BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.08.2023

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THE HON'BLE MR.JUSTICE P.DHANABAL

Crl.O.P.(MD)No.9413 of 2019
and
Crl.M.P.(MD)No.5987 of 2019

Nammalwar ... Petitioner

Vs.

1.The State Rep.by
The Inspector of Police,
SIPCOT Police Station,
Thoothukudi District.
(Crime No.211 of 2019)

2.S.Thangaraj ... Respondents

PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to the case in Crime No.211 of 2019 pending on the file of the Inspector of Police, SIPCOT Police Station, Thoothukudi District and quash the same as against the petitioner.

For Petitioner : Mr.R.Anand

For R1 : Mr.M.Sakthi Kumar,
Government Advocate (Crl. Side)

For R2 : Mr.P.P.Alwin Balan

ORDER

This Criminal Original Petition has been filed to quash FIR in Cr.No.211 of 2019 pending on the file of the Inspector of Police, SIPCOT Police Station, Thoothukudi District as against the petitioner.

2.According to the petitioner, he has been shown as an accused in FIR in Cr.No.211 of 2019 pending on the file of the first respondent, which was registered based on the complaint given by the second respondent, for the offence under Sections 420, 465, 467 and 468 IPC. According to the petitioner, the occurrence in question is said to have been taken place on 19.06.2018, for which, the second respondent preferred a complaint before the first respondent and based on the same, FIR was registered on 04.06.2019 as against five persons, in which the petitioner herein is arrayed as A3. According to the defacto complainant, the property in S.No.113/2 measuring to the extent of 1 acre 30 cents was originally purchased by his father, namely Samuel, through a sale deed dated 04.01.1965 and he died on 07.03.1986. The said Samuel had five sons and two daughters. The said two daughters relinquished their right through deed dated 10.07.1981 and 28.04.1980 respectively. Thereafter, the said five sons filed partition suit in O.S.No.51 of 1995 and partitioned the said property among themselves through a decree dated 27.04.2012. While facts are being so, A1, by name Samuel, by claiming right over the said property, has appointed A1 as his power agent on 23.03.2018 and on the strength of the same, an extent of 75.681 has been sold to the petitioner through sale deed dated 18.07.2018 through document No.1801 of 2018. In respect of the remaining property, A1 on 06.07.2018, has sold 10.11 cents to A4 and on the same day 10.68 cents to A5. It is further case of the defacto complainant that even prior to the execution of the said sale deed, on 19.06.2018, A2, vide document Nos. 645/18 and 546/18 has sold 5.10 cents and 5.05 cents to A5. According to the defacto complainant, A1 has neither sempulance of right nor having the capacity of dealing with the said property. Further, according to the petitioner, the allegations referred in FIR cannot be made as a subject matter for investigation at the instance of the police party and FIR is liable to be quashed.

3.The second respondent filed counter by alleging that A3, who had entered into a sale agreement with A1, represented by his power agent A2. The petitioner in connivance with A4 husband, who was then Sub Registrar of Pudur, has registered a fraudulent power deed. The petitioner herein has entered into the sale agreement, which was within his knowledge that the above sale agreement was in pursuant to the forged power deed, created with an intend to grab the property. The petitioner had knowledge of the fraudulent deed prior to the sale agreement. The petitioner and others conspired together and made fraudulent documents with an intention to grab the properties. The principal of the forged power deed, namely Samuel, was born on 08.03.1973 and his age as on today is 48. While so, at the time of execution of patta, he must be only 11 years. Thus, it is clear the mentioning of father’s name in the patta issued during UDR is only a mistake and the same was taken advantage by the petitioner to create forged deeds. Hence, the defacto complainant preferred the complaint and this petition is liable to be dismissed.

4.The learned counsel appearing for the petitioner would contend that A1, being owner of the property, executed power deed in favour of A2 dated 23.03.2018 and thereafter, so many sale transactions were happened. The petitioner herein entered into an agreement with A2, who is power agent of A1 on 18.07.2018. The petitioner has paid Rs.25,00,000/- towards advance and thereafter, he came to know that A1 and A2 impersonated and created forged document and thereby, the second respondent caused paper publication on 05.01.2019 by stating all the happenings and thereafter, FIR has been registered on 04.06.2019. The petitioner also gave a complaint as against A1 and A2 before the police and thereafter, A1 and A2 repaid Rs.20,00,000/- and remaining amount of Rs.5,00,000/- is yet to be paid. The petitioner has no intention to cheat the defacto complainant and further the petitioner has also been cheated by A1 and A2. The petitioner only intended to purchase the property. After seeing all the records, which were prepared by A1 and A2, he found the encumbrance and he also verified the patta and then only, he entered into agreement. Now, the petitioner is ready to execute cancellation deed to the defacto complainant. Even according to FIR, no offence is made out as against the petitioner and the so called power deed has been executed between A1 and A2 and the petitioner being agreement holder, no way connected with the forged document and thereby, FIR is liable to be quashed.

5.The learned counsel appearing for the second respondent would contend that A1 and A2 have created forged documents and based on the same, A3 entered into sale agreement with A2 and if the petitioner cancelled the sale agreement then, he has no objection to quash FIR.

6.The learned Government Advocate(Crl.side) appearing for the first respondent would contend that based on the complaint given by the second respondent, FIR has been registered in Cr.No.211 of 2019 for the offences under Sections 420, 465, 467 and 468 IPC and the same is at initial stage. So many transactions have been made and thereby, elaborate investigation is required in this case. Hence, he strongly opposed to quash FIR.

7.Heard both sides and perused the materials available in the records.

8.On perusal of records shows that the main allegations are against A1 and A2. According to FIR, they only created forged document, impersonated and executed deed. According to the petitioner, he only intended to purchase the property and paid advance amount of Rs.25,00,000/-. Thereafter, he came to know that A1 and A2 have no right over the property. Immediately, he came to know about the paper publication on 05.01.2019 and thereby, the petitioner gave complaint as against A1 and A2 for repayment of advance amount. Therefore, this petitioner being agreement holder has no nexus with the other accused. Entire allegations are against A1 and A2. Though the case is in the stage of FIR, on perusal of the same, no offence is made out as against the petitioner and he is agreement holder and thereby no offence is made out.

9.The learned counsel appearing for the petitioner relied upon the judgment of the Hon'ble Supreme Court in a case of Sheila Sebastian Vs. R.Jawaharaj reported in (2018) 2 LW (Cri)962, wherein Hon'ble Supreme Court held as follows:-

25.Keeping in view the strict interpretation of penal statute i.e., referring to rule of interpretation wherein *natural inferences are preferred, we observe that a charge of forgery cannot be imposed on a person who is not the maker of the same. As held in plethora of cases, making of a document is different than causing it to be made. As Explanation 2 to Section 464 further clarifies that, for constituting an offence under Section 464 it is imperative that a false document is made and the accused person is the maker of the same, otherwise the accused person is not liable for the offence of forgery.*

26.The definition of "false document" is a part of the definition of "forgery". Both must be read together. 'Forgery' and 'Fraud' are essentially matters of evidence which could be proved as a fact by direct evidence or by inferences drawn from proved facts. In the case in hand, there is no finding recorded by the trial Court that the respondents have made any false document or part of the document/record to execute mortgage deed under the guise of that 'false document'. Hence, neither respondent no.1 nor respondent no.2 can be held as makers of the forged documents. It is the imposter who can be said to have made the false document by committing forgery. In such an event the trial court as well as appellate court misguided themselves by convicting the accused. Therefore, the High Court has rightly acquitted the accused based on the settled legal position and we find no reason to interfere with the same.

10.In a case of Mohammed Ibrahim and others Vs. State of Bihar and another reported in (2009)8 SCC 751, the Hon'ble Supreme Court held 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 describing it as his, there are two possibilities. The first is that he bonafide 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.On careful reading of those judgments it is clear that even when a document is executed by a person claiming a property which is not his, there does not by itself satisfy the requirements of false documents as defined under Section 464 IPC and making a document is is different than casting it to be made, only one who makes a false document can be held liable under the provisions of Section 464 IPC. In the case on hand, this petitioner has not made any false document and he is an agreement holder.

12.At this juncture, the learned counsel appearing for the second respondent has represented that this Court may direct the petitioner to execute cancellation deed with regard to the said agreement. It is for the petitioner and the second respondent to take steps for cancelling the sale agreement and this Court cannot form any opinion with regard to the cancellation of sale agreement.

13.In view of the above discussion, FIR in Cr.No.211 of 2019 pending on the file of the first respondent police is quashed as against the petitioner herein. Accordingly, this criminal original petition is allowed. Consequently, connected miscellaneous petition is closed.

07.08.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

1.The The Inspector of Police,
SIPCOT Police Station,
Thoothukudi District.

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

P. DHANABAL,J.

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