



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 27.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

CRL. O.P. NO. 11160 OF 2018
AND CRL.M.P.NO.5747 OF 2018

V.K.Arumugam

. . . Petitioner

Versus

1.State represented by
Inspector of Police,
Kunnathur Police Station,
Tiruppur District.
Crime No.60 of 2012

2.N.Shanmugham

. . . Respondents

PRAYER : Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records in C.C.No.338 of 2015, on the file of the Learned Judicial Magistrate, Avinashi and quash the same.

For Petitioners: Mr.M.Guruprasad

For Respondents: MR.S.Vinoth Kumar

Govt. Advocate (Crl.Side) for R1

: Mr.S.Jaya Kumar for R2

ORDER

(This case has been heard through video conference)

This Criminal Original Petition has been filed to call for the records and quash the proceedings in C.C.No.338 of 2015 on the file of the Learned Judicial Magistrate, Avinashi for the offence under Sections 120(b), 467, 468 and 471 IPC.

2. The crux of the charge against the present petitioner/A4 in the final report is that the property in question is owned by the de facto complainant's ancestors. The document has been created on 04.04.1985 and the same was gifted to the Panchayat Union Middle School Committee, Velliravelli, for the purpose of construction of the building by an unregistered document. Thereafter, the legal heirs of the original owner appears to have entered into the partition deed dated 16.05.2008. In the



meanwhile, Chairman of the school building committee has executed a gift deed in Document No.4485 of 2008 dated 06.08.2008, in favour of the Chief Educational Officer, wherein, the present petitioner/A4 and A3 stood as attesting witnesses. Thereby, the present petitioner/A4 has been prosecuted. The final report itself clearly indicates the fact that he has been arrayed as an accused only on the ground that he has signed as one of the attesting witnesses.

3. It is submitted by the learned counsel appearing for the petitioner that the entire prosecution is nothing but abuse of process of law. Merely because the petitioner has signed as an attesting witness in the document executed by the School building committee in favour of the Government, he has been arrayed as an accused along with other accused. The allegation is mainly targeted against the accused for the alleged offence said to have been committed on 04.04.1985 by way of settlement deed from one of the descendants of the settlors.

4. Heard the learned Government Advocate(Crl.Side) appearing for the first respondent and the learned counsel appearing for the second respondent.

5. This Court has perused the entire materials available on record. The only allegation as rightly pointed out against this petitioner is that he has stood as one of the attesting witness in the document executed by the School Committee Chairman in favour of the Chief Educational officer, Erode on 06.08.2008. It is relevant to note that the prosecution has triggered on the basis of the partition deed of the legal heirs namely the de facto complainant and his brothers claiming the right over property which said to have been given by original owners in favour of the school committee on 04.04.1985 by a forged document. It is relevant to note that the possession of the property was with the school which is not in dispute which is also relied by this Court in CRP.PD.No.1330 of 2013, dated 18.04.2013, wherein, this Court has clearly recorded the fact that possession is already with the school and the school committee has admittedly executed a gift deed on 29.05.2008, wherein, this petitioner stood as one of the attesting witness. Even assuming any alleged fabrication of the document in the year 1985, the present petitioner who has just signed as a witness, cannot be roped into for any other charges. Accordingly, without going into the other merits, as far as this petitioner is concerned, the prosecution is nothing but a futile exercise.

6. Accordingly, the proceedings in C.C.No.338 of 2015, on the file of the Learned Judicial Magistrate, Avinashi is quashed so far as the petitioner/A4 is concerned. The trial Court shall



expedite the trial in respect of other accused and decide the main case on its own merits.

7. In such view of the matter, this Criminal Original Petition is allowed. Consequently, connected Criminal Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

psa/msv

To

1. The Judicial Magistrate,
Avinashi.
2. The Inspector of Police,
Kunnathur Police Station,
Tiruppur District.
3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.M.Guruprasad, Advocate, S.R.No.5344

Cr1. O.P. No. 11160 of 2018
and Cr1.M.P.No.5747 of 2018

GMR(CO)
PM/11/02/2022