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Crl.O.P.Nos.25820 of 2017 &
Crl.M.P.No.14880 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 15.12.2021

Coram:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Crl.O.P.No.25820 of 2017 &
Crl.M.P.No.14880 of 2017

1. Perumal
2. Satheeshkumar
3. Karthikeyan
4. V.K.Subramanian

... Petitioners

Vs

1. The State represented by
The Inspector of Police,
District Crime Branch,
Erode District.

2. N.Parvathi

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records in C.C.No.84 of 2015 on the file of the learned Chief Judicial Magistrate, Erode and quash the same.



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For petitioners : Mr.T.Gowthaman

For Respondent : S.Vinoth Kumar,
Government Advocate [Criminal Side]– R1

Mr.C.Deivasigamani – R2

ORDER

This petition has been filed to quash the final report in C.C.No.84 of 2015 on the file of the learned Chief Judicial Magistrate, Erode against the petitioners for the offences punishable under Sections 120 [b], 420, 467, 468 and 471 of IPC.

2. The crux of the prosecution case is as follows :

One Ramasamy Gounder owned an extent of one acre property in survey No.207D and he was allotted one acre of land in Survey No.196 by a partition deed dated 29.06.1924. Thereafter, the said Ramasamy Gounder has sold the property to one Chenniappa Gounder on 17.03.1959. While selling the property, instead of mentioning the survey No.207 [D] he has referred the survey number as 196. However, the boundaries are correct. Thereafter, patta was also issued in



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favour of Chenniappa Gounder. Subsequent to the same he has also executed a settlement in favour of his legal heirs and the remaining extent has also been settled to his daughter and the settlees also dealt with the properties. When the matter stood thus, A1 and his brother Krishnamurthy have partitioned their property in the year 1983. They dealt with the property knowing well that they do not have any right in the property. They also executed a Power of Attorney in favour of A1, wherein A2 and A7 were attested witnesses. Pursuant to the same A1 to A3 had entered into an agreement for sale in favour of A4 to A6. Thereby, the accused had committed the aforesaid offences.

3. The learned counsel for the petitioner mainly contended that the civil nature of the case is converted into criminal prosecution. Originally in two survey numbers 207 [D] and 196 to an extent of 35 cents and 58 cents have been allotted to the one Ramasamy Gounder in a partition deed dated 29.06.1924. The said Ramasamy Gounder had sold the property to an extent of one acre land in survey No.196 in favour of Chenniappa Gounder on 17.03.1959. The defacto complainant is the legal heir of the Chenniappa Gounder and the accused are the legal heirs and



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agreement holders in respect of the property. It is his contention that the Ramasamy Gounder has not sold the property allotted to him under the partition deed dated 29.06.1924, whereas he has sold a different area comprised in survey No.196. Therefore, it is his contention that when the allotment in his favour was in respect of 93 cents, the question of selling one acre in the same survey does not arise at all. Whereas, he has sold the property relating to survey No.196, which is no way connected to the property allotted in partition deed on 29.06.1924. It is his further contention that though the petitioner has filed a suit for declaration, the same was dismissed for default and the application filed to restore the suit was also dismissed against which the petitioner has filed CRP, which is pending. It is his further contention that merely because the parties have sold the properties claiming that the properties are their own properties, creating false documents as per section 464 of IPC cannot be attracted. Therefore, submitted that the entire prosecution is nothing but abuse of process of law.

4. Whereas, the learned counsel for the defacto complainant submitted that the the petitioner being the agreement holder has filed a suit in O.S.No.331 of



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2013 before the Principal Subordinate Judge, Erode for specific performance of the agreement. The learned trial judge found that the defendants have no claim over the property and therefore, the agreement is not valid in law. He has also submitted that the suit filed by the petitioner herein in O.S.No.369 of 2010 has already been dismissed. Hence, when a person has no title over the property, executing an agreement itself amounts to forgery. Therefore, the final report filed by the prosecution cannot be quashed.

5. The learned Government Advocate [Criminal Side] submitted that the prosecution has filed the final report and the same cannot be quashed.

6. Heard both sides and perused the records.

7. The crux of the prosecution case has already been extracted above. The main grievance of the defacto complainant is that what was purchased by ancestor Chenniappa Gounder in the year 1959 is the property allotted to the vendor in a



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partition deed dated 29.06.1924. As the Civil suit has already been filed in respect of which CRP is pending, this Court is not going to those aspects.

8. Normally when the final report is filed, the materials unearthed by the prosecution discloses prima facie materials as against the accused to proceed against the charges, the court will not venture into evidenciary value in exercising its power under section 482 of Cr.P.C. to quash the same. But at the same time, when the entire materials collected by the prosecution on its face value do not constitute any offence, to prevent abuse of process of law, the Court can quash the final report.

9. The main charge against the accused is the offence of forgery and fabrication of records. As indicated above, the entire final report reveal that the accused do not have title to the property to enter into an agreement of sale of the property. It is relevant to note that to attract the offence under section 420 IPC, essential ingredients of the offence of cheating are as follows :

(i) deception of a person either by making a false or



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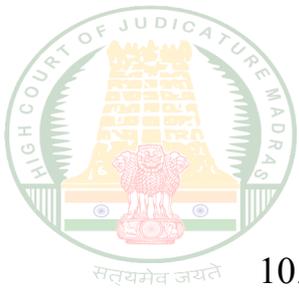
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misleading representation or by dishonest concealment or by any other act or omission;

(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.

Therefore 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 to deliver any property to any person. It is not case of the defacto complainant that the agreement holder or any third party have been dishonestly induced to enter into such an agreement. The main charge itself indicate that the accused have entered into an agreement with the agreement holders.



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10. It is to be noted that in this regard, the apex Court in **Mohammed Ibrahim and others Vs. State of Bihar and another** reported in [2009] 8 SCC

751 in para 20 the Apex Court has held as follows :

18. 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.



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19. 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).

20. 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.

21. It is not the case of the 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



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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.

Applying the above ratio, as agreement holder is not the complainant, for cheating, offence under section 420 of IPC cannot be attracted.

11. Now with regard to the offence of forgery, it is relevant to note that Section 464 deals with making of false documents and the same extracted as follows :



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"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



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at the time of such alternation; 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.”

Therefore, to attract offence under sections 467 and 471, the essential requirement is making of false documents. In this regard also, the Apex Court in the above judgment in para 16 and 17 has clearly held as follows :



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“16. 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.

17. When a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else



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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. [Section 420](#) IPC ”

12. When a person has entered into an agreement of sale by impersonating the owner or falsely claiming to be authorised or empowered by the owner, to execute the deed on owners behalf, then it can be said that there is a making of false document. But when the document itself executed by the person claiming to be owner of the property, execution of such documents do not fall within the definition of execution of false document as defined under section 464 IPC. Considering the above judgment and that the entire charge relate to the title to the property, the defacto complaint claiming title on the basis of the property in respect of survey No.196, when the issue relating to the title is in question, merely the agreement for sale is executed by the legal heirs of the original owner, who is



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said to have been allotted the property in the year 1924, such an act would not constitute any offence. Even when the materials collected by the prosecution is taken as a proof, the same would not constitute any of the aforesaid offences. In such view of the matter, continuing of prosecution is a futile exercise and is nothing but an abuse of process of law.

13. Accordingly, this Criminal Original Petition is allowed and the proceedings in C.C.No.84 of 2015 on the file of the learned Chief Judicial Magistrate, Erode is quashed. Consequently, connected miscellaneous petition is closed.

15.12.2021

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Index : Yes
Internet : Yes
Speaking Order

To

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