BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.03.2024

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THE HON'BLE MRS.JUSTICE R.HEMALATHA

Crl.O.P.(MD) No.4555 of 2021
and
Crl.MP(MD)No.2555 of 2021

1.Aravind
2.Nithya ... Petitioners / Respondents 2 & 3

Vs.

Dharmaraj ... Respondent / Complainant

Prayer: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, 1973, to call for the records in connection with the impugned private complaint in C.C.No.350 of 2013 pending trial on the file of the Judicial Magistrate No.II, Dindigul and quash the same.

For Petitioners : Mr.N.Sathish Babu

For Respondent : Mr.D.Venkatesh

O R D E R

Seeking to quash the final report in C.C.No.350 of 2013 on the file of the Judicial Magistrate No.II, Dindigul, the present petition is filed by A2 and A3.

2. The case of the prosecution, in a nutshell, is as follows:-

The father of the petitioners and the respondent/complainant are brothers. Their mother was residing with the father of the petitioners. During 2006, she was taken to the Registrar Office by the father of the petitioners and got a Settlement Deed executed in his favour in respect of her property in Dharmathupatti Village, Kombai, Dindigul District ad-measuring 9 acres 62 cents. Thereafter, a panchayat was convened on 20.05.2007 and as per the resolution passed in the said panchayat, a partition deed was executed on the same day between the shareholders through and by which, the land in Dharmathupatti Village, Kombai, Dindigul District, measuring 9 acres 62 cents was allotted to the share of the respondent/complainant. Subsequently, the respondent/complainant obtained patta from the Revenue Divisional Officer on 16.04.2010. It was challenged by the first accused before the DRO and the same was dismissed on 10.08.2010. Suppressing all these facts, the accused 1 to 3 sold the property on 23.09.2010 in favour of one Selvamani(A4).

3.According to the petitioners, the defacto complainant lodged a complaint with the District Crime Branch, Dindigul and the same was registered as FIR in Crime No.54 of 2011 for the offences punishable under Sections 120(b), 465, 468, 471 & 420 IPC. However, a final report in C.C.No.81 of 2013 was filed only against the accused Nos.4 to 6 for the offences punishable under Sections 294(b) & 506(i) IPC and the same also ended in conviction. According to him, for the very same cause of action, the respondent/complainant filed a private complaint under Section 200 Cr.P.C., before the Judicial Magistrate No.II, Dindigul in C.C.No.350 of 2013 against accused 1 to 6 for the offences punishable under Sections 465, 468, 471, 420 r/w 120 of IPC.

4.Mr.N.Sathish Babu, learned counsel appearing for the petitioners would contend that there is no fabrication of document as alleged by the respondent/complainant to attract the offences under Sections 465, 468 and 471 IPC and in fact, the petitioners' mother Vijaya, one of the accused (A1) in C.C.No.350 of 2013 filed Crl.OP(MD)No.23488 of 2014 before this Court and a learned Single Judge of this Court (The Hon'ble Mr.Justice G.R.Swaminathan) vide his orders dated 18.09.2019, quashed the private complaint filed under section 200 Cr.P.C., as against her.

5. Per contra, Mr.D.Venkatesh, learned counsel appearing for the respondent would contend that the averments in the private complaint

would clearly go to show the offences committed by the present petitioners and there is no good ground to quash the same.

6. It is pertinent to point out that the learned single Judge of this Court has quashed the proceedings against the first accused viz., Vijaya and in his order, he has observed thus:-

> *"The petitioner is facing trial in C.C No.350 of 2013 on the file of the learned Judicial Magistrate No.2, Dindigul. It is a private complaint. The case of the respondent is that the property in question actually belongs to him and that the petitioner herein had fraudulently sold the same in favour of the third parties. In other words, the case of the complainant is that the petitioner had sold the property that does not actually belonged to her. The question is whether this act committed by the petitioner can be said to attract the offences under Sections 465, 468, 471, 420 r/w.120(b) of IPC.*
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> *2.The issue is no longer res integra. The Hon'ble Supreme Court in the decision reported in (2009) 8 SCC 751 (Md.Ibrahim vs. State of Bihar) was concerned with a case arising under Section 467 and 471 of IPC. Paragraph Nos.8 to 12 of the sad decision are as follows :*
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> > *"8.Let us first consider whether the complaint averments even assuming to be true make out the ingredients of the offences punishable either under Section 467 or Section*

471 of Penal Code. 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. Section 470 defines a forged document as a false document made by forgery.

9.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. 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].

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.

10.An analysis of Section 464 of Penal Code shows that it divides false documents into three categories:

10.1) 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.

10.2) 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.

10.3) 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.

11. 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.*

12.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.

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. 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."*

3.Applying the aforesaid ratio laid down by the Hon'ble Supreme Court, the impugned prosecution deserves to be quashed as far as the petitioner herein is concerned. This criminal original petition stands allowed. Consequently, connected miscellaneous petitions are closed. "

7. The case of the respondent/Complainant is that the property in Dharmathupatti Village, Kombai, Dindigul District measuring 9 acres 62 cents, actually belonged to him by way of a partition deed dated 20.05.2007. Admittedly, it is an unregistered partition deed. However, it is the contention of the respondent/complainant that though he obtained patta, all the accused conspired with each other and sold the property in favour of the fourth accused. It is seen from the records that the property originally belonged to Vijaya and she had executed a registered settlement

deed in favour of petitioners' father namely, Vijayakandeepan. He is the brother of the respondent/Complainant. Since it was objected to by the respondent/complainant, a partition deed was said to have been executed in the presence of panchayathars in and by which the property was allotted to the share of the defacto complainant. However, the fact remains that the original owner of the property is Vijaya(A1). There can be no forgery/ fabrication of documents. If there is no forgery, then neither Section 467 nor Section 471 of IPC would be attracted.

8. In the circumstances, the private complaint in C.C.No.350 of 2013 pending on the file of the Judicial Magistrate No.II, Dindigul, is hereby quashed and the Criminal Original Petition is allowed. Consequently, the connected miscellaneous petition is closed.

08.03.2024

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

The Judicial Magistrate No.II,
Dindigul.

R.HEMALATHA, J.

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