BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 12.01.2024

CORAM

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

CRL OP(MD)No.3561 of 2021
and
Crl.M.P(MD)No.1984 of 2021

1.K.M.Ravinthar

2.R.Aswini ... Petitioners

Vs

1.The State Represented by
The Inspector of Police,
District Crime Branch Police Station,
Anti Land Grabbing Special Cell,
Thanjavur.
(in Crime No.32 of 2014)

2.Komalavalli ... Respondents

Prayer: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to call for the entire records pertaining to the impugned final report in C.C.No.19 of 2020 on the file of the learned Judicial Magistrate-II, Thanjavur and quash the same as against the petitioners herein.

For Petitioner : Mr.A.Rahul

For R1 : Mr.M.Sakthi Kumar
Government Advocate (crl.side)

For R2 : Mr.S.Deenadhayalan

ORDER

The present criminal original petition is filed seeking to quash the final report in C.C.No.19 of 2020 on the file of the learned Judicial Magistrate No.II, Thanjavur.

2. The brief facts of the case of the prosecution are as follows:

The defacto complainant Komalavalli, is a resident of Thulasiyapuram Colony, Thanjavur. She purchased a land in Survey No. 48/10, Plot No.32 measuring 2450 sq.ft. from one Parvathi(A1), W/o.Ganesha Pallundar, through a registered sale deed, dated 05.06.1985. She also took possession of the said property and obtained a patta in her favour. However, the first accused Parvathi executed a Power of Attorney in favour of her son Senthilnathan(A2) in respect of her properties including the property sold in favour of the defacto complainant. Thereafter, the said Senthilnathan sold all the properties in favour of one Tamilselvi (A3), (since deceased) through a registered sale deed dated 12.11.2004 for a total sale consideration of Rs.1,94,400/-. The contention of the defacto complainant is that the accused 1 to 5 had conspired with each other to grab her property and therefore, she lodged a complaint with the Sub Inspector of Police, Anti-Land Grabbing Special Cell, Thanjavur, which was registered as FIR in Crime No.32 of 2014. The Inspector of police, after conducting investigation, laid a final report before the learned Judicial Magistrate No.II, Thanjavur in C.C.No.19 of 2020 (renumbered as C.C.No.376 of 2022). The present petition is filed by the accused 4 and 5, namely, K.M.Ravinthar and R.Aswini, seeking to quash the final report filed by the concerned police.

3. Mr.A.Rahul, learned counsel appearing for the petitioners contended that Tamil Selvi (A3) is a *bona fide* purchaser for value and that the petitioners were not aware of the earlier sale made in favour of the defacto complainant by A1. He would also contend that after the death of Tamil Selvi (A3), A4 and A5 became entitled to the property

bearing plot No.32 and they cannot be charged for the offences punishable under Sections 420, 120(B), 423, 465, 468 and 471 IPC. He also relied on the decision in ***Mohammed Ibrahim and Others Vs. State of Bihar and Another*** reported in ***(2009) 3 SCC (Cri) 929*** and contended that the criminal proceedings should not be misused for settling scores or pressurising parties to settle civil disputes and that the purchasers of the property cannot be made as co-accused. He would also contend that the petitioners are not the purchasers of the property and they became entitled to plot No.32 on the death of Tamilselvi and they have not fabricated any document as alleged by the prosecution.

4. Per contra, Mr.S.Deenadhayalan, learned counsel appearing for the defacto complainant would contend that the police after conducting proper investigation had laid a final report before the Judicial Magistrate No.II, Thanjavur. There is no good ground to quash the entire case.

5. Mr.M.Sakthi Kumar, learned Government Advocate (Crl.side) appearing for the first respondent contended that the case is pending on the file of the learned Judicial Magistrate No.II, Thanjavur, since an

order of stay was granted by this Court.

6. At the outset, it may be observed that the sale made in favour of the defacto complainant is of the year 1985. However, the first accused had executed a power of attorney in the year 2003 in favour of her own son Senthilnathan in respect of all her properties including the property sold in favour of the defacto complainant. The defacto complainant's plot number is 32 measuring 2450 sq ft. Subsequently, A2 sold all his properties in favour of the third accused Tamilselvi, (since deceased) on 12.11.2004. The petitioners are husband and daughter of the said Tamilselvi. They became entitled to the property bearing plot No.32 after the death of Tamilselvi. The contention of the learned counsel for the petitioners is that Tamilselvi(A3) obtained a bank loan for construction of a house and in fact, they constructed the house during the year 2004. However, this complaint was preferred by the defacto complainant only in the year 2014. It is not known as to why the present defacto complainant did not file any civil suit against the original vendor A1. In any event, the present petitioners are the legal heirs of the deceased Tamilselvli and they cannot be stated to have fabricated the sale

deeds. In fact, Tamilselvi had obtained a bank loan and had also constructed a house, which shows that she had purchased the property for her own use and not for the purpose of cheating the present defacto complainant.

7. At this juncture, it is also relevant to extract the decision of the Hon'ble Supreme Court in ***Mohammed Ibrahim and Others (cited supra).***

> *10. Section 467 (in so far as it is relevant to this case) provides that whoever forges a document which purports to be a valuable security, shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine. Section 471, relevant to our purpose, provides that whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document, shall be punished in the same manner as if he had forged such document.*
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> *11. Section 470 defines a forged document as a false document made by forgery. The term "forgery" used in these two sections is defined in Section 463. Whoever makes any false documents with intent to cause*

damage or injury to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into express or implied contract, or with intent to commit fraud or that the fraud may be committed, commits forgery.

12. Section 464 defining "making a false document" is extracted below :

"464. Making a false document.--A person is said to make a false document or false electronic record---

First.--Who dishonestly or fraudulently -

(a) makes, signs, seals or executes a document or part of a document;

(b) makes or transmits any electronic record or part of any electronic record;

(c) affixes any digital signature on any electronic record;

(d) makes any mark denoting the execution of a document or the authenticity of the digital signature, with the intention of causing it to be believed that such document or a part of document, electronic record or digital signature was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person

by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or

Secondly.--Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with digital signature either by himself or by any other person, whether such person be living or dead at the time of such alternation; or

Thirdly.--Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his digital signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration.

Explanation 1 - A man's signature of his own name may amount to forgery.

Explanation 2 - The making of a false document in the name of a fictitious person, intending it to be believed that the document was made by a real person, or in the name of a deceased person, intending it to be *believed that the document was made by the person in his lifetime, may amount to forgery.*

[Note: The words `digital signature' wherever it occurs were substituted by the words `electronic signature' by Amendment Act 10 of 2009]."

13. The condition precedent for an offence under Sections 467 and 471 is forgery. The condition precedent for forgery is making a false document (or false electronic record or part thereof). This case does not relate to any false electronic record. Therefore, the question is whether the first accused, in executing and registering the two sale deeds purporting to sell a property (even if it is assumed that it did not belong to him), can be said to have made and executed false documents, in collusion with the other accused.

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.

8. In the instant case, the sale deed executed in favour of the third accused Tamilselvi would not fall under the second and third categories of false documents. When a document is not a false document, there cannot be any offence of forgery and therefore, the offences under Sections 467 and 471 IPC would not be attracted as far as the present case is concerned. Moreover to constitute an offence under Section 420 IPC, there should be an element of cheating consequent upon which, the accused should have dishonestly induced the person deceived (i) to deliver any property to any person or (ii) to make, alter or destroy wholly or in part a valuable security signed or anything signed or sealed and which is capable of being converted into a valuable security.

9. In the instant case, the fourth and fifth respondents have not committed an offence of Section 420 IPC because they were never made as parties to the sale deed executed in favour of Tamilselvi. As held in the decision in ***Mohammed Ibrahim and Others cited supra,*** even the purchaser cannot be made as an accused. In the instant case, as already observed, since the petitioners are only the legal heirs of the deceased Tamilselvi, the entire case in C.C.No.19 of 2020 fail as against the

present petitioners. Therefore, the Criminal Original Petition is allowed and the final report filed in C.C.No.19 of 2020 (renumbered as C.C.No.376 of 2022), before the learned Judicial Magistrate No.II, Thanjavur is quashed insofar as the present petitioners are concerned. Consequently, connected miscellaneous petition is closed.

12.01.2024

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

1.The Judicial Magistrate-II, Thanjavur.

2.The Inspector of Police,
District Crime Branch Police Station,
Anti Land Grabbing Special Cell,
Thanjavur.

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

R.HEMALATHA,J.

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