



Crl.O.P.(MD)No.2465 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.04.2025

CORAM

THE HON'BLE MR.JUSTICE P.DHANABAL

Crl.O.P.(MD)No.2465 of 2025

and

Crl.M.P(MD) Nos.1682 and 1683 of 2025

1. Devaraj @ Kolipitchai Devaraj

2. Raja jothi

.. Petitioners

Vs.

1. The Inspector of Police
City Crime Branch(CCB) Police Station
Tirunelveli City

2. Anantha Jothi Balan

.. Respondents

PRAYER : Criminal Original Petition filed under Section 528 of BNSS,
to call for the records in CC No.1432 of 2024 on the file of the learned
Judicial Magistrate No.I, Tirunelveli and quash the same.

For Petitioners : Mr.T.A.Ebenezer

For Respondents : Mr.M.Sakthi Kumar
No.1 Government Advocate(Crl.Side)

No.2 : Mr. R. Jegadeeshwaran



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ORDER

This Criminal Original Petition has been filed to quash the proceedings in CC No.1432 of 2024 on the file of the learned Judicial Magistrate No.I, Tirunelveli.

2. The case of the prosecution is that the property situated in Town No.3, Block-2, Town Survey No.112,113 and S.Nos.112/1, 112/2, 112/3, 112/4, 113 in Military line, Vallavan Street, Palayamkotti belongs to Appadurai Nadar and his wife Selvamani who died without issues on 13.05.1987 and 14.03.1975 respectively. The said Appadurai Nadar had one brother Enoch and one sister Diraviammal . As per the judgment in O.S. No. 10/1988 on the file of the Additional Sub Court, Tirunelveli and Probabate O.P.No.104 of 1991 and O.S.No.295 of 2001 the said Diraviammal is entitled to 12/24 shares and the legal heirs of Enok are entitled to 12/24 shares. The said Diraviammal executed a Will in favour of the defacto complainant and died on 27.05.2003. While so both the accused inorder to grab the property by obtaining legal heir certificate the first accused executed settlement in favour of the second accused. Therefore based on the same the defacto complainant who is the second



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respondent herein has lodged complaint before the first respondent and the first respondent registered a case in Crime No. 28 of 2023 for the offences under Sections 465,467,468,471 and 420 of IPC and thereafter the first respondent completed investigation and filed final report and the trial Court has also taken cognizance in C.CNo. 1432 of 2024 and now the case is pending for trial and at this stage the petitioners have filed this petition to quash the proceedings.

3. The learned counsel appearing for the petitioner would submit that based on the complaint given by the second respondent the first respondent registered a case in Crime No. 28 of 2023 for the offences under Sections 465,467,468,471 and 420 of IPC. Thereafter the first respondent without conducting proper investigation filed final report and the same is now pending in C.C. NO.1432 of 2024. As per the prosecution case the property belongs to one Appadurai Nadar who died without any children. The said Appadurai Nadar had one brother Enoch and one sister Diraviammal. The first petitioner claims to be adopted son of the said Appadurai and asserts that Appadurai bequeathed the property through a Will, whereas the defacto complainant claims that his wife is the daughter of Diraviammal. The defacto complainant wife's mother and other legal



heirs of Enoch filed suit claiming the property, while the first petitioner filed an OP for probating the Will of Appadurai in his favour.

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4. The suit filed by the defacto complainant's side for partition was allowed and the OP filed by the petitioner was dismissed. Thereafter the first petitioner appealed in both cases CMS 1443/1996 and Tr.AS No. 441/2000 but both the appeals were dismissed on 20.07.2022 due to non appearance of advocate and now restoration petitioners are pending in CMP(MD) No.11852 of 2022 in the said CMA which was dismissed on 23.09.2023 due to non appearance of another advocate. During the pendency of the restoration petition the first petitioner executed settlement deed in favour of his wife on 29.03.2023 and again the first petitioner filed restoration petition and the same is pending. Therefore there is a dispute between the parties in respect of title of the property. Moreover the first petitioner executed settlement deed in favour of his wife. Therefore the offences under Sections 465,467,467,471 and 420 of IPC would not attract. The second respondent inspite of approaching Civil court had lodged a false complaint against the petitioner. The civil dispute has been converted into criminal case. The first respondent without conducting proper investigation filed final report against the petitioners and based on



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the same the trial Court has also taken cognizance, thereby the pending proceedings are liable to be quashed.

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5. The learned Government Advocate(Crl.side) appearing for the first respondent would submit that the second respondent has lodged a complaint before the first respondent alleging that the property belongs to the defacto complainant family and the case in O.S. No. 10/1988 on the file of the Additional Sub Court, Tirunelveli and Probabate O.P.No.104 of 1991 and O.S.No.295 of 2001 were also filed and the same were disposed of in favour of the second respondent. Whiles the first respondent preferred appeal and the same was also dismissed. In the mean time, the first respondent executed settlement deed in favour of the second respondent without any title over the property. Therefore the second respondent lodged a complaint against the petitioners before the first respondent and they registered a case in Crime No. 28 of 2023 for the offences under Sections 465,467,468,471 and 420 of IPC and thereafter the first respondent conducted proper investigation filed final report and the same is pending before the learned Judicial Magistrate No.I, Tirunelveli in C.C. No.1432 of 2024. There are prima facie materials available to constitute the offences as against the petitioners and therefore



the matter needs elaborate trial and hence the petition is liable to be dismissed.

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6. The learned counsel appearing for the second respondent would submit that originally the property belongs to Appadurai Nadar and he died without any issues. The said Appadurai Nadar had one brother Enoch and one sister Diraviammal. The said Diraviammal executed a Will in favour of the defacto complainant and died on 27.05.2003. While so both the accused in order to grab the property by obtaining legal heir certificate the first accused executed settlement in favour of the second accused. While so the first respondent preferred appeal and the same was also dismissed. In view of the same the first respondent executed settlement deed in favour of the second respondent in order to cheat the second respondent. Thereby these petitioners have committed the serious offence, hence the second respondent has lodged a complaint before the first respondent and the first respondent also filed final report and the same is pending before the trial Court, there are prima facie materials available as against the petitioners and therefore the petitioners have to face the trial, at this stage the petition is liable to be dismissed.

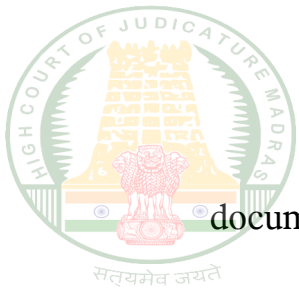


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7. Heard both sides and perused the materials available on record.

8. As per records they revealed that there is a civil dispute pending between the parties in respect of properties of one Appadurai Nadar while so the first accused executed settlement deed in favour of the second accused. According to the petitioner the property belongs to Appadurai Nadar and the petitioners also not denied the same. According to the petitioners the first petitioner is the adopted son of Appadurai Nadar and the property belongs to him, whereas the second respondent claims that the property belongs to him, though the Will executed by the sister of Enoc and daughter of Appadurai namely Diraviammal Therefore there is a dispute pending between the parties. While pending appeal the first petitioner executed settlement deed in favour of the second respondent. The charges levelled against the petitioners are 465,467,468,471 and 420 of IPC.

9. So far as offence under Section 420 of IPC is concerned there are no ingredients that the petitioners dishonest intention from the inception and they deceived the defacto complainant. So far as offence under Section 465 of IPC is concerned the petitioners have not made any false



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documents as defined under Sections 466,467,468 and 469 of IPC. There are no ingredients to show that the petitioner dishonestly, fraudulently, executed document of settlement deed and no materials to make out a case of false document. There are no averments to show that the petitioner executed documents by impersonation as if the original owner of the property.

10. So far as offence under Section 467 of IPC is concerned there is no allegations that the petitioner forged valuable security or Will. There are no ingredients to constitute the offence under Section 468 of IPC that he committed forgery with an intention to cheat the petitioner and they prepared the documents for the purpose of cheating. So far as offence under Section 471 of IPC is concerned, there are no ingredients to constitute the offence that the petitioner used the forged documents as genuine after knowing it was a forged document. Therefore there are no ingredients to constitute the offence even as per the charge sheet and the First Information Report. The available record shows that the civil dispute has been given criminal colour.



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11. At this juncture the learned counsel appearing for the petitioner relied on the Judgment of the Hon'ble Apex Court in the case of ***Mohammed Ibrahim and Others .vs. State of Bihar and another*** reported in 2010 Air SCW, wherein it is held as follows:

“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. 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.



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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*



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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. Section 420 IPC

13. Let us now examine whether the ingredients of an offence of cheating are made out. The essential ingredients of the offence of "cheating" are as follows: (i) deception of a person either by making a false or misleading representation or by dishonest concealment or by any other act or omission; (ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived; and (iii) such act or omission causing or is likely to cause damage or harm to that person in body, mind, reputation or property. To constitute an offence under section 420, there should not only be cheating, but as a consequence of such cheating, 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 (or anything signed or sealed and which is capable of being converted into a valuable security).

14. When a sale deed is executed conveying a property claiming ownership thereto, it may be possible for the purchaser under such sale deed, to allege that the vendor has cheated him by making a false representation of ownership and fraudulently induced him to part with the sale consideration. But in this case the complaint is not by the purchaser. On the other hand, the purchaser is made a co-accused. It is not the case of the



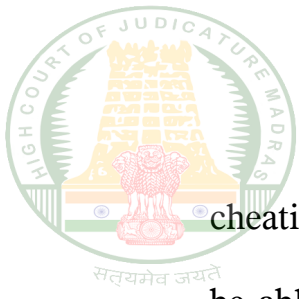
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complainant that any of the accused tried to deceive him either by making a false or misleading representation or by any other action or omission, nor is it his case that they offered him any fraudulent or dishonest inducement to deliver any property or to consent to the retention thereof by any person or to intentionally induce him to do or omit to do anything which he would not do or omit if he were not so deceived. Nor did the complainant allege that the first appellant pretended to be the complainant while executing the sale deeds. Therefore, it cannot be said that the first accused by the act of executing sale deeds in favour of the second accused or the second accused by reason of being the purchaser, or the third, fourth and fifth accused, by reason of being the witness, scribe and stamp vendor in regard to the sale deeds, deceived the complainant in any manner. As the ingredients of cheating as stated in section 415 are not found, it cannot be said that there was an offence punishable under sections 417, 418, 419 or 420 of the Code.

12. On careful perusal of the above said judgment it is clear that if person executed deed claiming ownership thereto it may be possible for the purchaser under such sale deed to allege that the vendor has cheated him by making a false representation of ownership and fraudulently induced him to part with the sale consideration. If a person sells his property knowing that it does not belong to him and thereby defrauds the person who purchased the property, the present defrauder i.e., the purchaser may complain that the vendor committed the fraudulent act of



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cheating, but a third party who is not the purchaser under the deed may not be able to make such complaint. In the case on hand also A1 executed settlement deed in favour of A2 no any document executed in favour of the of the defacto complainant in respect of the property. In view of the same, offences under Sections 420 ,468,and 471 of IPC would not attract.

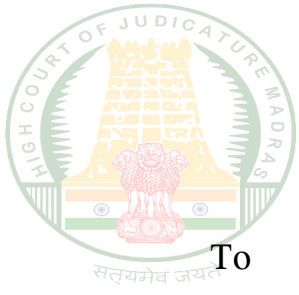
13. Further the person who is not a party to the document cannot lodge complaint for cheating and forgery. Thereafter the first respondent without conducting proper investigation filed final report and the trial Court also without considering the fact that there are no prima facie materials to constitute the offence has taken cognizance, therefore the pending proceedings are liable to be quashed.

14. Accordingly, the Criminal Original Petition stands allowed and the proceedings in CC No.1432 of 2024 on the file of the learned Judicial Magistrate No.I, Tirunelveli is hereby quashed. Consequently connected miscellaneous petition stands closed.

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

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1. The Judicial Magistrate No.I, Tirunelvel
2. The Inspector of Police
Thiruverumbur All Women Police Station
Trichy
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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P.DHANABAL,J.

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