



Crl.O.P.(MD).No.15479 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.08.2023

CORAM:

THE HONOURABLE MR. JUSTICE P.DHANABAL

Crl.O.P.(MD).No.15479 of 2019

and

Crl.M.P(MD) No.9186 of 2019

1.V.Sanjeevi

2. S.Balan @ Balasubramanian

3. Ashok

... Petitioners

Vs.

1. The Inspector of Police
Anti Land Grabbing Special Cell
Karur

2. S.Venugopal

..Respondents

PRAYER: This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, to quash the charge sheet filed by the first respondent under Sections 120(b), 420, 465, 506(i) of IPC in C.C.No. 40 of 2018 on the file of the learned Chief Judicial Magistrate, Karur.

For Petitioner : Mr.B.Saravanan, Senior Counsel
for Mr.E.K.Kumaresan

For R-1 :Mr.R.M.Anbunithi
Additional Public Prosecutor

For R-2 :No appearance



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ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.40 of 2018 on the file of the learned Chief Judicial Magistrate, Karur.

2. According to the petitioners based on the complaint given by the second respondent the first respondent registered a case in Crime No.19 of 2014 for the offences under Sections 120(B),420,465 and 506(i) of IPC. Already charge sheet as against the first accused who is the vendor of the first petitioner was quashed by this Court. These petitioners are only document writer and witnesses to the sale deed executed by the first accused, hence it is unnecessary for them to proceed with the trial. Infact an extent of Acre 10.00 ½ cents in S.No.30 of Andankovil East Village, Thanthoni Union, Karur Taluk was owned by one C.Kandasamy and he purchased the same on 18.02.1994. Thereafter the said C.Kandasamy had appointed one R.Balasubramanin , son of Ramasamy, first accused as his power agent in respect of the aforesaid property by virtue of a registered general Power of Attorney. As a power agent in respect of the above said property he sold the property to the second accused namely C.Ganesan by virtue of a registered sale deed dated 08.11.2005 . On and from the date of purchase the said C.Ganesan



was in possession and enjoyment of the property without any interruption. These petitioners herein are the document writer and witnesses to the sale deed executed by the first accused in favour of the second accused. While the facts are being so, the second respondent claiming that he is owning a property of 0.01 $\frac{3}{4}$ situated between the property of C.Kandasamy and the first petitioner and while selling land of C.Kandasamy he omitted to mention that the first petitioner and the said Venugopal are the persons holding the property on the northern boundary. Hence the defacto complainant has lodged complaint before the first respondent stating that power agent R. Balasubramanian failed to mention his name as a northern boundary holder and executed the sale deed in favour of C.Ganesan. Thereafter the first respondent convinced both the parties by stating that the matter is purely civil in nature and directed the parties to get redressal before the Civil Court. Hence the petitioners were under the impression that the first respondent has closed the complaint but suddenly the first respondent registered a case in Crime No.19 of 2014 as against the petitioners herein. Further civil suit in O.S. No.156 of 2018 was filed for execution of rectification deed and the same is still pending. In the meanwhile charge sheet has been filed and the same was taken on file in C.C. No. 40 of 2018.

3. No counter was filed by the respondents.



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4. No representation on behalf of the second respondent. This court has given ample chances to the second respondent but none appeared on behalf of the second respondent, hence this Court is inclined to pass orders based on the available records.

5. The learned counsel for the petitioners would contend that A2 and A3 purchased the property from one Kandasamy. Thereafter the said Kandasamy appointed one R. Balasubramanian as power agent to sell the property. The said R.Balasubramanian executed sale deed in favour of the C.Ganesan in respect of the property dated 08.11.2005. At that time the northern boundary was mentioned as Periyasamy instead of Venugopal, thereby the second respondent had given false complaint stating that the northern boundary was omitted to be mentioned in the name of the said Venugopal, thereby they committed the offences under Sections 120(b),420,465 and 506(i) of IPC. Mere non mentioning of the defacto complainant in the northern boundary will not constitute any offence . Further already the said R. Balasubramanian filed a civil suit in O.S. No.156 of 2018 was filed for execution of rectification deed and the same is still pending. Further these petitioners are only document writer and witnesses to the sale deed executed by the first accused. Whiles, the second respondent has given false complaint and based on that complaint, without conducting proper investigation the first



respondent filed final report and hence the charge sheet is liable to be quashed.

6. The learned Additional Public Prosecutor appearing for the first respondent would contend that the second respondent has given complaint before the first respondent stating that the petitioners and other have forged documents by omitting to mention about the name of the second respondent in the northern boundary and also mentioned to excess extent, thereby created forged documents. After investigation since *prime facie* materials are available as against the petitioners, the first respondent filed final report and proceeded with the case, thereby the charge sheet is liable to be dismissed.

7. Heard both sides and perused the materials available on record.

8. On perusal of the record it is observed that the second respondent gave complaint before the first respondent and based on that complaint, the first respondent registered a case in Crime No.19 of 2014 for the offences under Sections 120(B),420,465 and 506(i) of IPC. Thereafter the case was investigated and the first respondent filed final report. The contention of the defacto complainant is that the accused persons created forged documents as if northern boundary belongs to



one Periyasamy. Infact the northern boundary belongs to the second respondent and they purposefully omitted the name of the second respondent in the northern boundary, thereby they created forged documents. According to the petitioners they are only document writer and witnesses to the sale deed executed by the first accused. Already charge sheet as against the first accused who is the vendor of the first petitioner was quashed by this Court. The only allegations as against these petitioners is that they prepared the document and attested as witness to the said document. Further if the second respondent is aggrieved for the above said wrong mentioning of northern boundary he can approach the civil court for appropriate remedy, instead of that he has filed this criminal complaint and the same is abuse of process of law and is liable to be quashed.

9. At this juncture the learned counsel for the petitioners relied on the order passed by this Court in the case of ***T.Muthuramalingam.vs. The Inspector of Police, District Crime Branch, Theni District and others*** reported in ***(2018)3 MWN (Cri) 487***, wherein it is held as follows:

“13.With regard to allegations of false documents, it will be useful to refer to the judgment of the Supreme Court of India in Mohammed Ibrahim and Others reported in 2009 3 SCC Crl P 929. The relevant portion of the judgment is extracted hereunder.

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



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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.

15. 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.

16. 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.

17. 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.



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18. 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.

10. On a careful reading of the said judgment it is clear that in order to attract the penal section of 465 of IPC the persons has to make or execute a document claiming to be some one else or authorised by some one else or he altered or tampered a document or he obtained a document by practicing deception, or from a person not in control of his senses. In the case on hand also no averments in the complaint to attract any penal provisions mentioned in the First Information Report and charge sheet. The registration of First Information Report and pending charge sheet are abuse of process of Court. Therefore the said case is liable to be quashed.

11. Accordingly this Criminal Original Petition is allowed and the proceedings in C.C.No.40 of 2018 on the file of the learned Chief Judicial Magistrate, Karur is quashed in so far the petitioners are concerned. Consequently connected miscellaneous petition is closed.

16.08.2023

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

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1. The Judicial Magistrate, Karur
2. The Inspector of Police
Anti Land Grabbing Special Cell
Karur
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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P.DHANABAL, J.

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