BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On	:	01.02.2024
Pronounced On	:	22.02.2024

CORAM:

THE HONOURABLE MR. JUSTICE K.K.RAMAKRISHNAN

Crl.O.P.(MD) No.15117 of 2020
and
Crl.M.P.(MD) Nos.7251 and 7252 of 2020

Ganapathy ... Petitioner/Accused No.1

Vs.

1. Inspector of Police,
   Land Grabbing Special Cell,
   Pudukottai,
   (Crime No.34 of 2013) ... Respondent/Complainant

2. Venkata Subramanian ... Respondent/De-facto Complainant

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records and quash the proceedings in C.C.No.4 of 2020, pending on the file of the Judicial Magistrate No.II, Pudukkottai in respect of this petitioner alone.

For Petitioner : Mr.T.Gowthaman,
Senior Counsel
for Mr.Swarnam.J.Rajagopal

For Respondents : Mr. E.Antony Sahaya Prabhagar,
Additional Public Prosecutor for R1
: Mr.P.H.Manoj Pandian,
for Mr.S.Elambharathi for R2

ORDER

The petitioner the Accused No.1 in C.C.No.4 of 2020 on the file of the learned Judicial Magistrate No.II, Pudukkottai, filed this petition to quash the proceeding against him in C.C.No.4 of 2020.

2.The petitioner and other accused are said to have committed offence under Sections 120(B), 420, 465, 468, 471 and 506(i) of IPC. One Shanmugam and other accused executed a possessory farming right of the property situated at S.Nos.368/3, 368/4, 368/6, 368/7, 368/10, 368/12 and 368/13 measuring an extent of 4 acres and 83 cents, belonging to the defacto complainant's Sangam. In the said document, it is represented that one Shanmugam and other persons are in possession of the said properties and the possession was to the petitioner under the said deed. On the basis of the said deed, the accused/Village Administrative Officer issued the forged possessory certificate in the name of the remaining accused. Therefore, the Sangam preferred a complaint before the respondent Police and the respondent Police registered a case in Crime No.34 of 2013 for the offence under Sections 120(B), 420, 465, 468, 471 and 506(i) of IPC. Thereafter, the investigating agency completed the investigation and filed a final report before the jurisdictional Court and the same was taken on file in C.C.No. 4 of 2022. To quash the proceedings in C.C.No.4 of 2020, against the petitioner, he filed the present quash petition.

3.Mr.T.Gowthaman, learned Senior Counsel appearing on behalf of the petitioner made the following submissions;-

3.1.Even accepting the allegation made in the FIR and the final report, the offence under Sections 120(B), 420, 465, 468, 471 and 506(i) of IPC are not made out. He further elaborated his argument on the basis of the Judgment of the Honourable Supreme Court in the case of ***Mohammed Ibrahim and others Vs. State of Bihar and another*** reported in ***2009 (8) SCC 751*** (hereinafter, called as **Ibrahim case**) he has specifically stated that the act of the petitioner entering into the transaction with the Shanmugam and other persons to get the possessory right over the schedule property through the document would not amount to fabrication of the document, i.e., false document. According to the learned Senior Counsel, in order to constitute the offence of creation of false document, it must be established that the accused person had made or executed the document claiming to be someone else or he was authorised by someone else. In this case, no such alienation was made.

As per the **Ibrahim case**, the aggrieved person is only a purchaser of the property and any complaint made by the third party relating to the fraudulent nature of the document can not be legally entertained. For which, he relied the specific paragraph of the **Ibrahim case** which reads as follows:

> ***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 alteration; 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 they occur were substituted by the words 'electronic signature' by Amendment Act 10 of 2009.]"

14. *An analysis of Section 464 of the 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 practising deception, or from a person not in control of his senses.

3.2.The learned Senior Counsel further submitted that when the case of the petitioner is covered under the **Ibrahim case**, the ordeal of trial against him is not legally maintainable. The learned senior counsel further submitted that they accepted the possession of the petitioner and they filed a suit for recovery of possession and hence, the initiation of the proceedings against the petitioner for the fabrication of the document is not legally maintainable. In the said circumstances, he prayed for quash of the proceedings initiated against the petitioner.

4.Per contra, Mr.P.H.Manoj Pandian, learned Counsel appearing on behalf of the second respondent/defacto complainant submitted that **Ibrahim case** res on its own facts. In para 8 of the Judgment of the Honourable Supreme Court the Hon'ble Supreme Court specifically interpreted the provisions to the facts of the case. He further emphasized the phrase that “insofar as it is relevant to this case” in paragraph No.8 of the Ibrahim case and hence, he contended that the **Ibrahim case** is not applicable to the present case. The learned counsel further submitted that Sangam is the owner of the property. In order to deceive the Sangam and grab the property of the Sangam, the petitioner and the said Shanmugam conspired together and created forged document. On the basis of the forged document, the A6/Village Administrative Officer issued possession certificate. In the said circumstances, there is a clear case of cheating and forgery of the document. The learned counsel relied upon the paragraph 15 of the **Ibrahim case**. By referring the paragraph 15 of the **Ibrahim case**, he emphasized that when there was a alienation without any legal title, the offence was made out.

4.1.The learned counsel further submitted that in the **Ibrahim case**, there was a claim made between the two grandchildren of the original owner. Therefore, the Honourable Supreme Court interpreted the provisions of the IPC and held that the complaint was not maintainable at the hands of third party to the transaction. In the said specific circumstances, if the purchaser filed a complaint against the vendor on the ground that he intentionally suppressed the title of the suit property, the complaint is maintainable. But, in this case, this fact is entirely different and the original owner himself filed a complaint and after completion of investigation, the final report was filed and the same was taken on file in C.C.No.4 of 2020, under Sections 120(B), 420, 465, 468, 471 and 506(i) of IPC. Therefore, the argument of the learned Senior Counsel on behalf of the petitioner is not legally sustainable. If the argument of the learned Senior Counsel is accepted, the original owner has no remedy in the law, who preferred the complaint against the person who made intentional alienation to convey the property with the active collusion of some body. Therefore, he seeks for the interpretation of the provisions in achieving the prime object of the act.

5.The learned Additional Public Prosecutor appearing on behalf of the first respondent also reiterated the submission of the learned counsel for the second respondent/defacto complainant and he submitted that now the investigating agency collected abundant materials to frame the charges. Further, it is clear case of cheating and forgery on the ground that the petitioner and Shanmugam and other accused made the transaction through unregistered document without any title over the properties. Further, they stated that they transferred the possessory right. The possessory right is imaginary one and the same was investigated by the investigating agency and hence, they filed the final report after collecting the materials to constitute the offence. Hence, he seeks for the dismissal of the quash petition.

6.Mr.T.Gowthaman, learned Senior Counsel by way of reply submitted that the **Ibrahim case** is followed by this Court in Crl.O.P.(MD).Nos.16327 and 19045 of 2018. In Crl.O.P.(MD).Nos. 16327 and 19045 of 2018, the learned single Judge of this Court, after considering the **Ibrahim case** and other cases, clearly stated that in the similar circumstances, the issues with regard to any title, the civil Court has to look into the matter. Further, the mere execution of the documents does not constitute the offence of forgery and cheating and same is not made out. Therefore, he seeks for quashment of the proceeding against the petitioner on the basis of the strong reliance on the judgment of the learned single judge of this court.

7.This Court considered the submission made on either side and the learned Additional Public Prosecutor and perused the record. This Court also considered the precedents relied upon by the both the parties.

8.The second respondent defacto complainant produced the number of documents to show the ownership of the subject property. The investigating agency also collected materials to prove the ownership of the second respondent/defacto complainant. The Accused Nos.2, 3 and 4 executed the document transferring their possessory right of the property of the Sangam to the extent of the 4 acres 83 cents. The said document, according to the defacto complainant is forged one. They made the said transaction in order to grab the property of the Sangam. The A6/Village Administrative Officer also issued the possession certificate without verifying the ownership of the property. Admittedly, the petitioner got the documents from the Accused Nos.2 ,3 and 4. The Accused Nos.2, 3 and 4 are not the owners of the property. In the said circumstances, they conveyed the property through the unregistered document relating to the possession of the properties without any authority. They have no right to transfer the same. It is not the case of the Accused Nos.2, 3 and 4 that they have lawfully obtained the possession of the property of the Sangam and the same was re-transferred to the petitioner.

9.In the said circumstances, there is prima facie case against the petitioner and other accused that they conspired together to cheat the defacto complainant and grab the property of the Sangam by entering into an unregistered document and created the subsequent record with the help of the A6/Village Administrative Officer. Therefore, the offence under Sections 120(B), 420, 465, 468, 471 and 506(i) of IPC are made out against the petitioner. To substantiate the same, the prosecution collected number of documents and also examined number of witnesses. Therefore, this Court finds no merit in the contention of the learned Senior Counsel for the petitioner that the offences were not made out. As rightly pointed out by the learned counsel for the second respondent, the offences under Sections 120(B), 420, 465, 468, 471 and 506(i) of IPC are made out against the petitioner. In the **Ibrahim case,** paragraph No.15, there is a clarification, which reads as follows:

A clarification

15. When we say that execution of a sale deed by a person, purporting to convey a property which is not his, as his property, is not making a false document and therefore not forgery, we should not be understood as holding that such an act can never be a criminal offence. If a person sells a property knowing that it does not belong to him, and thereby defrauds the person who purchased the property, the person defrauded, that is the purchaser, may complain that the vendor committed the fraudulent act of cheating. But a third party who is not the purchaser under the deed may not be able to make such complaint. The term `fraud' is not defined in the Code. The dictionary definition of `fraud' is "deliberate deception, treachery or cheating intended to gain advantage". Section 17 of the Contract Act, 1872 defines `fraud' with reference to a party to a contract. In Dr. Vimla vs. Delhi Administration- AIR 1963 SC 1572, this Court explained the meaning of the expression `defraud' thus "The expression "defraud" involves two elements, namely, deceit and injury to the person deceived. Injury is something other than economic loss that is, deprivation of property, whether movable or immovable, or of money, and it will

> *include any harm whatever caused to any person in body, mind, reputation or such others. In short, it is a non-economic or non-pecuniary loss. A benefit or advantage to the deceiver will almost always cause loss or detriment to the deceived. Even in those rare cases where there is a benefit or advantage to the deceiver, but no corresponding loss to the deceived, the second condition is satisfied."*

10.From the above reading and the remaining portion of the judgment of the **Ibrahim case**, it is clear that when the transaction made by two persons with conspiracy to cheat the original owner, the original owner is the aggrieved person and he is entitled to make the complaint and also they are entitled to initiate criminal action against the petitioner, apart from filing suit for recovery of possession through the civil Court. In the said circumstances, this court is not inclined to accept the argument of the learned Senior Counsel for the petitioner and inclines to dismiss the petition.

11.In view of the specific submission of the learned Senior Counsel for the petitioner as they pleaded adverse possession in the pending suit in O.S.No.11 of 2015, on the file of the District Munsif, Thirumayam, this Court hereby directs the learned District Munsif, Thirumayam, to decide the matter on merits without influenced by the above finding, which was made for deciding the case of the petitioner, whether the offence is made out or not. It is always open to the civil Court to decide the issue independently and without being influenced by the discussion made above.

12.With the above observation, this Criminal Original Petition stands dismissed. Consequently, the connected criminal miscellaneous petition is also closed.

22.02.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
vsg

To

1. The Judicial Magistrate No.II,
Pudukkottai.

2.The learned District Munsif,
Thirumayam.

3. The Inspector of Police,
Land Grabbing Special Cell,
Pudukottai.

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

5.The Section Officer,
Criminal Section (Records)
Madurai Bench of Madras High Court,
Madurai.

K.K.RAMAKRISHNAN, J.

vsg

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