BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 02.07.2025

CORAM

THE HONOURABLE DR JUSTICE R.N.MANJULA

Crl.R.C(MD). No.217 of 2025

and

Crl.M.P.(MD).No.2250 of 2025

1.Sivasubramanian

2.Athavan @ Aathavan

3.Manonmani Thangam @ Manomanithangam ... Petitioners/A1 to A3

Vs.

1.The State Represented by
The Sub Inspector of Police,
DCB Police Station,
Kanyakumari District.
(In Crime No.18 of 2023)

2.S.Subbaiah ... Respondents
/Defacto complainant

PRAYER: Criminal Revision Petition has been filed under Section 438 r/w 442 of B.N.S.S., to call for the records of the impugned order dated 07.01.2025 passed by the learned Judicial Magistrate No.I, Nagercoil, Kanyakumari District, in Crl.M.P.No.3830 of 2024 in C.C.No.1040 of 2023 and set aside the same by allowing the revision petition.

For Petitioner : Mr.G.Anto Prince
For Respondent : Mr.K.Gnanasekaran, (for R1)
Government Advocate(Crl.Side)
Mr.AL.Gandhimathi (for R2)
Senior Counsel
for Mr.S.Ananth

ORDER

This Criminal Revision Case has been preferred challenging the impugned order dated 07.01.2025 passed by the learned Judicial Magistrate No.I, Nagercoil, Kanyakumari District, in Crl.M.P.No.3830 of 2024 in C.C.No.1040 of 2023.

2.The allegation made by the defacto complainant in the complaint is that his great grandfather namely, Krishnan was the original and sole owner of the land to an extent of 88 cents comprised in Old S.No.10759 situated at Neendakarai B Village. Out of 88 cents, the said Krishnan had given 44 cents to his elder son namely, Aadhi Narayanan and the remaining 44 cents to his other son namely, Subbiah. The said Aadhi Narayanan was in enjoyment of his share of 44 cents and subsequently, he died intestate leaving his legal heirs namely, Bhagavathi Nadachi and Narayana Vadivu. They have inherited the property through a partition deed vide Deed No.1998/1970 dated 12.06.1970. As per the partition deed, the said Bhagavathi Nadachi was allotted the entire share of 44 cents in respect of S.No.10759 and she had been in enjoyment of the above said property. Thereafter, on 19.12.1983, the said Bhagavathi Nadachi and her husband namely, Shanmuga Thangavel Nadar jointly executed a partition deed in favour of their sons namely, Narayana Perumal and Subbaiah, through partition deed No.2027/1983. In the said partition, 44 cents were allotted to the share of Subbiah, who is the defacto complainant herein. The above said property now has been subdivided into Re-Survey.Nos.1128/17 and 1128/18.

3.The other sharer namely, Subbiah, being the other son of the said Krishnan, was allotted the remaining extent of 44 cents in S.No.10759. The said Subbiah S/o Krishnan had given an extent of 22 cents in favour of his first wife namely, Ponnammal, and the remaining extent of 22 cents in favour of his second wife namely, Isakki Pillai. The said Ponnammal had executed a gift deed in favour of her brother namely, Thirumalai Kutti Nadar vide Gift Deed No. 712/1957, dated 21.03.1957. Thereafter, on 25.05.1980, the said Thirumalai Kutti Nadar had executed a Will in favour of his son namely, Sivasubramanian/the first petitioner (A1) in respect of the above said property, which was subdivided into Re-Survey No.1128/19. In the Will, instead of mentioning 22 cents, it is mentioned as 27 ½ cents. After the death of Thirumalai

Kutti Nadar, the first petitioner could have inherited only 22 cents, which belongs to his father and not 27 ½ cents as stated in the Will. On 11.01.2008, the first petitioner had executed a settlement deed in favour of his son, who is the second petitioner/A2 namely, Athavan @ Aathavan. The property particulars have been mentioned as 22 cents in S.No.1128/17 and it is alleged that he is in possession of 27.5 cents. The first petitioner had executed another settlement deed in favour of his sister namely, Manonmni Thangam, who is the third accused/third petitioner in respect of 22.5 cents, and he wrongfully included five more cents of Re.S.No.1128/17. On 02.09.2018, the third petitioner had executed settlement deed in favour of the first petitioner in respect of 27.5 cents vide Deed No.2391/2018.

4.According to the complainant, the excess extent of the property mentioned in the Will executed by the father of the first accused namely, Thirumalai Kutti Nadar and the subsequent transactions between the petitioners 1 to 3 /A1 to A3, have been made with the intention to grab the 5.5 cents, which belongs to the defacto complainant and the allegations made pursuant to the Will and the settlement deeds are forged documents. Based on the complaint given by the second respondent/defacto complainant, the respondent Police have registered a case in Crime No.18 of 2023 against the petitioners/A1 to A3 for the offences punishable under Sections 465, 468, 470 and 471 of IPC. After completion of investigation, the first respondent Police have filed a final report and the same was taken on file in C.C.No.1040 of 2023, by the learned Judicial Magistrate No.I, Nagercoil, Kanyakumari District.

5.The revision petitioners herein had filed a discharge petition in Crl.M.P.No.3830 of 2024 in C.C.No.1040 of 2023 to discharge them from the criminal case by stating that no forgery has been committed and no prima facie case is made out against them. It is further stated that a civil case has been given into the colour of a criminal case. The said petition was dismissed by the learned Judicial Magistrate No.I, Nagercoil, Kanyakumari District with the observations that the materials, which have been brought on record by the prosecution is true and no roving enquiry can be conducted at this stage.

6.According to the learned counsel for the revision petitioners, there are no essential ingredients available in order to make out a prima facie case against the accused to discharge them for the offences punishable under Sections 465, 468, 470 and 471 of IPC. It is further contended that a dispute which is civil in nature has been given with criminal colour. Even according to the averments made by the defacto complainant, the entire 88 cents originally belonged to one Krishnan and the said Krishnan had given 44 cents each to his sons namely, Aadhi Narayanan and Subbiah. After Aadhi Narayanan died, the said Bhagavathi Nadachi was allotted 44 cents. Later, the said Bhagavathi Nadachi and her husband namely, Shanmuga Thangavel Nadar jointly executed a partition deed in favour of their sons namely, Narayana Perumal and Subbiah, through partition deed No.2027/1983 and in the said partition, 44 cents was allotted to the share of Subbiah, who is the defacto complainant herein.

7.The other branch namely, Subbiah, who is the another son of Krishnan, got 44 cents from his father and he had given 22 cents each to his two wives namely, Ponnammal and Isakki Pillai. Until then, there was no dispute. The said Ponnammal had executed a Gift Deed in favour of her brother namely, Thirumalai Kutti Nadar and in the Gift deed also, the extent of land was shown as 22 cents. Only when Thirumalai Kutti Nadar had executed a Will in the year 1980, an excess of 5.5 cents has been included and it is mentioned as 27.5 cents in the Will. The entire documents have not been called as forged. Subsequent to the Will, which has been executed by the Thirumalai Kutti Nadar to an extent of

27.5 cents instead of 22 cents, all the subsequent transactions have been executed only by real persons, who existed before the authority to register the same. None of the documents are forged documents or falsified documents within the meaning of Sections 463, 464 and 470 of IPC. For the sake of clarity, the invocation of the penal provision under Section 465 of the IPC will arise only, if forgery is found to have taken place. Similarly, the offence under Section 468 of IPC would arise only, when the ingredients under Section 464 of IPC is found to be present. Section 463 of IPC defines act of forgery as under:

> *463. Forgery.—3 [Whoever makes any false document or false electronic record or part of a document or electronic record, 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 any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.*

8.In order to make out an offence of forgery, the essential ingredient of making a false document or false electronic record has to be proven. In this case, it is claimed that there is a dispute with regard to a portion of the property mentioned in the documents.

9. Insofar as Section 464 IPC is concerned, a false document or false electronic record is created only when a person is doing the following acts. Section 464 of IPC reads as under,

> *464. Making a false document.—3 [A person is said to make a false document or false electronic record— First.—Who dishonestly or fraudulently—*
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> *(a) makes, signs, seals or executes a document or part of a document;*
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> *(b) makes or transmits any electronic record or part of any electronic record;*
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> *(c) affixes any 4 [electronic signature] on any electronic record;*
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> *(d) makes any mark denoting the execution of a document or the authenticity of the 4 [electronic signature], with the intention of causing it to be believed that such document or part of document, electronic record or 4 [electronic 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, singed, sealed, executed or affixed; or*
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> *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 4 [electronic 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 4 [electronic 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.] Illustrations

(a) A has a letter of credit upon B for rupees 10,000, written by Z. A, in order to defraud B, adds cipher to the 10,000, and makes the sum 1,00,000 intending that it may be believed by B that Z so wrote the letter. A has committed forgery.

(b) A, without Z's authority, affixes Z's seal to a document purporting to be a conveyance of an estate from Z to A, with the intention of selling the estate to B and thereby of obtaining from B the purchase-money. A has committed forgery.

(c) A picks up a cheque on a banker signed by B, payable to bearer, but without any sum having been inserted in the cheque. A fraudulently fills up the cheque by inserting the sum of ten thousand rupees. A commits forgery.

(d) A leaves with B, his agent, a cheque on a banker, signed by A, without inserting the sum payable and authorizes B to fill up the cheque by inserting a sum not exceeding ten

thousand rupees for the purpose of making certain payments. B fraudulently fills up the cheque by inserting the sum of twenty thousand rupees. B commits forgery.

(e) A draws a bill of exchange on himself in the name of B without B's authority, intending to discount it as a genuine bill with a banker and intending to take up the bill on its maturity. Here, as A draws the bill with intent to deceive the banker by leading him to suppose that he had the security of B, and thereby to discount the bill, A is guilty of forgery.

(f) Z's will contains these words—"I direct that all my remaining property be equally divided between A, B and C." A dishonestly scratches out B's name, intending that it may be believed that the whole was left to himself and C. A has committed forgery.

(g) A endorses a Government promissory note and makes it payable to Z or his order by writing on the bill the words "Pay to Z or his order" and signing the endorsement. B dishonestly erases the words "Pay to Z or his order", and thereby converts the special endorsement into a blank endorsement. B commits forgery.

(h) A sells and conveys an estate to Z. A afterwards, in order to defraud Z of his estate, executes a conveyance of the same estate to B, dated six months earlier than the date of the conveyance to Z, intending it to be believed that he had conveyed the estate to B before he conveyed it to Z. A has committed forgery.

(i) Z dictates his will to A. A intentionally writes down a different legatee named by Z, and by representing to Z that he has prepared the will according to his instructions, induces Z to sign the will. A has committed forgery.

(j) A writes a letter and signs it with B's name without B's authority, certifying that A is a man of good character and in distressed circumstances from unforeseen misfortune, intending by means of such letter to obtain alms from Z and other persons. Here, as A made a false document in order to induce Z to part with property, A has committed forgery.

(k) A without B's authority writes a letter and signs it in B's name certifying to A's character, intending thereby to obtain employment under Z. A has committed forgery inasmuch as he intended to deceive Z by the forged certificate, and thereby to induce Z to enter into an express or implied contract for service.

Explanation 1.—A man's signature of his own name may amount to forgery. Illustrations

(a) A signs his own name to a bill of exchange, intending that it may be believed that the bill was drawn by another person of the same name. A has committed forgery.

(b) A writes the word "accepted" on a piece of paper and signs it with Z's name, in order that B may afterwards write on the paper a bill of exchange drawn by B upon Z, and negotiate the bill as though it had been accepted by Z. A is guilty of forgery; and if B, knowing the fact, draws the bill

upon the paper pursuant to A's intention, B is also guilty of forgery.

(c) A picks up a bill of exchange payable to the order of a different person of the same name. A endorses the bill in his own name, intending to cause it to be believed that it was endorsed by the person to whose order it was payable; here A has committed forgery.

(d) A purchases an estate sold under execution of a decree against B. B, after the seizure of the estate, in collusion with Z, executes a lease of the estate, to Z at a nominal rent and for a long period and dates the lease six months prior to the seizure, with intent to defraud A, and to cause it to be believed that the lease was granted before the seizure. B, though he executes the lease in his own name, commits forgery by antedating it.

(e) A, a trader, in anticipation of insolvency, lodges effects with B for A's benefit, and with intent to defraud his creditors; and in order to give a colour to the transaction, writes a promissory note binding himself to pay to B a sum for value received, and antedates the note, intending that it may be believed to have been made before A was on the point of insolvency. A has committed forgery under the first head of the definition.

Explanation 2.—The making of a false document in the name of a fictious 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. Illustration A draws a bill of exchange upon a fictious person, and fraudulently accepts the bill in the name of such fictitious person with intent to negotiate it. A commits forgery.*
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> *1 [Explanation 3.—For the purposes of this section, the expression "affixing 2 [electronic signature]" shall have the meaning assigned to it in clause (d) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000).]*

10.As already stated that the documents arising out of the transactions between A1 to A3 were neither concocted by any individuals involved in the transactions, nor were any of the persons dishonestly compelled to sign or execute those documents. All that has been done, as alleged by the defacto complainant, is the mentioning of an excess extent of land, which is actually claimed to belong to the branch of Subbiah, the son of Krishnan. When the records are not falsified and the transactions are *bona fide*, any dispute regarding the title allegedly conveyed through the title deeds is purely civil in nature. Instead of seeking recourse before a civil court by way of filing a suit or initiating appropriate proceedings to declare title over the excess extent mentioned in the impugned transactions or to cancel the documents, a criminal complaint has been improperly registered. When a civil dispute is given a criminal colour, the Court, while deciding a petition for discharge, is first obligated to determine whether a criminal case is made out at all. Even if the allegations or the records in this case shows that a civil dispute has been given with criminal colour, then the Court is expected to discharge the accused by according reasons to part them. The Court has a duty to look into the prima facie materials by assuming that those documents are true, without making any roving enquiry at that stage.

12. It is pertinent to note that in the instant case there is a civil dispute regarding the excess extent mentioned in the Will executed between the accused 1 to 3. If a criminal case is registered for this kind of transactions, which are not forced but entered without title or in excess of title, each of such civil dispute will be lodging in all the police station. In the instant case, none of the penal provisions, under which the FIR has been registered is made out.

13. As the trial Judge has not properly appreciated the above essential facts which are available on the face of the case, the impugned order is liable to be set aside.

14.Accordingly, this criminal revision case stands allowed. The impugned order dated 07.01.2025 passed by the learned Judicial Magistrate No.I, Nagercoil, Kanyakumari District, in Crl.M.P.No.3830 of 2024 in C.C.No.1040 of 2023, is set aside. Consequently, the connected criminal miscellaneous petition is closed.

02.07.2025

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

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To

1.The Learned Judicial Magistrate No.I,
Nagercoil,
Kanyakumari District.

2.The Sub Inspector of Police,
DCB Police Station,
Kanyakumari District.

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

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

DR.R.N.MANJULA, J.,

vsg

Crl.R.C(MD). No.217 of 2025

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