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Crl.O.P No.16591 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **24.01.2023**

CORAM:

**THE HONOURABLE Ms. JUSTICE R.N.MANJULA**

Crl.O.P No.16591 of 2021  
and Crl.M.P. Nos.9067 & 9068 of 2021

1. R.Visalakshi
2. Sanjeev
3. Saravanan
4. Amsaveni

... Petitioners

Vs.

1. The State represented by  
Inspector of Police,  
District Crime Branch,  
Erode District.

2. K.P.Saravanan

... Respondents

Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to C.C. No.153 of 2021 pending on the file of the Judicial Magistrate No.II at Erode and quash the same as illegal, incompetent and abuse of process by allowing the present Criminal Original Petition.

For Petitioners : Mr.R.Jayaprakash

For Respondent-1 : Mr. A.Gopinath  
Government Advocate (crl.side)

R2 : Mr. V.R.Appaswamee



## **ORDER**

**WEB COPY** This Criminal Original Petition has been filed to call for the records pertaining to C.C.No.153 of 2021 pending on the file of the Judicial Magistrate No.II at Erode and quash the same as illegal, incompetent and abuse of process by allowing the present Criminal Original Petition.

2. The petitioners are the accused 2 to 5. The first petitioner who is the second accused is the wife of deceased R.Maruthachalam / first accused. The second respondent / defacto complainant had executed a general power of attorney in favour of the deceased Maruthachalam vide document No.17/2003 dated 17.02.2003 on the file of SRO, Thoonganpalayam in respect of the said property. Since the second respondent was ill at particular point of time and he wanted to sell the property, he executed the said power of attorney. After recovering from his illness, the second respondent changed his mind and contacted the first petitioner's husband to come forward to cancel the power of attorney. But the first petitioner's husband without even producing the life certificate of the second respondent before Sub-Registrar, transferred the subject property in his capacity as power agent in favour of his wife, the second accused. The third



accused is the son of the second accused and the fourth and fifth accused are the persons who stood as witnesses for the alleged sale deed which has been executed without obtaining the life certificate.

3. The learned counsel for the petitioners submitted that at the time of execution of sale in favour of the second accused, the power given in favour of the first accused was not cancelled; had the husband of the first petitioner produced any life certificate or he had made the transaction subsequent to the death of the second respondent there is prima facie proof to make out a criminal case against the petitioners; since the sale deed in favour of the first petitioner / second accused was executed during the life time of the second respondent, the petitioners cannot be fastened with any criminal liability and if at all the second respondent is affected in any way due to the alleged transaction, his remedy is open before the Civil Court.

4. The learned Government Advocate (Crl.side) and the learned counsel for the second respondent submitted that the Sub-Registrar who had registered the sale deed without insisting for life certificate has also been implicated as an accused; even without the knowledge of the second



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respondent, the first petitioner had acted in a fraudulent manner in connivance with the Sub-Registrar and managed to register the sale deed in favour of the second petitioner; since all the accused had worked in tandem with the criminal intention, there is a *prima facie* case made against all the accused and hence the petitioners should be subjected to trial.

5. The point which was canvassed by the learned counsel for the petitioners is purely technical. His only contention is that at the time when the alleged sale deed was executed by the deceased first accused in favour of the second accused, the defacto complainant was very much alive and hence there is no fabrication of the documents or any other offence committed by the petitioners. The categorical contention of the second respondent and the averments made by him in the complaint is that without his knowledge and by taking advantage of the power of attorney, the first accused had acted contrary to his will and had executed the sale deed in favour of the second petitioner for his personal gain. The original sale deeds are in the custody of the second respondent and he did not intend to sell the property in favour of anyone including the petitioner herein.



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6. It is seen that the power of attorney executed by the second respondent in favour of the first accused is not an irrevocable one. It is made clear in the power of attorney that the executant did not get any consideration for the said power given in favour of the husband of the first petitioner. Generally when the power is given to an agent especially for executing a sale, the predominant duty of the power agent would be to find out a potential buyer and inform it to the principal, negotiate the price, get the approval of the principal and execute the sale deed as directed by the power agent. Even if the said rights were not reserved by the principal in the power of attorney document, the law will only say that the power agent is responsible for the acts done by him and he is liable to furnish the accounts to the principal.

7. The sale was not executed in favour of the wife of the deceased first accused. Further the sale transaction was managed to be done without even producing the life certificate of the principal before the Sub-Registrar. It is not the contention of the petitioner that the said rule was not in force at the relevant point of time. Since there are doubts about the contact of the petitioners and the principal was put on surprise about the sale deed



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executed in his favour without producing the life certificate before the Sub-Registrar, there is every reason to suspect the criminal intention if any in the minds of the parties. Since the materials would make out a criminal case against the petitioners they should be subjected to trial in order to prove the genuineness on the side of the prosecution.

8. When the prosecution asserts criminal intention on the part of the petitioners on the basis of the contact exhibited by them, they are duty bound to face the trial and disprove if at all they wish to rebut any proof offered by prosecution. Hence, I do not find any reason to quash the proceedings against the petitioners

9. In view of the above stated reasons, this Criminal Original Petition is dismissed. Connected miscellaneous petitions are closed.

**24.01.2023**

Index : Yes/No  
Speaking Order : Yes / No  
bkn



Crl.O.P No.16591 of 2022

WEB COPY To:

1. The Judicial Magistrate -II,  
Erode.
2. The Inspector of Police,  
District Crime Branch,  
Erode District.
3. The Public Prosecutor,  
High Court, Madras.



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**R.N.MANJULA, J.,**

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