No.18164 of 2021

Vs.

1.The State Rep. By
The Inspector of Police,
District Crime Branch,
Chengalpet, Chengalpet District.

2. A.Kabilan ... Respondents in both Crl.O.Ps.

Prayer in both Crl.O.Ps: These Criminal Original Petitions filed under Section 482 Cr.P.C., to call for the entire records in Crime No.4 of 2021 pending on the file of the first respondent police and quash the same.

For Petitioner
in Crl.O.P.No.958/2022 : Mr.N.R.Elango Senior Counsel for
Mr.N.Kumanan

For Petitioner
in Crl.O.P.No.18164/2021 : Mr.N.R.Elango Senior Counsel for

Mr.P.C.Hari Kumar

For R1 in both
Crl.O.Ps. : Mr.A.Gopinath
Government Advocate (Criminal Side)
For R2 in both
Crl.O.Ps. :Mr.R.John Sathiyan (Senior counsel) for
Mr.A.Kumara Guru

COMMON ORDER

These petitions have been filed to quash the FIR in Crime No.04 of 2021, pending investigation before the Inspector of Police, District Crime Branch, Chengalpet.

2. The second respondent gave a complaint to the first respondent to the effect that the subject properties were purchased by the second respondent through registered sale deeds that were executed in the year 1992 and 1995 and he was in possession and enjoyment of the properties that were covered under these documents. The second respondent also took steps to get his name entered in the Revenue Records. Out of the total extent of 5.30 acres, the second respondent had obtained DTCP approval for a residential lay-out for an extent of 2.65 acres and the second respondent had further obtained RERA approval through proceedings dated 02.12.2020. While so, one Gajendiran (A2) approached the second respondent and started claiming right over a portion of

the property in Survey Nos.2B/3 and 2B/4.

3. The second respondent immediately made an inspection and he came to know that one Ganesa Naicker (A1), who had sold the properties to the vendors of the second respondent, had fraudulently executed settlement deed in favour of his son Gajendiran (A2), during the year 2013. According to the second respondent, a property which has already been sold, was once again dealt with by the father and son and thereby, they intentionally attempted to create an encumbrance over the properties.

4. The further case of the second respondent is that A2 had created further documents by entering into an agreement of sale dated 30.05.2014 with one Muthukumar(A3) and Naveen (A4) and also a mortgage deed dated 19.08.2014. According to the second respondent, A3 and A4 are also aware of the entire facts and they have joined A1 and A2 and have created documents and thereby, they are attempting to create more encumbrance over the properties.

5. Hence, the second respondent filed a petition before the District Registrar under the Registration Act questioning the documents that were created by the accused persons. The District Registrar, by order dated 05.07.2021, found that all the documents have been created only to defeat the rights of the second respondent and the documents were held to be fabricated

documents and accordingly, a direction was issued to the concerned Sub Registrar to initiate criminal proceedings under Section 83 of the Registration Act. Pursuant to the same, the second respondent gave a complaint before the first respondent and the first respondent registered an FIR in Crime No.4 of 2021 on 26.08.2021. This FIR has been put to challenge in these petitions by all the accused persons namely A1 to A4.

6. Heard the learned counsel for the petitioners and the learned Government Advocate (Crl.Side) appearing for the first respondent and Mr.R.John Sathiyan Senior Counsel appearing for the second respondent.

7. It was brought to the notice of this Court that the order passed by the District Registrar was further confirmed by the Deputy Inspector General of Registration through order dated 21.11.2022.

8. This Court has carefully considered the submissions made on either side and perused the materials available on record.

9. In the instant case, the role played by A1 and A2 has to be first taken into consideration. The specific case of the second respondent is that A1 had already sold his share of the properties to the vendors of the second respondent and despite the same, he once again dealt with the very same properties by

executing the settlement deeds in favour of his son A2 on 13.03.2013.

10. The above act on the part of A1 will primafacie fall within the scope of Section 463 and 464 of IPC. This Court had an occasion to deal with the issue in detail reported in ***2018 (3) MWN (Criminal) 487 [T.Muthuramalingam Vs. Inspector of Police, District Crime Branch, Theni, Theni District].*** The relevant portions are extracted hereunder:

> *13. With regard to allegations of false documents, it will be useful to rele to the Judgment of the Supreme Court of India in Mohd. Ibrahim v. State of Biharm, 2009 (3) SCC (Crl) 929. The relevant portion of the Judgment is extracted hereunder:*
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> *"14. An analysis of Section 464 of Penal Code shows that it divides false documents into three categories:*
>
> *(1) The first is where a person dishonestly or fraudulently makes or executes a document with the intention of causing it to be believed that such document was made or executed by some other person, or by the authority of some other person, by whom or by whose authority he knows it was not made or executed.*
>
> *(2) The second is where a person dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part, without lawful authority,*

after it has been made or executed by either himself or any other person.

(3) The third is where a person dishonestly or fraudulently causes any person to sign, execute or alter a document knowing that such person could not by reason of (a) unsoundness of mind; or (b) intoxication; or (c) deception practised upon him, know the contents of the document or the nature of the alteration.

In short, a person is said to have made a 'false document', if (i) he made or executed a document claiming to be someone else or authorised by someone else; or (ii) he altered or tampered a document; or (iii) he obtained a document by practicing deception, or from a person not in control of his senses.

15. The Sale Deeds executed by First Appellant, clearly and obviously do not fall under the second and third categories of 'false documents". It therefore remains to be seen whether the claim of the Complainant that the execution of Sale Deeds by the First Accused, who was in no way connected with the land, amounted to committing forgery of the documents with the intention of taking possession of Complainant's land (and that Accused 2 to 5 as the purchaser, witness, scribe and stamp vendor colluded with First Accused in execution and registration of the said Sale Deeds) would bring the case under the first category.

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."*

11. It is clear from the above decision that an offence of forgery can also be committed by a person who dishonestly or fraudulently claims the property to be his, even though he knows that it is not his property. That is exactly the allegation that has been made as against A1 and A2 to the effect that the properties were already sold in the year 1992 and 1995 and whereas it was once again dealt with in the year 2013. In view of the same, this act on the part of A1 and A2 requires investigation by the first respondent police.

12. The next issue to be considered is the role played by A3 and A4. A3 and A4 came into the scene only in the year 2013 and 2014 by virtue of the sale agreement dated 30.05.2013 and the mortgage deed dated 19.08.2014. There is no allegation against them that A3 and A4 had come into the scene even in the year 2013. Therefore, if A3 and A4 were not in the scene when the settlement deeds were executed in the year 2013, it is too far-fetched to make them an accused in this case, since they have gone by the settlement deed that was executed by A1 in favour of A2 and have entered into transactions with A2. Based on the materials available on record, it is seen that A3 and A4 cannot be roped in as accused persons at this stage. At the best, they can be made as witnesses and statements can be recorded from A3 and A4. Ultimately, at the time of filing of the final report or during the course of enquiry/trial, if materials

come forth regarding the involvement of A3 and A4, they can always be added as accused to proceed against them. For the present, the Investigation Officer must proceed with the investigation by adding A1 and A2 as accused persons and by collecting the statements of A3 and A4 under Section 161(3) Cr.P.C. Hence, the investigation in Crime No.4 of 2021 as against A3 and A4 is interfered at this stage.

13. In the light of the above discussion, Crl.O.P.No.18164 of 2021 is hereby dismissed and Crl.O.P.No.958 of 2022 is allowed to the extent stated herein above. There shall be a direction to the first respondent police to complete the investigation in Crime No.4 of 2021 within a period of four months from the date of receipt of a copy of this order and file a final report or a closure report as the case may be, before the concerned Jurisdictional Court. Consequently, connected miscellaneous petitions are closed.

17.07.2023

Speaking Order/Non-speaking Order
Index :Yes/No
Internet:Yes/No
mpa

To

1.The Inspector of Police,
District Crime Branch,

Chengalpet, Chengalpet District.

2.The Public Prosecutor,
Madras High Court,
Chennai.

N.ANAND VENKATESH,J.

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