

Madras High Court  
Amala Niruba vs State Rep. By

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 19.12.2017

Pronounced on : 13.03.2018

CORAM:

THE HONOURABLE MR. JUSTICE M.S.RAMESH

Crl.O.P.Nos.17629 & 18676 of 2017  
and  
Crl.M.P.Nos.10787 & 11370 of 2017

1.Amala Niruba .. Petitioner in Crl.O.P.17629 of 2017  
2.Prema .. Petitioner in Crl.O.P.17629 of 2017  
3.Vijaya .. Petitioner in Crl.O.P.17629 of 2017  
4.Karnal .. Petitioner in Crl.O.P.18676 of 2017

Vs.

1.State rep. by  
The Inspector of Police,  
District Crime Branch,  
Vellore District. .. Respondent in both Crl.O.Ps

2.Mani .. Respondent in both Crl.O.Ps

Common Prayer: Criminal Original Petitions filed under Section 482 Cr.P.C. praying to ca  
For Petitioners : Mr.R.Bharath Kumar  
in Crl.O.P.No.17629/2017

For Petitioner : Mr.R.Murali  
in Crl.O.P.No.18676/2017

For Respondent-1 : Mr.C.Iyyaparaj  
in both Crl.O.Ps Additional Public Prosecutor

For Respondent-2 : Mr.A.Rajesh Kanna  
in both Crl.O.Ps

C O M M O N O R D E R

Both the criminal original petitions have been filed challenging the FIR in Crime No.13 of 2017 on the file of the first respondent herein for the alleged offences punishable under Sections 120-B, 419, 420, 465, 467, 471, 294(b) and 506(i) of IPC. While the petitioners in Crl.O.P.No.17629 of 2017 are the third, fourth and fifth accused, the petitioner in Crl.O.P.No.18676 of 2017 is the first accused. The second respondent in both the petitions is the defacto complainant.

2.Heard Mr.R.Bharath Kumar and Mr.R.Murali, learned counsel appearing on behalf of the petitioners 1 to 3 and 4 respectively and Mr.C.Iyyapparaj, learned Additional Public Prosecutor for the first respondent as well as Mr.A.Rajesh Kanna, learned counsel for the second respondent.

3.The case of the complainant is that his father Mr.Chinnappan, who belonged to Adi Dravidar community purchased a land comprised in Survey No.201/3 and 201/4 in Vikramasi Village, Vellore District through a sale deed dated 20.03.1968 registered as Document No.898/1968. The second respondent's father died on 26.11.1977 and was survived by his two sons namely, Pazhani and Mani. When the second respondent was working in the Indian Army, one Mr.Velu, who is the second accused, had assisted in impersonating a third person as the defacto complainant's father and had registered an Adoption Deed dated 26.03.1990 in his favour, as if, he was his son. Subsequently, a Will dated 07.09.1990 also came to be executed in favour of the second accused.

4.On the strength of the Will, the subject property was sold to one Mr.Karnal (petitioner in Crl.O.P.No.18679 of 2017) through a registered sale deed dated 06.10.2010. Pursuant to the sale, patta Nos.442, 443 and 444 was also granted in favour of Amala Niruba (A3), Prema (A4) and Vijaya (A5) respectively (petitioners in Crl.O.P.17629 of 2017).

5.On a complaint of the second respondent's brother's son, the sale deed dated 06.10.2010 in favour of the first accused came to be cancelled through a deed of cancellation dated 28.08.2014. In the meantime, the first accused had also purchased the subject property through two different sale deeds dated 13.12.2012 registered as Document Nos.4291 and 4292 of 2012 from the fourth and fifth accused. According to the second respondent, the petitioners herein had committed the fraud on the defacto complainant and thereby committed the criminal offences, based on which, the present FIR came to be registered.

6.The learned counsel for the petitioners submitted that the allegations in the FIR in its entirety, do not prima facie constitute the alleged offences against these petitioners. The learned counsel further submitted that the respondents herein are trying to give a criminal colour to a dispute which is purely civil in nature. In this connection, various civil suits are also pending before the District Munsif Court at Katpadi.

7.The learned counsel for the second respondent on the other hand submitted that Velu, who is the second accused had impersonated a third person as defacto complainant's father and had registered an adoption deed dated 26.03.1990 in his favour, as if, he was his son. He had also fraudulently obtained a Will dated 07.09.1990 in his name. The first accused had joined together with his relatives and misused his political influence and had obtained pattas in the name of the third, fourth and fifth accused and thereafter, purchased the subject property on 13.12.2012. In view of the

fraudulent conduct on the part of the petitioners herein, all of them had indulged in the offences of land grabbing and when the second respondent had questioned them, he was threatened with dire consequences. The complaint purely constitutes criminal offences and therefore the Criminal Original Petitions are liable to be dismissed.

8.The learned Additional Public Prosecutor, by reiterating the submissions of the second respondent, submitted that the grounds raised by the petitioners are matters for investigation. The Investigating Officer has properly registered the complaint for the said criminal offences and the aspect as to whether the averments are true can be determined only through a proper investigation and hence it is pre-mature to quash the FIR.

9.I have given careful consideration to the submissions made by the respective counsels.

10.Before analysing the merits of the grounds raised by all the parties, it would be appropriate to refer to certain dates alleged in the complaint. Admittedly, the defacto complainant's father had purchased the subject lands on 20.03.1968. The second accused, who is not the petitioner in these petitions, is alleged to have impersonated himself as the adopted son of the defacto complainant's father and obtained an adoption deed on 26.03.1990. Based on the adoption deed, a registered Will dated 07.09.1990 was executed, whereby the subject property was bequeathed in favour of the second accused. After 20 years from thereon, the second accused had sold the lands to the first accused on 06.10.2010, which came to be subsequently cancelled on 28.08.2014. As per the complaint, the cause of action for implicating the first accused for having committed the criminal offence arose in the year 2010. The complaint further alleges that the first accused had joined with his relatives and obtained patta in favour of the third, fourth and fifth accused in the year 2012 and thereafter the first accused had purchased the subject lands on the strength of these pattas on 13.12.2012.

11.The facts, as projected by the petitioners herein are that, the first accused had purchased the property from the second accused in the year 2010. After purchase, when he realised that the pattas for the subject lands came to be granted in favour of the third, fourth and fifth accused, the first accused had again chosen to purchase the same lands from the third, fourth and fifth accused on 13.12.2012. In view of the present sale deeds dated 13.12.2012 respectively, the title over the subject property came to be transferred in favour of the first accused through three transactions viz., one sale deed executed by the second accused and two subsequent sale deeds executed by the third, fourth and fifth accused. In order to set right the discrepancy, the earlier sale deed dated 06.10.2010 came to be cancelled through Deed of Cancellation dated 28.08.2014.

12.In consideration of the submissions made by the respective counsels, it is seen that the first accused had earlier purchased the properties in the year 2010 from the second accused and on realizing that the pattas for the said lands stood in the name of the third, fourth and fifth accused chosen to purchase the same through two other sale deeds dated 13.12.2012 and further to set right the discrepancy the earlier sale deed by the second accused also came to be cancelled in the year 2014 itself. Therefore, the subject lands purchased by the first accused can only be termed as a bona fide purchase and there is nothing to indicate that he had colluded with the second accused.

Likewise, according to the defacto complainant, the second accused had impersonated himself to be the adopted son of Chinnappan in the year 1990 and obtained a Will in his favour in the same year. The role of the first accused, as alleged in the complaint is that, he had colluded with the second accused for the purpose of obtaining an Adoption Deed and Will. As per the complainant, the occurrence on the allegations of conspiracy and impersonation relates to 20 years prior to the complaint. There is no valid explanation for this inordinate delay of more than 20 years. I am unable to comprehend as to how an effective or fruitful investigation could be conducted for an occurrence of impersonation that allegedly took place 20 years back. It is highly improbable that the investigation would unearth this aspect of impersonation after 20 years. In the absence of any valid explanation for the delay, it can only be concluded that the delay is fatal to the complainant's case.

13.It is further seen that after purchasing the subject property in the year 2010, the first accused had realized that the patta for the subject lands stood in the name of the third, fourth and fifth accused and therefore, decided to purchase the same lands from these three accused.

14.It is the case of the defacto complainant that the first accused had colluded with the third, fourth and fifth accused and thereby obtained patta for the subject lands for the purpose of purchasing it in his name. In this background, the documents filed in the present case were perused. It is seen therein that the kist receipts of the subject lands stood in the name of the third, fourth and fifth accused from 04.04.2011. Notice under Section 5 of Tamil Nadu Land Encroachment Act, 1905 came to be issued in favour of these three accused. On 24.11.2011, the third, fourth and fifth accused had applied for patta in their favour for the subject properties, which came to be forwarded by the District Collector to the Revenue Divisional Officer, Vellore on 03.12.2011. The Village Administrative Officer of the Vikramasi Village had also issued 'No Objection Certificate' for grant of patta on 10.02.2012. The Revenue Inspector had also recommended for issuance of patta in favour of these three accused and based on the said receipts and certificates, allotment orders came to be passed by the Tahsildar, Katpadi in favour of the third, fourth and fifth accused on 04.05.2012. In other words, the grant of patta in favour of the third, fourth and fifth accused has been done through proper proceedings of the Revenue Department after due enquiry and verification.

15.The defacto complainant has not implicated any of the Revenue Authorities in this regard. While the patta proceedings has been properly initiated and pattas have been granted in favour of the third, fourth and fifth accused, I am unable to comprehend as to what could be the role of the first accused in obtaining the pattas in favour of the third, fourth and fifth accused. If at all, the defacto complainant was aggrieved with regard to the grant of patta in favour of these three accused, the proper recourse would have been to challenge the patta proceedings in an appropriate Court of Law. In view of the fact that patta has been granted after due process of law in favour of the third, fourth and fifth accused, it cannot be said that these accused had colluded with the first accused for obtaining patta. As such, the offences alleged in the FIR as against these accused namely, the third, fourth and fifth accused will not be made out.

16.Apart from the above observations, it is further seen that the grievance of the defacto complainant seems to be purely civil in nature. Admittedly, the adoption deed and the Will executed, claims to have been executed by the defacto complainant's father in the year 1990. The

adoption deed dated 26.03.1990 is a registered document and a Will came to be executed on 07.09.1990 thereafter. The second accused who claims to be the adopted son of the defacto complainant's father has chosen to sell the subject property to the first accused only in the year 2010. There is absolutely no explanation as to why the defacto complainant had not chosen to challenge the Adoption Deed dated 26.03.1990 in the appropriate Court of Law. Likewise, the patta proceedings, whereby the third, fourth and fifth accused were granted patta to the subject lands, has also not been challenged by the defacto complainant. If at all, the defacto complainant is of the view that the adoption deed or the patta proceedings are improper or illegal, the appropriate recourse is to approach the Civil Court to declare them as invalid. Hence the present complaint, with a vague statement that the first accused had colluded with the third, fourth and fifth accused has been apparently made only for the purpose of giving a criminal colour to an issue on which, the defacto complainant had slept over for more than 20 years. In view of the dispute being civil in nature, it would not be appropriate for the first respondent to investigate into the same.

17.The Hon'ble Supreme Court of India, as well as various High Courts, has time and again drawn the attention to the growing tendency of the complainants attempting to give the cloak of a criminal offence to matters which are essentially and purely civil in nature. These attempts are obviously either to apply pressure on the accused or out of enmity towards the accused, or to give life to a civil case barred by limitation or to subject the accused to harassment. The present complaint may fall under atleast two of the above categories.

18.In view of my above observations, it can only be concluded that the major offences of Sections 420, 465, 467 and 471 have not been made out in the said complaint as against these petitioners.

19.With regard to the procedure for ascertaining as to whether the ingredients of the aforesaid offences have been made out or not came up for consideration before the Hon'ble Supreme Court of India in Mohammed Ibrahim and others Vs. State of Bihar and another reported in 2009 (8) SCC 751. The detailed analysis was made on this issue and the following observations came to be made by the Hon'ble Apex Court:

8.Let us first consider whether the complaint averments even assuming to be true make out the ingredients of the offences punishable either under section 467 or section 471 of Penal Code. Section 467 (in so far as it is relevant to this case) provides that whoever forges a document which purports to be a valuable security, shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine. Section 471, relevant to our purpose, provides that whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document, shall be punished in the same manner as if he had forged such document. Section 470 defines a forged document as a false document made by forgery.

9.The term "forgery" used in these two sections is defined in section

463. Whoever makes any false documents 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 express or implied contract, or with intent to commit fraud or that the fraud may be committed, commits forgery. Section 464 defining "making a false document" is extracted below :

"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 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.

[Note: The words `digital signature' wherever it occurs were substituted by the words `electronic signature' by Amendment Act 10 of 2009]."

The condition precedent for an offence under sections 467 and 471 is forgery. The condition precedent for forgery is making a false document (or false electronic record or part thereof). This case does not relate to any false electronic record. Therefore, the question is whether the first accused, in executing and registering the two sale deeds purporting to sell a property (even if it is assumed that it did not belong to him), can be said to have made and executed false documents, in collusion with the other accused.

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.

10.3) 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.

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 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 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.

A clarification

15. When we say that execution of a sale deed by a person, purporting to convey a property which is not his, as his property, is not making a false document and therefore not forgery, we should not be understood as holding that such an act can never be a criminal offence. If a person sells a property knowing that it does not belong to him, and thereby defrauds the person who purchased the property, the person defrauded, that is the purchaser, may complain that the vendor committed the



fraudulent act of cheating. But a third party who is not the purchaser under the deed may not be able to make such complaint. The term 'fraud' is not defined in the Code. The dictionary definition of 'fraud' is "deliberate deception, treachery or cheating intended to gain advantage". Section 17 of the Contract Act, 1872 defines 'fraud' with reference to a party to a contract. In *Dr. Vimla vs. Delhi Administration* - AIR 1963 SC 1572, this Court explained the meaning of the expression 'defraud' thus "The expression 'defraud' involves two elements, namely, deceit and injury to the person deceived. Injury is something other than economic loss that is, deprivation of property, whether movable or immovable, or of money, and it will include any harm whatever caused to any person in body, mind, reputation or such others. In short, it is a non-economic or non-pecuniary loss. A benefit or advantage to the deceiver will almost always cause loss or detriment to the deceived. Even in those rare cases where there is a benefit or advantage to the deceiver, but no corresponding loss to the deceived, the second condition is satisfied."

The above definition was in essence reiterated in *State of UP vs. Ranjit Singh* - 1999 (2) SCC 617.

16. The Penal Code however defines 'fraudulently', an adjective form of the word 'fraud', in section 25, as follows : "A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise". The term "fraudulently" is mostly used with the term "dishonestly" which is defined in section 24 as follows : "Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person is said to do that thing 'dishonestly'". To 'defraud' or do something fraudulently is not by itself made an offence under the Penal Code, but various acts when done fraudulently (or fraudulently and dishonestly) are made offences. These include:

- (i) Fraudulent removal or concealment of property (sec.206, 421, 424)
- (ii) Fraudulent claim to property to prevent seizure (sec. 207).
- (iii) Fraudulent suffering or obtaining a decree (sec. 208 and 210)
- (iv) Fraudulent possession/delivery of counterfeit coin (sec.239, 240, 242 and 243).
- (v) Fraudulent alteration/diminishing weight of coin (sec. 246 to 253)
- (vi) Fraudulent acts relating to stamps (sec. 261-261)
- (vii) Fraudulent use of false instruments/weight/measure (sec.264 to 266)
- (viii) Cheating (sec. 415 to 420)
- (ix) Fraudulent prevention of debt being available to creditors (sec. 422).
- (x) Fraudulent execution of deed of transfer containing false statement of consideration (sec. 423).

(xi) Forgery making or executing a false document (sec. 463 to 471 and 474)

(xii) Fraudulent cancellation/destruction of valuable security etc.(sec. 477)

(xiii) Fraudulently going through marriage ceremony (sec.496). It follows therefore that by merely alleging or showing that a person acted fraudulently, it cannot be assumed that he committed an offence punishable under the Code or any other law, unless that fraudulent act is specified to be an offence under the Code or other law.

20.The aforesaid extract of the Judgment is self explanatory. While applying the observations made in the aforesaid judgment, it can be safely held that offences of cheating or forgery have not been made out in the instant case.

21.In fine, I do not find any justification to permit the first respondent police to continue with the investigation, which is not only civil in nature, but also lacks the main ingredients to constitute the alleged offences. Above all, there is an abnormal delay on the part of the defacto complainant in ventilating his grievances for the occurrence that took place in the year 1990 and 2012. Since the delay is unexplained, the petitioners herein are liable to succeed on the ground of laches also.

22.In the result, both the Criminal Original Petitions are allowed. Consequently, the investigation in Cr.No.13 of 2017 on the file of the first respondent herein, insofar as it relates to the first, third, fourth and fifth accused are concerned, stands quashed. Connected Miscellaneous Petitions are also closed.

13.03.2018 Speaking Index:Yes Internet:Yes DP To

1.The Inspector of Police, District Crime Branch, Vellore District.

2.The Public Prosecutor, High Court, Madras.

M.S.RAMESH.J, DP Order made in Crl.O.P.Nos.17629 & 18676 of 2017 and Crl.M.P.Nos.10787 & 11370 of 2017 13.03.2018