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Crl.O.P.No. 13301 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No. 13301 of 2021

and

Crl.M.P.Nos. 7310 & 7311 of 2021

Eri Etti Elumalai @ Elumalai

.... Petitioner

Vs

1. The State, Rep. by
Inspector of Police,
District Crime Branch,
Kanchipuram District.
Crime No.141 of 2011.

2. Kamalam

.... Respondents

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records pertaining to the Charge Sheet in C.C.No.44 of 2016 on the file of the Judicial Magistrate No.II, Chengalpattu and quash the same.

For Petitioner	: Mr.R.Surya Prakash
For R1	: Mr.A.Gopinath Government Advocate (Crl.Side)
For R2	: No appearance



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ORDER

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This Criminal Original Petition has been filed to quash the proceedings in C.C.No.44 of 2016 on the file of the Judicial Magistrate No.II, Chengalpattu and quash the same.

2. Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Crl.Side) appearing for the first respondent. Though notice has been served on the second respondent, none appeared on behalf of the second respondent either in person or through pleader.

3. The case of the prosecution is that the property, comprised in Survey No.807/1, 307/3A, 308/3, 309, house plot No.210 admeasuring 2100 sq.ft situated at Mambakkam, Chennai, owned by the second respondent. She was impersonated by the first accused with the help of the petitioner/A2 and had executed power of attorney in favour of the first accused in respect of the property. In turn, the first accused had executed a sale deed in favour one Thangeshwarn. For the said sale deed, A3 and A4 stood as witnesses. Hence, the complaint.



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4. On receipt of the complaint, the first respondent registered FIR in Crime No.141 of 2011 for the offences under Sections 120B, 419, 420, 423, 465, 468 and 471 of IPC. After completion of investigation, the first respondent filed final report and the same has been taken cognizance in C.C.No.44 of 2016 on the file of the Judicial Magistrate No.II, Chengalpattu.

5. The learned counsel appearing for the petitioner would submit that the petitioner is arrayed as A2. No one spoke about the role played by the petitioner. The petitioner is connected with other accused and no charge was made out. Even according to the prosecution, the second respondent was impersonated by another person by the first accused who had executed power of attornment in favour of first accused. In turn, the first accused sold out the said property in favour of one Thangeshwarn, in which the A3 and A4 had stood as witnesses. Therefore, as far as the petitioner is concerned, he has nothing to do with the offence as alleged by the prosecution.



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6. The learned Government Advocate (CrI.Side) appearing

for the first respondent would submit that the confession statement of the first accused was recorded and it categorically revealed the active role played by the petitioner and he also helped the first accused to impersonate the second respondent by another person and had executed power of attorney in favour of the first accused. In turn, the first accused had executed a sale deed in favour of one of the witnesses, in which, A3 and A4 had stood as witnesses. Therefore, the petitioner had played a vital role, while impersonating the second respondent and had executed power of attorney in favour of the first accused. That apart, the grounds raised by the petitioner can be considered only before the Trial Court and it cannot be considered before this Court, since it is a mixed question of facts.

7. It is seen that there are totally four accused, in which the petitioner is arrayed as A2. According to the prosecution the first accused and the petitioner conspired together and impersonated the second respondent and executed a power of attorney in favour of the first accused vide Document No.1871/2010. In turn, the first accused had



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executed a sale deed dated 01.12.2010 vide Document No.10239/2010 in favour of one Thangeshwarn, in which A3 and A4 had stood as witnesses as power of attorney executed in favour of the first accused.

8. A perusal of the statement recorded under Section 161 of Cr.P.C reveals that no one had spoken about the role played by the petitioner. Further the petitioner is no way connected with the other accused. Only the confession statement of the first accused, the petitioner has been implicated as an accused. In order to corroborate the confession statement of the first accused, no material or oral evidence was produced by the prosecution in order to implicate the petitioner as an accused. The confession statement cannot be a substantial evidence without supporting materials. That apart, the prosecution also failed to secure the impersonator who impersonated the second respondent and had executed a power of attorney in favour of the first accused. Therefore, the entire proceedings as against the petitioner is nothing but a clear abuse of process of Court and it cannot be sustained as against the petitioner. Therefore, this Court is inclined to quash the proceedings.



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9. In view of the above, the proceedings in C.C.No.44 of 2016 on the file of the Judicial Magistrate No.II, Chengalpattu, is hereby quashed only as against the petitioner alone. Accordingly, this Criminal Original Petition stands allowed. The Trial Court is directed to proceed with the trial as against the other accused persons in the manner known to law. Consequently, connected miscellaneous petitions are closed.

06.11.2023

Internet: Yes
Index : Yes/No
Speaking/Non Speaking order
Lpp

To

1. The Judicial Magistrate No.II,
Chengalpattu.

2. The Inspector of Police,
District Crime Branch,
Kanchipuram District.

3. The Public Prosecutor,
High Court, Madras.



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G.K.ILANTHIRAIYAN. J.

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