BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 30.08.2024

Pronounced on : 29.10.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.O.P.(MD)No.8633 of 2024

M.Sahayaselvi ... Petitioner

Vs.

1.The State rep. by
The Sub Inspector of Police,
District Crime Branch-II,
Dindigul, Dindigul District.

2.M.Thangarajan ... Respondents

Prayer : This Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records in Crime No.1 of 2024 on the file of the Inspector of Police, District Crime Branch, Dindigul District and quash the same as against the petitioner.

For Petitioner : M/s.M.Sahayaselvi (party-in-person)

For R1 : Mr.P.Kottai Chamy
Government Advocate (Crl. Side)

For R2 : Mr.S.Ram Sundar Vijayaraj

ORDER

The Criminal Original Petition has been filed, invoking Section 482 Cr.P.C., seeking orders to quash the FIR in Crime No.1 of 2024 pending on the file of the first respondent.

2. On the basis of the complaint lodged by the second respondent, FIR came to be registered in Crime No.1 of 2024 against 13 persons including the petitioner herein for the alleged offences under Sections 120B, 417, 463, 465, 468 and 471 IPC.

3. The 11th accused has earlier filed a similar petition in Crl.O.P.(MD)No.3068 of 2024 to quash the FIR as against him and a learned Judge of this Court, vide order dated 03.04.2024, disposed of the said petition with a direction to the investigating officer to conduct the investigation by considering the points raised in the quash application, during the course of investigation and shall conclude the investigation within a period of six months either by filing final report or with a closure report.

4. When the present matter was taken up for final hearing, the learned Government Advocate (Criminal Side) appearing for the first respondent would submit that the first respondent, after completing the investigation, has filed the final report and he has also produced the copy of the final report. The learned Government Advocate (Criminal Side) appearing for the first respondent and the learned counsel appearing for the second respondent would submit that since charge sheet has already been filed, the present petition to quash the FIR has become infructuous. At this juncture, it is necessary to refer the judgment of the Hon'ble Supreme Court in the case of ***Anand Kumar Mohatta and another Vs. State (Govt. of NCT of Delhi) Department of Home and another*** reported in ***AIR 2019 Supreme Court 210***, wherein, the Hon'ble Apex Court has specifically held when the final report is filed pending quash petition, the High Court has jurisdiction to look into the material collected by the investigating agency and the relevant passages are extracted hereunder:-

> *"15. First, we would like to deal with the submission of the learned Senior Counsel for the Respondent No.2 that once the charge sheet is filed, petition for quashing of FIR is untenable. We do not see any merit in this submission, keeping in mind the position of this Court in Joseph Salvaraj A. v. State of Gujarat (2011) 7 SCC 59. In the*

case of Joseph Salvaraj A. (supra), this Court while deciding the question whether the High Court could entertain the 482 petition for quashing of FIR, when the charge sheet was filed by the police during the pendency of the 482 petition, observed: -

> *"16. Thus, from the general conspectus of the various sections under which the appellant is being charged and is to be prosecuted would show that the same are not made out even prima facie from the complainant's FIR. Even if the charge-sheet had been filed, the learned Single Judge could have still examined whether the offences alleged to have been committed by the appellant were prima facie made out from the complainant's FIR, charge-sheet, documents, etc. or not."*

16. Even otherwise it must be remembered that the provision invoked by the accused before the High Court is Section 482 Cr.P.C. and that this Court is hearing an appeal from an order under Section 482 of Cr.P.C. Section 482 of Cr.P.C reads as follows: -

> *"482. Saving of inherent power of the High Court.- Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent*

abuse of the process of any Court or otherwise to secure the ends of justice."

17. There is nothing in the words of this Section which restricts the exercise of the power of the Court to prevent the abuse of process of court or miscarriage of justice only to the stage of the FIR. It is settled principle of law that the High court can exercise jurisdiction under Section 482 of Cr.P.C even when the discharge application is pending 2 (2011) 7 SCC 59 with the trial court. Indeed, it would be a travesty to hold that proceedings initiated against a person can be interfered with at the stage of FIR but not if it has advanced, and the allegations have materialized into a charge sheet. On the contrary it could be said that the abuse of process caused by FIR stands aggravated if the FIR has taken the form of a charge sheet after investigation. The power is undoubtedly conferred to prevent abuse of process of power of any court."

5. Considering the legal position above referred, this Court has no other option but to say that the objections raised by the counsels for the respondents are devoid of merits and are liable to be rejected.

6. The case of the second respondent/defacto complainant, as evident from the FIR, is that the second respondent had purchased the property in Survey No.748/8C3 at Sevugampatti Village from one Amalorpavam vide sale deed dated 19.07.2010 and since then he has been in possession and enjoyment of the said property by cultivating the same, that the accused 1 to 6, by misusing the patta bearing No.6995, which came to be issued for the second respondent in respect of the land in Survey No.748/8C3, had executed a document in favour of the seventh accused Christofer Samuel vide document dated 02.08.2023 bearing Registration No.1844/2023, that the seventh accused on the very next day i.e., on 03.08.2023 has executed a sale deed in favour of the petitioner herein/fourth accused Sahayaselvi, who was one of the executant of the document dated 02.08.2023 and the said document came to be registered in document No.1899/2023 dated 07.08.2023, that an Advocate Kandasamy of Nilakottai had prepared the documents and subscribed his signature as a scribe, that all of them have colluded together and used patta No.6995 and executed documents without the second respondent's signature, as if, the property was belonging to them, that the Sub Registrar, without considering the encumbrance and without following the due

process, had helped the other accused in registering the fabricated documents and that therefore, action has to be taken against all the accused.

7. The case of the petitioner is that father of the accused 1 to 4 Mariya Louis filed a suit in O.S.No.1020 of 1992 against his brother Sathappan before the Additional Subordinate Court, Dindigul, that the suit was decreed in favour of the said Mariya Louis and challenging the same, the said Sathappan filed an appeal in A.S.No.227 of 1994 before the Principal District Court, Dindigul, that the said appeal was allowed and the suit was dismissed, that the said Mariya Louis has preferred a second appeal before this Court in S.A.(MD)No.216 of 2010 and the same was allowed and the judgment and decree passed by the trial Court was restored and that the legal heirs of the said Sathappan, without disclosing the pendency of the second appeal, sold the disputed property.

8. It is the further case of the petitioner that the said Sathappan's son Laser has executed a document in favour of his wife Amalorpavam vide gift deed in the year 2010, who in turn executed a sale deed in favour of the second respondent on 19.07.2010, that the said Laser and his wife

Amalorpavam, by suppressing the pendency of the appeal, have executed the documents, that subsequently this Court has allowed the second appeal and decreed the suit in favour of the said Mariya Louis declaring his title to the property in dispute, that in pursuance of the judgment and decree passed by this Court, the legal heirs of the said Mariya Louis sold the property in favour of Christofer Samuel vide sale deed dated 02.08.2023 and that since the second respondent had threatened and attempted to man handle the purchaser Christofer Samuel on the date of registration of sale deed on 02.08.2023, the said Christofer Samuel sold the property again to the petitioner herein, one of the legal heir of the said Mariya Louis.

9. The main contention of the petitioner is that the second respondent is a habitual land grabber and he is claiming that he purchased the property from the said Amalorpavam but the alleged vendor Amalorpavam herself was an illegal encroacher and not the legal owner of the property, that the sale deed was executed during the pendency of the second appeal, that as per the judgment of this Court in the second appeal, the said Amalorpavam or her husband or her father-in-law are not having

any right over the said property and that the above complaint came to be lodged only to threaten and harass the accused including the petitioner.

10. Heard the petitioner, who appeared in person, the learned Government Advocate (Criminal Side) appearing for the first respondent and the learned counsel appearing for the second respondent. I have perused the records and also the copy of the final report produced by the first respondent. I have also perused the judgment of this Court passed in S.A.(MD)No.216 of 2010 dated 02.12.2016 to understand the civil disputes pending between the parties.

11. In the case on hand, as already pointed out, the main case of the prosecution is that the accused 1 to 6 had colluded together with other accused and fabricated the documents by using the patta issued to the second respondent in respect of the land in Survey No.748/8C3, as if, the property was belonging to the accused 1 to 6 with ulterior desire to cause loss to the second respondent.

12. It is necessary to refer the judgment of the Hon'ble Supreme Court in ***Md. Ibrahim and others Vs. State of Bihar and another*** reported in ***(2009) 8 SCC 751,***

> *"12. .... 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."

13. It is also necessary to refer the judgment of the Hon'ble Apex Court in the case of ***Sheila Sebastian Vs. R.Jawaharaj and another*** reported in ***AIR 2018 Supreme Court 2434,***

"19. A close scrutiny of the aforesaid provisions makes it clear that, Section 463 defines the offence of forgery, while Section 464 substantiates the same by providing an answer as to when a false document could be said to have been made for the purpose of committing an offence of forgery under Section 463, IPC. Therefore, we can safely deduce that Section 464 defines one of the ingredients of forgery i.e., making of a false document. Further, Section 465 provides punishment for the commission of the offence of forgery. In order to sustain a conviction under Section 465, first it has to be proved that forgery was committed under Section 463, implying that ingredients under Section 464 should also be satisfied. Therefore unless and until ingredients under Section 463 are satisfied a person cannot be convicted under Section

465 by solely relying on the ingredients of Section 464, as the offence of forgery would remain incomplete

20. The key to unfold the present dispute lies in understanding Explanation 2 as given in Section 464 of IPC. As Collin J., puts it precisely in Dickins v. Gill, (1896) 2 QB 310, a case dealing with the possession and making of fictitious stamp wherein he stated that "to make", in itself involves conscious act on the part of the maker. Therefore, an offence of forgery cannot lie against a person who has not created it or signed it.

21. It is observed in the case Md. Ibrahim and Ors. vs. State of Bihar and Anr., (2009) 8 SCC 751 that-

> *"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."*

......

24. In Mir Nagvi Askari vs. Central Bureau of Investigation, (2009) 15 SCC 643, this Court, after analysing the facts of that case, came to observe as follows:

> *"A person is said to make a false document or record if he satisfies one of the three conditions as noticed hereinbefore and provided for under the said section. The first condition being that the document has been falsified with the intention of causing it to be believed that such document has been made by a person, by whom the person falsifying the document knows that it was not made. Clearly the documents in question in the present case, even if it be assumed to have been made dishonestly or fraudulently, had not been made with the intention of causing it to be believed that they were made by or under the authority of someone else.*
>
> *The second criteria of the section deals with a case where a person without lawful authority alters a document after it has been made. There has been no allegation of alteration of the voucher in question after they have been made. Therefore, in our opinion the second criteria of the said section is also not applicable*

> *to the present case.*
>
> *The third and final condition of Section 464 deals with a document, signed by a person who due to his mental capacity does not know the contents of the documents which were made i.e. because of intoxication or unsoundness of mind, etc. Such is also not the case before us. Indisputably therefore the accused before us could not have been convicted with the making of a false document."*

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."*

14. Bearing the above legal position in mind, let us proceed with he present case. Generally, when a sale deed is executed conveying a property claiming ownership thereto, the purchaser under such sale deed can allege that the vendor has cheated him by making a false representation of ownership and fraudulently induced him to part with sale consideration. In the case on hand, the purchaser is not the complainant, whereas, the purchaser is made a co-accused.

15. It is not the case of the second respondent that any of the accused tried to deceive him either by making a false or misleading representation or by any other action or omission. Considering the averments in the complaint, it cannot be stated that the accused 1 to 6 by their act of executing sale deed in favour of the seventh accused and sale deed executed by the seventh accused in favour of the fourth accused and other accused being witnesses/scribes and stamp vendor in regard to the sale deeds, deceived the second respondent in any manner.

16. It is pertinent to note that when a sale deed executed by a person purporting to convey a property, which is not his property, as his property, is not making a false document and therefore, it cannot be termed as forgery. The condition precedent for forgery is making a false document. It is also pertinent to note that 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.

17. In the present case, as already pointed out, this Court in the second appeal has restored the judgment and decree passed by the trial Court, wherein, the trial Court has specifically held that the appellant therein Mariya Louis has proved his title to the suit property and whereas, the said Sathappan and his son Laser have failed to prove their case that the said Sathappan purchased the suit property from one Lakshmi Ammal and encroached the Government land and he has been in possession and enjoyment of the suit property for the past 45 years.

18. The investigating officer in the charge sheet though referred the allowing of the second appeal, would state that the property now in dispute i.e., Survey No.748/8C3 was not referred in the judgment and that the Tahsildar, Nilakottai has cancelled the patta issued in favour of the petitioner and again issued in favour of the second respondent. In the charge sheet, it has been further stated that the accused have not produced any documents to show that the property in dispute was belonging to them.

19. As rightly pointed out by the petitioner, the suit in O.S.No.1020 of 1992 was filed by the said Mariya Louis in respect of the properties in Survey Nos.748/7 and 748/8. Even assuming that the property in dispute is belonging to the said Sathappan, since execution of sale deed by the petitioner and other accused in favour of the seventh accused and other sale deed by the seventh accused in favour of the fourth accused, as if, the property belonging to them, applying the legal position above referred, by no stretch of imagination, can be stated to attract the offence. Considering the above, in order to constitute the offence of criminal conspiracy under Section 120B IPC, conspiracy has to relate to the commission of the offence. In the present case, as already pointed out, the execution of sale deeds would not constitute the offence and as such, consequently offence of criminal conspiracy will also fall.

20. The Hon'ble Supreme Court in ***Md.Ibrahim's*** case above referred has specifically observed that the Supreme Court has time and again drawn attention to the growing tendency of complainant's attempting to give the cloak of a criminal offence to matters which are essentially and purely civil in nature, obviously either to apply pressure on the accused, or

out of enmity towards the accused, or to subject the accused to harassment and that criminal courts should ensure that proceedings before it are not used for settling scores or to pressurise parties to settle the disputes.

21. Considering the above, this Court has no hesitation to hold that the present case is a fit case to exercise the power under Section 482 Cr.P.C. to quash the proceedings.

22. No doubt, the present quash petition has been filed only by the fourth accused and other quash petition filed by the 11th accused was already disposed of, as referred above. But the Hon'ble Supreme Court in the case of ***State of U.P. through C.B.I. S.P.E. Lucknow Vs. R.K.Srivastava and another*** reported in ***AIR 1989 Supreme Court 2222*** has observed that when the allegations in the FIR are the same against all the accused persons, the entire proceedings as against all the accused persons can be quashed. Here also, the same allegations are levelled against all the accused persons in connection with the execution of two documents.

23. In the result, this Criminal Original Petition stands allowed and the proceedings in Crime No.1 of 2024 pending on the file of the first respondent is hereby quashed against the petitioner as well as the other accused.

29.10.2024

NCC :yes/No
Index :yes/No
Internet:yes/No
csm

To
1.The Sub Inspector of Police,
District Crime Branch-II,
Dindigul, Dindigul District.

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

K.MURALI SHANKAR,J.

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Pre-Delivery Order made in
Crl.O.P.(MD)No.8633 of 2024

Dated : 29.10.2024