IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.07.2015

DELIVERED ON : 27.07.2015

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

W.P. No.11221 of 2015
and M.P. No.1 of 2015

1.V.Sundaram
2.Malliga .. Petitioners

Vs

1.The Deputy Superintendent of Police
Economic Offences & Wing
Kancheepuram District.

2.The Joint Sub Registrar
No.IV, Kancheepuram
Kancheepuram District. .. Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus calling for the records relating to C.No.136/EOW/KPM/2015 dated 08.01.2015 of the first respondent, to quash the same in so far as it relates to the properties in S.Nos.1 to 3 and 5 to 8 in the list of properties annexed thereto and permit the petitioners to encumber them.

For Petitioners Mr.G.Punniyakotti
For Respondents Mr.S.Shanmugavelayutham
Public Prosecutor
Mr.Abudukumar Rajaratnam
Amicus Curiae

ORDER

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This petition has been filed seeking a writ of certiorarified mandamus calling for the records relating to C.No.136/EOW/KPM/2015 dated 08.01.2015 of the first respondent and quash the same in so far as it relates to the properties in S.Nos.1 to 3 and 5 to 8 in the list of properties annexed thereto and permit the petitioners to encumber them.

2. It is the case of the prosecution that the petitioners herein, along with the co-accused in Crime No. 733 of 2013, were conducting unregistered chits and had collected subscriptions from 35 persons to a tune of Rs.1,66,54,015/- between December 2010 and May 2013 and thereafter, they had defaulted in making repayments.

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The police completed the investigation in Crime No.733 of 2013 and filed Final Report before the Chief Judicial Magistrate, Chengelpet, which has been taken on file as C.C. No.9 of 2015 for offences under Sections 120B, 420 read with 34, 406, 506(i) IPC and Section 4 read with Section 7 of the Chit Funds Act, 1982 and the trial is pending. After filing the Final Report, the Deputy Superintendent of Police (Economic Offences Wing), Kancheepuram, who is the Investigating Officer in Crime No.733 of 2013, has addressed a communication dated 08.01.2015 to the Sub-Registrar-IV, Kancheepuram, challenging which, this writ petition has been filed.

3. It may be necessary to quote the said communication verbatim.

"POLICE DEPARTMENT

From To

Deputy Superintendent of Police The Sub Registrar-IV
Economic Offences Wing Kanchipuram
Kanchipuram District Kanchipuram District.

C.No.136/EOW/KPM/2015, Dt.08.01.2015

INTIMATION LETTER

Sir,

I am the Investigation Officer in Cr.No.733/2013 u/s 120(B), 420 r/w 34, 406, 506(1) IPC r/w section 4 r/w 7 of Chit Fund Act of 1982 and investigation yet to be finished as against accused 1.Kumar, Age-36, S/o Sundaram, 2.Sundaram, Age-60, S/o Venkatesan, 3.Manikandan @ Mani, Age-38, S/o Sundaram, 4.Malliga, Age-55, W/o Sundaram, 5.Sindhu, Age-30, W/o Manikandan, 6.Latha, Age-32, W/o Kumar.

In order to proceed my Investigation, to compensate the complainants, the properties belonged to the accused can be attached through the court as per law. The attachment procedure is taken and it will be order of attachment of the properties will be effected within a short span of time.

The properties of the accused, described herewith falls under the Registrar Jurisdiction of yours. It is just and necessary to intimate to you, hereafter further encumbrances of described accused properties of any encumbrance as will be

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made against the properties of the accused. I could not proceed my investigation. Kindly co-operate to my investigation of the case.

In spite of this intimation about the attachment of the accused properties, any encumbrances allowed to be made unnecessary litigations will be effected. Please avoid unpleasantness. Kindly co-operate my investigation."

4. It is the contention of the learned counsel for the petitioners that, on account of the aforesaid communication, the petitioners are not able to sell any of their property, as the Sub-Registrar is refusing to accept any document for registration in respect of the lands referred to in the above said communication.

5. This Court was indeed wondering as to, from where the Police Officer derived power to send such a communication handing out a veiled threat to the Registration authorities against registering documents of the accused who are facing prosecution. The Deputy Superintendent of Police has filed a counter affidavit justifying the aforesaid communication in the following words:

"It is submitted that the averments made in ground E are denied the first respondent has not taken any illegal action to attach the properties of the petitioner, but as followed the procedure to establish as per law. The petitioner so far have not taken any steps to settle the defaulted Chit amount to the subscribers totally 35 amounting to the tune of Rs.1,66,54,015/-. The properties belonging to Accused and his family members have been purchased out of the amount collected as Chit amount. Hence the malafide properties are subject to attachment to settle the hard earned money of subscribers.

It is submitted that the averments made in ground F are denied. The first respondent has not passed any order on the contrary. A letter was sent to the Sub Registrar, Kancheepuram in order to protect the interest of the subscribers.

It is submitted that the respondent has not passed any order as stated in the affidavit. The respondent initiating attachment process under Criminal Law averments Ordinance, 1944. The petitioner had conducted unregistered Chit and cheated 35 subscribers to the tune of Rs.1,66,54,015/-. The guideline value of the eight properties are Rs.1,47,35,625/-."

6. Before adverting to the stand taken by the Deputy Superintendent of Police, it may be necessary to analyse the various legal provisions governing the subject. Though Right to

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property is no more a fundamental right, yet, it is a Constitutional right flowing from Article 300-A, which reads as under:

> "300-A. Persons not to be deprived of property save by authority of law.- No person shall be deprived of his property save by authority of law.]

7. The Legislature has made provisions for tracking down proceeds of crime in various enactments like NDPS Act, SAFEMA, Prevention of Money Laundering Act, Criminal Law Amendment Ordinance, 1944, etc. The prosecution faced by the petitioners herein will fall within the ambit of Criminal Law Amendment Ordinance, as amended by the State of Tamil Nadu. Criminal Law Amendment Ordinance, 1944 was introduced to attach the ill-gotten wealth of accused involved in offences mentioned in the Schedule to the Ordinance. Initially item No.2 and Item No.4 of the Schedule to the Ordinance provided for attachment of properties, where the offence was committed in relation to the State and its instrumentalities. In other words, where the State or its instrumentalities had been cheated, the provisions of the Ordinance can be invoked for attaching the properties of the offender. The Schedule to the Criminal Law Amendment Ordinance, 1944 was amended by the Criminal Law (Tamil Nadu Amendment Act, 1997) with effect from 12.08.1997 on account of which, the restriction that the offences must have been committed in relation to the State or its instrumentalities was taken away and now, the State of Tamil Nadu has the power to initiate proceedings even in respect of offences against private persons. Thus, if a person is involved in an offence under Section 406 or 420 IPC and the victim is a private person, the provisions of the Criminal Law Amendment Ordinance, 1944 can be invoked in the State of Tamil Nadu for attaching the properties of the offender. The Ordinance provides for procedure to effect attachment. Under Section 3 of the Ordinance, it is only the State Government or the Central Government that can initiate action by approaching the District Judge of the area where the accused ordinarily resides or carries on business. The police officer has no role to play in this. He can, at the most, submit a report to the State Government or Central Government requesting the State Government to initiate action under the Ordinance and he cannot arrogate to himself the power to issue such veiled threats to the Sub-Registrar.

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8. Mr. Abudu Kumar Rajaratnam, learned Amicus Curiae, rightly submitted that, such a power is not traceable even to Section 102 Cr.P.C. which reads as follows:

> "102. Power of police officer to seize certain property.--(1) Any police officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any offence.

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> (2) Such police officer, if subordinate to

the officer in charge of a police station, shall forthwith report the seizure to that officer.

(3) Every police officer acting under sub-section (1) shall forthwith report the seizure to the Magistrate having jurisdiction and where the property seized is such that it cannot be conveniently transported to the Court or where there is difficulty in securing proper accommodation for the custody of such property, or where the continued retention of the property in police custody may not be considered necessary for the purpose of investigation, he may give custody thereof to any person on his executing a bond undertaking to produce the property before the Court as and when required and to give effect to the further orders of the Court as to the disposal of the same:

Provided that where the property seized under sub-section (1) is subject to speedy and natural decay and if the person entitled to the possession of such property is unknown or absent and the value of such property is less than five hundred rupees, it may forthwith be sold by auction under the orders of the Superintendent of Police and the provisions of sections 457 and 458 shall, as nearly as may be practicable, apply to the net proceeds of such sale.

9. He also brought to my notice a Full Bench judgment of the Bombay High Court in Sudhir Vasant Karnataki Mohideen Mohammed Sheik Dawood through its Power of Attorney Holder Mr.Rajesh Baxi Chetna Properties Pvt.Ltd. v. The State of Maharashtra [MANU/MH/1561/2010], wherein, the Full Bench went in depth into the powers of the police under Section 102 Cr.P.C. and has held as follows:

"86. To sum up, we answer the reference thus:

Q.(a) Whether the words "any property" used in Sub-section (1) of Section 102 of the Code of Criminal Procedure, 1973 would mean to include "immovable property"?

Ans. We, therefore, hold that the expression "any property" used in Sub-section (1) of Section 102 of the Code does not include immovable property. Question (a) is, therefore, answered in the negative.

Q. (b) Whether a police officer can take control of any immovable property which may be found under circumstances which create suspicion of the commission of any offence?

Ans. No."

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10. The Full Bench of the Bombay High Court refused to extend the law laid down by the Supreme Court in State of Maharashtra v. Tapas D.Neogy [(1999) 7 SCC 685] to immovable properties in order to bring them within the purview of Section 102, Cr.P.C. In paragraph no.66 of the judgment, the Full Bench has held as follows:

> "66. If it is taken for a while that Section 102 of the Code provided for seizure of immovable property for the purpose of ensuring the offenders do not derive benefits from the property which they got as a result of crime as well, then it would have been unnecessary for the Legislature to provide for attachment and, eventually, forfeiture of such property under the Criminal Law (Amendment) Ordinance, as also the provisions of Section 105-A to 105-L of the Code and Section 68-C to F of the Narcotic Drugs and Psychotropic Substances Act. It became necessary for the Legislature to provide for attachment and forfeiture of such property which the offenders had got as a result of crime, because Section 102 did not and could not have provided for attachment of such property."

11. Though, Right to Property is not a fundamental right, yet, it has now been declared to be a human right by the Hon'ble Supreme Court in State of Haryana v. Mukesh Kumar and other [(2011) 10 SCC 404]. A similar issue arose before the Kerala High Court in Kuriachan Chacko v. State of Kerala in W.P.(C) No.12275 of 2012 dated 26.07.2012 and it has been held as follows in para 14:

> "14. Section 102, by no stretch of imagination, can apply in a situation like this. Even though the words "any property" are there in Section 102, it is clear from a reading of sub-sections (1) to (3) together, that what is involved is not the seizure of immovable property. As already noticed, Section 83 contains a provision for attachment of immovable property and the power is conferred on the court itself. Under Section 102, the power of seizure is on the police officer and it has never envisaged a situation like the one herein, where a police officer can direct attachment of immovable property. Therefore, in the absence of a specific conferment of power on the Police officer, the steps for attachment made by the Sub Registrar herein, relying upon the request made by the Police officer, cannot hold good. The said letter, even going by the wordings therein, cannot amount to an order of attachment also. Therefore, merely because there is a power for the Police officer to conduct investigation and collect details of properties of the accused or others involved in that process, it can never be treated as an order of attachment for enabling

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the Sub Registrar to put an endorsement in the registers."

12. This Court is in complete agreement with the law laid down by the Full Bench of the Bombay High Court and the Kerala High Court with regard to the power of the police officer to seize immovable properties under Section 102, Cr.P.C. The Deputy Superintendent of Police, by couching the impugned communication in a camouflaged language, is in fact, indirectly attaching the properties of the accused via the backdoor, which is not permissible. If the Deputy Superintendent of Police is desirous of safeguarding the interest of the depositors, he should have immediately taken steps to send a report to the Government for initiating action under Section 3 of the Criminal Law Amendment Ordinance and not through such a subterfuge.

13. The order impugned is indeed arbitrary exercise of power and is therefore, violative of Article 14 of the Constitution of India. It is always open to the Investigating Officer to call for information from the Sub-Registrar about the property holdings of an accused. He can also ask the Sub-Registrar to inform him, if any transaction concerning the properties of the accused, is registered. He cannot prohibit the Registrar from registering a document.

14. In the result, the writ petition is allowed and the impugned communication dated 08.01.2015 is quashed. The second respondent is directed to keep the first respondent informed of all transactions concerning the properties mentioned in the impugned communication. No costs. Connected Miscellaneous Petition is closed.

While parting with the matter, this Court places on record, its appreciation for Mr. Abudu Kumar Rajaratnam, learned Amicus Curiae, for his able assistance.

सत्यमेव जयते

Sd/-
Assistant Registrar

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//True Copy//

Sub Assistant Registrar

(CO)
EU(/07/2015)
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To

1.The Deputy Superintendent of Police
Economic Offences & Wing
Kancheepuram District.

2.The Joint Sub Registrar
No.IV, Kancheepuram
Kancheepuram District.

3.The Public Prosecutor
High Court, Madras.

Copy to: Mr.Abudukumar Rajaratnam, Amicus Curiae,
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+ 1 cc to Mr.G. Punniyakoti, Advocate SR.38145

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