
**V. Dharmaraj, V. Rajamani and Chinnamurthy Ammal Vs The Inspector of
Police District Crime Branch and Janakiraman**

Criminal O.P. No. 15540 of 2010

Court: Madras High Court

Date of Decision: Aug. 9, 2010

Acts Referred:

Penal Code, 1860 (IPC) " Section 120, 420, 464, 467, 471

Hon'ble Judges: C.T. Selvam, J

Bench: Single Bench

Advocate: N. Suresh, for the Appellant; I. Paul Nobel Devakumar, Government Advocate (Crl. Side) for Respondent 1 and A.N. Rajan, for Respondent 2, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

C.T. Selvam, J.

The petitioners seek quash of proceedings in C.C. No. 328 of 2009 pending on the file of the learned District Munsif cum

Judicial Magistrate, Vanur, wherein they stand accused of offences under Sections 420, 467, 474 read with 120(b) IPC.

2. The charge sheet in the case informs that property of an extent of 8 acres in survey Nos. 108.6, 109.1, 68.13 belonged to one

Kalivarathaperumal son of Kothandarama Gounder and the same was purchased by Kanniya Gounder under sale deed registered as document

No. 1236/1981. The purchaser had bequeathed the same under a Will to his son Sundaramurthy. The complainant had obtained a general power

from the said Sundaramurthy and was in enjoyment thereof. The 1st petitioner/accused claiming himself to be the guardian of one Fleix Gabriel, the

minor son of Kalivarathaperumal and on the strength of release deed registered as document No. 505 of 1998, (which according to the

prosecution relates to a different property) and with the connivance of the accused 2 and 3, with intent of usurping the property held by the

complainant, prepared a false document viz., the sale deed registered as document No. 402 of 2007 dated 25.01.2007 to the effect that A2 and

A3 had purchased property from A1. The accused 2 and 3 suppressing such fact had in turn sold property in survey No. 108/6.09 and in an

extent of 1 acre 93 cents to a third party.

3. The learned Counsel for the petitioners would inform that the charge sheet proceeds on the basis that the accused had prepared false

documents. The original owner of the property viz., Kalivarathaperumal and his wife had died in a fire accident leaving behind a minor son. The 1st

petitioner duly had been appointed as guardian of the minor son. The entire extent of 8 acres originally belonged to one Kothandaraman and after

his demise, the wife, five sisters and only son Kalivarathaperumal became entitled thereto. The mother and sisters executed a release deed in

favour of Kalivarathaperumal in respect of entire property of 8 acres. The main contention raised by the learned Counsel is that the 1st accused

had not represented himself to be anybody else. The 1st accused having been appointed as a guardian by Court and having obtained the

permission of Court as per orders in G.O.P. No. 50 of 2005 dated 26.10.2006 from the learned Principal District Judge, Villupuram had effected

sale of the property under sale deed dated 25.01.2007 registered as document No. 402 of 2007. The 1st petitioner had not represented himself to

be anybody else nor to be acting under the authority of anybody else. As such, he could not be said to have created a false document. If he has not

created a false document, then there was no question of him, having committed forgery and consequentially, he could not have committed offences

under Sections 467 and 474 IPC. In this regard, the decision of the Honourable Apex Court in Md. Ibrahim and Others Vs. State of Bihar and

Another, has been relied upon.

4. On the other hand, the learned Counsel for the respondent would impress upon this Court that the accused 1 to 3 had entered into a sale deed

in the year 2007 knowing fully well that the 1st accused had no right to the property intended to be sold thereunder, since the same already had

been disposed of by Kalivaratha Perumal even in the year 1981. Learned Counsel would rely upon judgment of the Honourable Apex Court in K.

Neelaveni v. State represented by Inspector of Police and Ors. 2010 (2) Crimes 90 (SC) to inform that this Court could not now interfere and

would leave it to the trial Court to appreciate the merits of the case. Learned Counsel would also refer this Court to some interim orders of Civil

Court wherein the likelihood of the documents of the year 2007 being unjustified, is pointed out. In response, the learned Counsel for the

petitioners informs that the very suit wherein such observations came about, stands dismissed.

5. This Court may look into the documents put up by the accused in an appropriate case. Given the clear and unambiguous ruling of the

Honourable Apex Court in Mohammed Ibrahim's case that "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 documents (purporting

to convey some property of which he is not the owner) is not execution of a false document as defined u/s 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", this Court

towards satisfying itself that when the 1st petitioner represented himself to be the guardian of a minor and to be duly permitted under orders of

Court to effect sale of the property, he indeed held such capacity, would look into the documents put up by the petitioners. On perusal of the

documents, this Court finds that the contentions of the petitioners are factually correct. Again, this Court finds that the 1st petitioner has not

represented himself to be any person other than himself. He has executed the sale deed in favour of the petitioners 2 and 3 claiming to be the

guardian of minor and empowered to effect sale, which position stands substantiated.

6. In these circumstances, it cannot be said that the 1st petitioner has executed a false document. Once that is so, given the rationale of the

judgment of the Honourable Apex Court in Mohammed Ibrahim's case, it follows that the other offences of which the petitioners stand charged,

would not stand attracted. Accordingly, the Criminal Original Petition shall stand allowed. The proceedings in C.C. No. 328 of 2009 on the file of

the learned District Munsif cum Judicial Magistrate, Vanur shall stand quashed.

7. This order only makes clear that in circumstances of the case the accused could not be said to be guilty of any offence. The same shall have no

bearing on the rights of different parties to the property and the civil litigation in respect thereof.