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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2021

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CRL. O.P. NO.10627 OF 2017

AND

CRL.M.P.NO.7013 OF 2017

R.Thirumurthy

...Petitioner/Accused 12

Vs.

1. The State by Inspector of Police,
Perundurai Police Station,
Crime No.296 of 2007,
Erode District.

2. Perundurai Recreation Club
(Registered under the Societies
Registration Act), rep. by its
President Chinnasamy,
S/o.K.Sellappa gounder,
51, Kariappan Thottam,
Perundurai,
Erode District.

...Respondents/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, praying to call for the records relating to the case in C.C.No.37 of 2009 on the file of the District Munsif-Cum-Judicial Magistrate, Perundurai, and quash the same in so far as the petitioner is concerned.

For Petitioner : Mr.N.Manokaran

For Respondents : Mr.S.Vinoth Kumar
Government Advocate (Crl.side)
for R1

R2- deceased



ORDER

This Criminal Original Petition has been filed to call for the records relating to the case in C.C.No.37 of 2009 on the file of the District Munsif-Cum-Judicial Magistrate, Perundurai, and quash the same.

2.The petitioner has been arrayed as A12 in C.C.No.37 of 2009 for offences punishable under Sections 466 r/w 120B, 466 r/w 109, 468 and 471 r/w 120B of IPC. The case of the prosecution is that A1 to A12 have conspired together to grab the property of the defacto complainant and in pursuance of the conspiracy, A7 to A11 have executed a General Power of Attorney in favour of A12, A12 inturn sold the property to A1 for sale consideration of Rs.15,00,000/- on 14.07.2006, thereby, all were prosecuted. While being so, the defacto complainant claiming to be the owner of the said property has lodged a complaint.

3. It is the contention of the learned counsel for the petitioner that as against A1, this Court has already quashed the proceedings in Crl.O.P.No.15196 of 2009 vide order dated 06.08.2013. He further submitted that A1 has filed a suit for declaration without any document, which was also dismissed. At any event, there is no materials available on record to proceed the trial as against A12 for the offence under Sections 421, 420 (b) of I.P.C for creation of forged document.

4. The learned Government Advocate(Criminal side) has not disputed the quashment of Final report as against A1. As rightly contended by the learned counsel for the petitioner, this Court in Crl.O.P.No.15196 of 2009 has already quashed the final report as against A1. The only allegation as against A12 is that he has created a Power of attorney and sold the property to A1. It is to be noted that there is no materials are available on record to show whether A12 has created a power of attorney by way of false document. No materials unearthed by prosecution that A12 created false documents.

5.This Court is of the view that in the absence of any such evidence unearthed during the investigation, continuing the prosecution as against A12 is nothing but waste of time and abuse of process of law. It is not the case of the prosecution that A12 has forged the document. Therefore, in the absence of forgery on the part of A12, invoking the penal provision for the offence under Section 471 of IPC will not arise at all. In such view of the matter, it is fit case to quash the proceedings.



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6. Accordingly, this Criminal Original Petition is allowed.
Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

msv/nr

To

1. The District Munsif-Cum-Judicial Magistrate,
Perundurai,
2. The Inspector of Police,
Perundurai Police Station,
Crime No.296 of 2007,
Erode District.
3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.N.Manokaran, Advocate, S.R.No.62061

Crl. O.P. No.10627 of 2017
and CRL.M.P.No.7013 of 2017

MG(CO)
RLP(06/01/2022)