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Crl.O.P.No.23070 of 2023
& Crl.M.P.Nos.16169 & 16170 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2024

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.O.P.No.23070 of 2023
& Crl.M.P.Nos.16169 & 16170 of 2023

Sathiyalingam ... Petitioner/Accused No.1

/versus/

1. State Rep. by,
The Inspector of Police,
CCB, Chennai.
(Crime No.194/2018). ... 1st Respondent/Complainant

2. Manna Venkatachalapathy. ... 2nd Respondent/Defacto Complainant

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records in C.C.No.5072/2023 on the file of Metropolitan Magistrate for Exclusive Trial of CCB Cases, Egmore, Chennai and quash the same.

For Petitioner : Mr.B.Harikrishnan, for
Mr.B.Viswanathan

For R1 : Mr.S.Udaya Kumar
Government Advocate (Crl.Side)

For R2 : No appearance

ORDER



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This petition is filed to quash the criminal case pending against this petitioner who was arrayed as A2 on the complaint given by one Manna Venkatachalapathy alleging that the property purchased by Manne Venkamma *vide* sale deed dated 10.05.1963, later bequeath by the wife of the complainant through *Will* executed by owner Manne Venkamma been fraudulently transferred by impersonation and fabrication of documents.

2. The respondent police, on completing the investigation has filed final report and same been taken on file by the Special Court for CCB cases, Egmore, Chennai in C.C.No.5072 of 2023. This petitioner is shown as A1. The role of this petitioner as spoken by the final report indicates that the impersonator of original owner Manne Venkamma had created a settlement deed, Doc.No.509/2017 in favour of one Jothi showing her as daughter of Manne Vengammaa. The said Jothi, in-turn has executed a General Power of Attorney duly registered at SRO, Velacherry as Doc.No.510 of 2017, dated 03.02.2017 in favour of this petitioner. The said General Power of Attorney however been cancelled *vide* Doc.No.7917 of 2017 dated 28.12.2017 and thereafter, the said Jothi impersonating herself as daughter of Manne Vengamma through a General Power of Attorney deed executed in favour of



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Fathima Ali had sold the property to one Vinoth under a sale deed dated 29.05.2019 *vide* Doc.No.3021/2018 at SRO, Velacherry. The said Vinoth in turn mortgaged the property in favour of TATA Capital Housing Finance Ltd by way of deposit of title deed in Doc.No.3021/2018 dated 29.05.2018.

3. From the scheme of the crime as narrated in the final report and the materials relied by the prosecution, this Court finds that the role of this petitioner has commenced on 03.02.2017 on creating General Power of Attorney executed by the impersonator Jothi and ended on 28.12.2017 on the cancellation of the said General Power of Attorney.

4. The Learned Counsel appearing for the petitioner states that the petitioner, who got general power of attorney, after perusing the documents and other material thought fit that he cannot be agent for the said Jothi in respect of the property and therefore, duly cancelled the general power of attorney deed executed in his favour and thereafter, the petitioner had no knowledge about what has transpired between Jothi and others. Since, there is no element of *mens rea* in respect of the conduct of the petitioner, there cannot be criminal prosecution for the offences under Section 120-B, 419, 465, 467, 468 and 471



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of I.P.C. On perusal of the statement of witnesses and documents, this Court

finds that there is no element of conspiracy between this petitioner and others.

The only overt act which is attributed against this petitioner is that the general power of attorney executed by Jothi in favour of the petitioner and subsequent cancellation of general power of attorney.

5. This event is an independent event unconnected with the subsequent transfer of property by way of sale deed and creation of mortgage in favour of TATA Capital Housing Finance Ltd., by the final purchaser Vinoth. When there is no meeting of mind between the other accused with that of the petitioner herein and no material available to infer such meeting of mind, charge under Section 120-B cannot be framed against this petitioner. If the charge of conspiracy cannot be framed, automatically the other offences such as 419, 465, 467, 468 and 471 of I.P.C will not get attracted since the ingredient of cheating and fabricating of document for the purpose of cheating does not arise. Admittedly, the prosecution case does not say anything about the document either executed in favour of the petitioner or executed by the petitioner has led to any transfer of right in respect of the disputed property.



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6. In the said circumstances, there is no purpose in forcing the petitioner herein to face the ordeal of trial. Hence, the petition to quash is allowed. The petitioner herein stands exonerated from the prosecution in C.C.No.5072 of 2023 on the file of the Metropolitan Magistrate, CCB Cases Egmore, Chennai.

7. With the above observation, this Criminal Original Petition is allowed. Consequently, connected Miscellaneous Petitions are closed.

13.06.2024

Index : Yes/No.
Neutral Citation : Yes/No.
bsm

Copy to:-

1. The Metropolitan Magistrate for Exclusive Trial of CCB Cases, Egmore, Chennai
2. The Inspector of Police, CCB, Chennai.
3. The Public Prosecutor, High Court of Madras, Chennai.

Dr.G.JAYACHANDRAN, J.



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