

Crl.R.C.(MD).No.205 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 17.04.2025

PRONOUNCED ON : 13.06.2025

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

Crl.R.C.(MD)No.205 of 2025

P.Alliraja

... Petitioner/Accused No.4

Vs.

1.The State of Tamil Nadu,
represented by the Inspector of Police,
Sankarankovil Taluk Police Station,
Tenkasi District. : 1st Respondent/Complainant

2.R.Rubesh Selvakumar : 2nd Respondent/Defacto complainant

PRAYER: Criminal Revision Petition has been filed under Sections 438 and 422 of BNSS, 2023, to call for records and set aside the order passed in Cr.M.P.No. 1354 of 2024 dated, 24.01.2025, on the file of the learned Judicial Magistrate Court, Sankarankovil, Tenkasi District.



Crl.R.C.(MD).No.205 of 2025

WEB COPY

For Petitioner : Mr.G.Thalai Mutharasu

For Respondents : Mrs.M.Aasha
Government Advocate (Crl.Side)
for R.1

: Mr.T.Lenin Kumar
for R.2

ORDER

This Criminal Revision is directed against the order passed in Cr.M.P.No. 1354 of 2024, dated 24.01.2025, on the file of the Court of the Judicial Magistrate, Sankarankovil under Section 175(3) of BNSS, 2023.

2. The revision petitioner is the proposed accused /fourth respondent in Cr.M.P.No.1354 of 2024, filed under Section 175(3) of BNSS. The case of the second respondent/defacto complainant is that the property to an extent of 2.35 acres comprised in Survey Nos.224/3, 224/5 and 224/6 at Sankarankovil, Tenkasi District came to be owned by one Muppidthi Naicker, S/o Subbiah Naicker as self-acquired property, that the said Muppidthi Naicker executed a registered Will dated 15.03.2002 bequeathing the said property in favour of his second son Poochaiah, that the said Poochaiah along with his siblings sold the said property



Crl.R.C.(MD).No.205 of 2025

WEB COPY

to the complainant and one Muppidthi Muppanar, vide sale deed dated 11.02.2009 and since then the purchasers have been in possession and enjoyment of the same, that one Rajamani – first respondent in Cr.M.P.NO.1354 of 2024 along with other respondents therein without referring to the earlier title deed with sole intention to grab the said property, executed documents titled as “Pagapaathiya Viduthalai Pathiram” fraudulently and got it registered on 03.03.2010 before the Sankarankovil SRO, that the said respondents in order to escape from the criminal proceedings of cheating, have also created a bogus unregistered Will dated 18.08.2005 forging the signature of the original owner Muppidthi Naicker, that the said Rajamani has then filed a suit in O.S.No.9 of 2024, showing some other persons as defendants without impleading the complainant, that since the said respondents in the said Cr.M.P., had fabricated documents and attempted to grab the property worth about more than Two Crores, the complainant was forced to send a complaint to the Sankarankovil Taluk Police Station through registered post on 23.09.2024, that since there was no action, the complainant has then sent a complaint to the District Superintendent of Police, Tenkasi through registered post, that though the petitioner was summoned by the Sankarankovil Taluk Police, without conducting any enquiry, directed the complainant to approach the competent civil Court, as



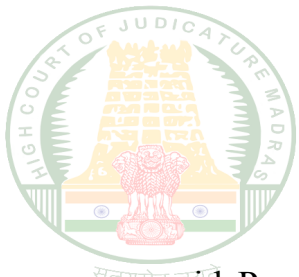
Crl.R.C.(MD).No.205 of 2025

WEB COPY

dispute is of civil in nature and that therefore, the complainant was constrained to file the above petition under Section 175(3) BNSS for registration of the case and for investigation.

3. The learned Judicial Magistrate, taking the petition filed under Section 175(3) BNSS on file in Cr.M.P.No.1354 of 2024 and upon perusing the petitioner's/complainant's affidavit and other available materials, has passed the impugned order dated 24.01.2025, directing the concerned police to conduct a detailed enquiry and submit a report and also directed the concerned police that if any cognizable offence is made out during the enquiry, to register a F.I.R., against the accused. Aggrieved by the impugned order, the present revision came to be filed.

4. The complainant's main contention is that himself along with one Muppidathi Muppanar purchased the property to an extent of 2.35 Acres in S.Nos.224/3, 224/5 and 224/6 at Sankarankovil, from one Poochiah – second son of Muppidathi Naicker who was owning the property originally. It is the specific case of the complainant that the said Muppidathi Naicker executed a Will in favour of his son Pochaiah on 15.03.2002 bequeathing the said property and the



Crl.R.C.(MD).No.205 of 2025

WEB COPY

said Poochaiah along with his siblings sold the property to the defendant and another.

5. The learned Counsel for the defendant would submit that the said Poochaiah alone has executed the sale deed, but his siblings had subscribed their signatures as attestors to the sale deed and that since the date of sale deed on 11.02.2009, the complainant and the said Muppidathi Muppanar have been in possession and enjoyment of the property as absolute owner therefor.

6. It is the case of the complainant that one Rajamani, the first respondent in Cr.M.P., along with other respondents in an attempt to grab the said property created two bogus documents by forgery and cheating and that they have fabricated a document styled as “Pagapaathiya Viduthalai Pathiram” as if the same was executed by Chinna Muppidathiyammal – second wife of Muppidathi Naicker in favour of the said Rajamani and the second document is the Will alleged to have been executed by Muppidathi Naicker in favour of his second wife Chinna Muppidathiyammal. Even according to the complainant, “Pagapaathiya Viduthalai Pathiram” dated 03.03.2010 is a registered document vide registration No.955/2010, on the file of the Sankarankovil SRO and that the



Crl.R.C.(MD).No.205 of 2025

WEB COPY

Will dated 18.08.2005 is an unregistered document. It is evident from the records that the complainant has added the present revision petitioner who is an Advocate by profession as if he colluded with the other respondents and authored the disputed documents and that the other respondents are the witnesses to the said documents.

7. As already pointed out, even according to the complainant, the said Rajamani had also filed a civil suit in O.S.No.9 of 2024 and the same is pending on the file of the Subordinate Court, Sankarankovil. As rightly contended by the learned Counsel for the petitioner, the validity and the legality of the documents canvassed in both sides cannot be gone into by the police authorities, more particularly when a civil dispute is pending.

8. As rightly contended by the learned Counsel for the petitioner, the Will is not a compulsory registerable document and that even a registered Will can be cancelled by an unregistered Will and as such, just because the Will claimed by the said Rajamani is an unregistered document, that by itself is not a ground to entertain any suspicion over the document and it is for the concerned

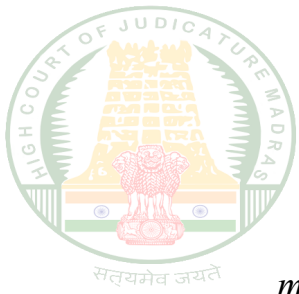


Crl.R.C.(MD).No.205 of 2025

propounders of the Will to prove their respective Wills and it is for the concerned competent civil Court to decide about the genuineness of the same.

9. At this juncture, 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**, relied on by the learned counsel appearing for the petitioners,

“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



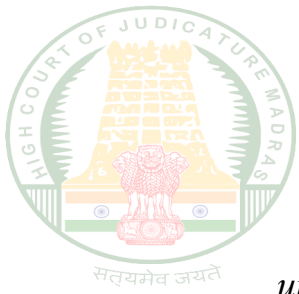
Crl.R.C.(MD).No.205 of 2025

WEB COPY

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.”

10. 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



Crl.R.C.(MD).No.205 of 2025

WEB COPY

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.”



Crl.R.C.(MD).No.205 of 2025

WEB COPY

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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.



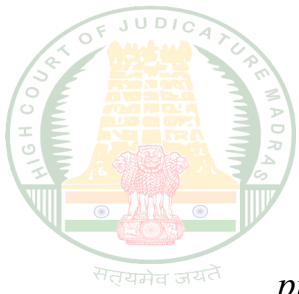
Crl.R.C.(MD).No.205 of 2025

WEB COPY

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



Crl.R.C.(MD).No.205 of 2025

WEB COPY

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."

11. Bearing the above legal position in mind, let us proceed with the case on hand. Generally when a sale deed is executed conveying a property claiming ownership thereto, the purchaser under such a 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 present case, the complainant alleged to be the one of the purchasers has not levelled any complaint against his seller, but against the third party who is claiming ownership over the property through a registered "Pagapaathiya Viduthalai Pathiram" alleged to have been executed by his mother Chinna Muppidthiyammal, who in turn is claiming ownership through an unregistered



Crl.R.C.(MD).No.205 of 2025

WEB COPY

Will executed by her husband Muppidathi Naicker. Though the complainant has alleged that the Will was fabricated by forging the signature of Muppidathi Naicker in the year 2005, as already pointed out, even according to the complainant, he allegedly purchased the property in the year 2009.

12. As rightly contended by the learned Counsel for the petitioner, neither Muppidathi Naicker during his life time nor his legal heirs including Poochaiah had chosen to dispute the said document. It is not the case of the complainant that the revision petitioner or other respondents in Cr.M.P., tried to deceive him either by making a false representation or by any other action or omission. The condition precedent for forgery is making a false document. It is 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.

13. It is settled law that mere cheating will not attract Section 420 IPC and it has to be shown that the accused must dishonestly induced cheated persons to deliver property. It is not the case of the complainant that the respondents



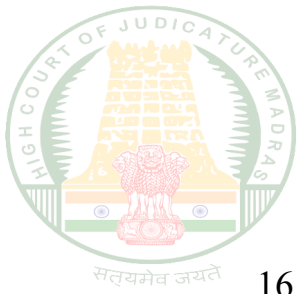
Crl.R.C.(MD).No.205 of 2025

WEB COPY

including the revision petitioner have dishonestly induced the complainant to deliver or part with any property.

14. Considering the complainant's affidavit and other materials available on record, this Court has no hesitation to hold that the complainant has been attempting to give civil dispute a criminal colour, but the learned Magistrate without considering the above aspect in proper perspective has proceeded to pass an order with the contradictory directions.

15. In the impugned order, the learned Magistrate observed that a prima facie case existed against the accused based on the records. However, instead of directing the police to register an FIR and proceed with the investigation, the Magistrate decided that a detailed inquiry was necessary. Consequently, the Magistrate directed the Station House Officer to issue summons, record statements, and submit a detailed report, with the authority to summon revenue authorities for clarification if needed. The Magistrate further instructed that if a cognizable offence is established during the inquiry, an FIR should be registered, and directed the police to follow the principles laid down by the Supreme Court in *Lalita Kumari v. State of Uttar Pradesh*.



Crl.R.C.(MD).No.205 of 2025

WEB COPY

16. The Magistrate's order is self-contradictory, as it initially finds a prima facie case but then orders a detailed inquiry, suggesting uncertainty about cognizable offences. Given the attempt to give a criminal colour to a civil dispute and the flawed order, this Court finds the impugned order unsustainable. The complainant is free to seek impleadment in the pending civil proceedings before the Subordinate Court, Sankarankovil.

17. In the result, the Civil Revision Case is allowed and the impugned order dated 24.01.2025 passed in Cr.M.P.No.1354 of 2024, on the file of the Judicial Magistrate Court, Sankarankovil is hereby set aside.

13.06.2025

NCC : Yes/No

Index : Yes/No

Internet: Yes/No

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To

1. The Judicial Magistrate Court, Sankarankovil,
Tenkasi District.

2. The Inspector of Police,
Sankarankovil Taluk Police Station, Tenkasi District.

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

15/16



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Crl.R.C.(MD).No.205 of 2025

K.MURALI SHANKAR, J.

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Pre-Delivery order made in

Crl.R.C.(MD)No.205 of 2025

13.06.2025