



Crl.O.P.Nos.34070 and 31517 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 12.04.2023

Pronounced on : 25.04.2023

CORAM

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.O.P.Nos.34070 and 31517 of 2019

and

Crl.M.P.Nos.17264 and 18826 of 2019

1.Mr.Ravichandran

...Petitioner/Accused No.11
in Crl.O.P.No.34070 of 2019

2.Mr.D.Oumasudan

...Petitioner/Accused No.2
in Crl.O.P.No.31517 of 2019

Vs.

1.State by:-

The Station House Officer,
Lawspet Police Station,
Puducherry.
Crime No.75 of 2019

2.J.Shankar

...Respondents in both Crl.O.Ps



Crl.O.P.Nos.34070 and 31517 of 2019

COMMON PRAYER: Criminal Original Petitions have been filed under Section 482 of the Criminal Procedure Code, to call for the records in Crime No.75 of 2019 on the file of Station House Officer, Lawspet Police Station, Puducherry and quash the same.

For Petitioner in

Crl.O.P.No.34070 of 2019 : Mr.A.P.Sathyamurthy

For Petitioner in

Crl.O.P.No.31517 of 2019 : Mr.V.S.Senthil Kumar

For R1 in both Crl.OPs : Mr.N.Danalatchoumy

Assistant Public Prosecutor
(Puducherry)

For R2 in both Crl.O.Ps : Mrs.R.Renukadevi

C O M M O N O R D E R

The Criminal Original Petitions have been filed to quash the FIR in Crime No.75 of 2019 for the alleged offences under Sections 120 (b), 406, 417, 420, 468 and 471 r/w 34 IPC.

2. The allegation in the impugned FIR is that the defacto complainant and his wife purchased two plots measuring a total extent of 3,600 sq.ft at Kuruji Nagar Extension, Lawspet, Puducherry on



10.09.1998 from one Malon Veerasamy; that on 07.05.2018 some unknown persons had illegally attempted to occupy the land belonging to the petitioners; that they later came to know that Mrs. Malon Jagathambal along with her three sons who are the Legal heirs of the said Mr. Malon Veerasamy had executed a Power of Attorney in favour of 1.Mr. D.Oumasudan, petitioner/A2 in Crl.O.P.No.31517 of 2019 and 2.Mrs. M.Malon Jagathambal; that those two persons by virtue of the said Power of Attorney, executed jointly a Sale Deed in collusion with Mr.Ravichandran, the petitioner/A11 in Crl.O.P.No.30470 of 2019, (the Sub Registrar, Oulgaret Registration Office, Pondicherry) in favour of Mr.Gunalan, Mr.Appadurai, Mr.Periyasamy, and Mr.Vaithiswaran. The said Mr.Gunalan and Mr.Periyasamy, in turn sold the land in favour of one Ms.Sakina Yusuf. Hence, it is alleged that the aforesaid persons committed the offences.

3. Mr.V.S.Senthilkumar, the learned counsel for the petitioner/A2 in Crl.O.P.No.31517 of 2019, submitted that the petitioner/A2 acted only as a power agent; and that there is nothing in the impugned FIR to show that he committed forgery or cheating. The allegations only suggest that the Legal heirs of Mr. Malon Veerasamy had executed Power of Attorney



by falsely claiming title to the property. The learned counsel therefore submitted that the facts of the instant case are squarely covered by the Judgement of the Honourable Apex Court in ***Mohammad Ibrahim and others vs. State of Bihar and another*** reported in ***(2009) 8 SCC 751***. The learned counsel also submitted that the impugned FIR was registered pursuant to a direction issued by the learned Magistrate under Section 156 (3) of Cr.P.C; that the respondents have violated the directions given by the Honourable Supreme Court in ***Priyanka Srivastava and another Vs. State of Uttar Pradesh and others*** reported ***(2015) 6 SCC 287***; and that a petition under Section 156 (3) of Cr.P.C can be entertained only if there is an affidavit filed in support of the said petition. However, in the instant case, the respondent has not filed any affidavit. Hence he prayed for the quashing of the complaint as against the petitioner/A2.

4. Mr. A.Sathyamurthy, the learned counsel for the petitioner/A11 in Crl.O.P.No.34070 of 2019, submitted that the petitioner was the Sub Registrar, Oulgaret Registration Office, Pondicherry, who had registered the Power of Attorney and the subsequent Sale Deeds; that he is bound to register the documents presented before him; that Section 54 of the Registration Act does not mandate the Sub Registrar to verify the



title and ownership; that he cannot, therefore, refuse Registration, questioning the title and ownership; and that he had discharged his duty in accordance with law. Hence, he prayed for quashing of the complaint as against him.

5. Mr. N.Danalatchoumy, the learned Additional Public Prosecutor (Pondicherry) and Mrs. R.Renukadevi, the learned Counsel appearing for the second respondent/defacto complainant in both the petitions submitted that after Mr. Malon Veerasamy had sold the property, his Legal heirs in connivance with the petitioners and others had executed Power of Attorney and subsequently Sale Deeds in favour of third parties. The act of the petitioners in creating an encumbrance over the property would squarely attract the offences alleged. The FIR was stayed by this Court on 25.11.2019 and hence investigation could not be completed. They further submitted that only an investigation would reveal if the petitioners have committed any other offences. Hence, they prayed for the dismissal of the quash petitions.

6. This Court, on perusal of the petition filed by the second respondent/defacto complainant before the learned Judicial



Magistrate – I, Pondicherry, under Section 156 (3) of Cr.P.C finds that the said petition is not accompanied by an affidavit as mandated by the Honourable Supreme Court in ***Priyanka Srivastava and another Vs. State of Uttar Pradesh and others*** reported **(2015) 6 SCC 287**. The relevant observations of the Honourable Supreme Court in ***Priyanka Srivastava's case (cited supra)*** is as follows:-

“30.In the present case, we are obligated to say that learned magistrate should have kept himself alive to the aforesaid provision before venturing into directing registration of the FIR under 156(3) Cr.P.C. It is because the Parliament in its wisdom has made such a provision to protect the security creditors or any of its officers, and needless to emphasise, the legislative mandate, has to be kept in mind.”

7. That apart, this Court finds that the facts of the instant case is squarely covered by the Judgement of the Honourable Apex Court in ***Mohammad Ibrahim and others vs. State of Bihar and another*** reported in **(2009) 8 SCC 751**. Admittedly, the accused had executed documents by falsely claiming title over the property which was purchased by the defacto complainant from one Mr. Malon Veerasamy. The Legal heirs of Mr. Malon Veerasamy had executed these documents



by falsely claiming title. There is no allegation of forgery. That apart, this is not a case where the subsequent purchasers have prosecuted the executants of the document accusing them of cheating. The subsequent purchasers are also accused in this case. The Honourable Supreme Court in **Mohammad Ibrabim's case** (cited supra) had held as follows :-

“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.

18. Let us now examine whether the ingredients of an offence of cheating are made out. The essential ingredients of the offence of “cheating” are as follows:

- (i) deception of a person either by making a false or misleading representation or by dishonest concealment or by any other act or omission;*
- (ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally*



induce that person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived; and

(iii) such act or omission causing or is likely to cause damage or harm to that person in body, mind, reputation or property.

...

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.”

The above observations would show that the petitioners can neither be prosecuted for the offence of forgery nor for cheating.

8. As regards the petitioner in Crl.O.P.No.34070 of 2019, it is seen that besides the fact that no offence has been committed by the other accused, the Sub Registrar, Oulgaret Registration Office, Pondicherry, is protected in view of his duty to register a document presented before him. He has no authority to question the title or ownership of any person. The Judgments relied upon by the learned counsel (i.e) (i) ***S.Annamalai vs. State through Deputy Superintendent of Police*** reported in ***2018 (1) MWN (Cr.) 536*** and (ii) ***Sakthivel vs. State and another*** in ***Crl.O.P.(MD).No.10767 of 2014 dated 19.09.2018*** squarely apply to the facts of this case. As rightly submitted by the learned counsel Section 52



Crl.O.P.Nos.34070 and 31517 of 2019

of the Registration Act does not mandate the Sub Registrar to verify the title and ownership.

9.Hence, for all the reasons the FIR against the petitioners is liable to be quashed. Accordingly, the Criminal Original Petitions are allowed. Consequently, the Connected Miscellaneous Petitions are closed.

25.04.2023

dk

NCC: Yes/No

Index : Yes/No

Speaking/Non Speaking Order



Crl.O.P.Nos.34070 and 31517 of 2019

To
The Station House Officer,
Lawspet Police Station,
Puducherry.



WEB COPY



Crl.O.P.Nos.34070 and 31517 of 2019

SUNDER MOHAN. J,
dk

Pre Delivery Order in
Crl.O.P.Nos.34070 and 31517 of 2019
and
Crl.M.P.Nos.17264 and 18826 of 2019

25.04.2023