

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.02.2015

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

Crl.R.C.No.132 of 2015

and

M.P.No.1 of 2015

N.Baaskaran

.. Petitioner

Vs

1. State

Rep. by the Inspector of Police,
Central Crime Branch - Team XVIII,
Egmore, Chennai - 8.

2. Mrs. Indira Devaraj Bhat

.. Respondents

Criminal Revision filed under sections 397 r/w 401 of Criminal Procedure Code against the order dated 22.01.2015 passed in Crl.M.P.No.6187 of 2014 in Crime NO.330 of 2011 on the file of the learned XI Metropolitan Magistrate at Chennai.

For Petitioner : Mr.R.Thiyagarajan, Sr. Counsel
for Mr.S.Santhosh

For Respondents : Mr.P.Govindaraj (for R1)
Additional Public Prosecutor.

O R D E R

Criminal Revision case is directed against the order made in Crl.M.P.6187 dated 22.01.2015 on the file of the learned XI Metropolitan Magistrate, Saidapet, Chennai, by which, the learned Magistrate has directed the petitioner to return the 8 original documents bearing Nos.1447/2011 to 1454/2011, within one month from the date of passing of the order i.e or or before 20.2.2015, for the purpose of deciding the issue of interim custody of the abovesaid documents.

2. Material on record discloses that earlier, in Cr.No.330 of 2011 N.Baaskaran, petitioner herein has filed Crl.M.P.No.3376 of 2013

on the file of the learned XI Metropolitan Magistrate, Saidapet, Chennai, for return of the documents and by order dated 05.06.2013, the learned Magistrate has passed the following orders.

"Reply received. Heard. Record Perused. Petition filed under Section 451 Cr.P.C. to return of document Nos.1447/2011 to 1454/2011 on the file of Sub-Registrar Office, Saidapet. The prosecution side raised objection that if the document handed over to the petitioner, they will create number of sale deeds based on the documents mentioned in the petition. As per order in CrI.M.P.No.2058/2013 the said documents were called from sub-registrar, Saidapet office. The original documents were produced by sub-registrar. The petitioner gave undertaking that based on said title deeds. He will not alienate the property till disposal of the above said case. The said undertaking has been recorded and the original documents mentioned in the petition are ordered to returned to the petitioner. The petitioner has to produce the said documents as and when ordered by this Court."

3. Being aggrieved by the same, Indira Devaraj Bhat, the defacto complainant has filed CrI.Rev.Case No.1023 of 2013 before this Court. Facts considered by this Court in CrI.R.C.No.1023 of 2013 is reproduced hereunder.

"4. On a perusal of the records, it appears that on 25.6.2010, a Power of Attorney Deed has been executed by the petitioner in favour of one Muruganandam with respect to her property at T.Nagar and the same has been registered on 13.08.2010. Thereafter, on that strength, the said Muruganandam is said to have entered into an agreement for sale with one M.Sundaram on 18.02.2011 under a Registered Deed Sale Agreement. Thereafter, a complaint has been given by the petitioner to the concerned police on 4.8.2011 and the same was registered in Crime No.330/2011 for the offences under Sections 415, 417, 419, 463, 465, 468, 471 and 120-B of IPC and the investigation is going on. Before that, V.Muruganandam along with M.Sundaram is said to have executed 8 sale deeds in favour of 8 persons on 23.6.2011. The 2nd respondent is also one such purchasers. In the meanwhile, the 2nd respondent filed CrI.M.P.No.2058 of 2013 in Crime No.330 of 2011 imder Section 457 of Cr.P.C. before the learned XI Metropolitan Magistrate, Chennai, seeking a direction to the Sub-Registrar, T.Nagar, Chennai to produce all the 8 Sale deeds though only one sale deed is in his

favour and the same was allowed by order dated 16.05.2013. Thereafter, the 2nd respondent also filed Crl.M.P.No.3376 of 2013 to return the documents to the owners of the documents in Documents Nos.1447 to 1454 of 2011 and the same was allowed by order dated 5.6.2013. It appears that the petitioner filed a suit and obtained an interim order not to alienate or encumber the property. When the said suit is pending, the order dated 5.6.2013 came to be passed by the learned XI Metropolitan Magistrate, Chennai."

4. One of the grounds of challenge to the order in Crl.M.P.No.3376 of 2013 dated 05.06.2013, in Criminal Revision Case was that though she was the complainant in Cr.No.330 of 2011, no opportunity of hearing was given to her, in Criminal Miscellaneous Petitions.

5. Having regard to the above facts and failure of the lower Court to provide reasonable opportunity, this Court, vide order dated 18.12.2013 in Crl.R.C.No.1023 of 2013 at paragraph No.7, passed the following orders.

"7. Considering the facts and circumstances, I am of the view that the order passed by the learned XI Metropolitan Magistrate, Chennai has to be set aside and the same is accordingly set aside. If the petitioner wants to file any application, she can do so after impleading the purchasers or their power agents and thereafter, hearing all the persons, the trial Court shall pass suitable orders."

6. Material on record discloses that the defacto complainant has filed Crl.M.P.No.6187 of 2014 under Section 451 Cr.P.C for return of the abovesaid documents, contending inter alia that the property belonged to her. In the said petition, she has further submitted that by forging her signatures, documents have been created and properties are alleged to have been sold to Mr.N.Baaskaran/petitioner and seven others. She has also contended that a suit in O.S.No.4610 of 2013 has been filed, to set aside the alleged power of attorney given to Muruganantham by her. In the abovesaid circumstances, she has sought for a direction to N.Baaskaran to return the documents No.1447 to 1454 of 2011 to her. Documents have been registered on the file of the Sub Registrar, Saidapet.

7. Perusal of the impugned order made in Crl.M.P.No.6187 of 2014 dated 22.01.2015 on the file of the learned XI Metropolitan Magistrate, Saidapet, Chennai, shows that the Court below, by notice

dated 31.12.2014, has directed the petitioner to return the documents to the Court. But, he has not appeared. Having regard to the averments made in Crl.M.P.No.6187 of 2014, failure to comply with the directions issued to the petitioner to return the abovesaid documents to the Court and also taking note of the orders made in Crl.R.C. No.1023 of 2013 dated 18.12.2013, the learned learned XI Metropolitan Magistrate, Saidapet, Chennai, Magistrate has directed the petitioner to return the documents within 30 days from the date of passing of the order i.e., before 20.02.2015.

8. Though, Mr.A.Thiyagarajan, learned Senior counsel appearing for the petitioner contended that the High Court while setting aside the order made in Crl.M.P.No.3376 of 2013 dated 05.06.2013, did not pass any specific directions, directing the petitioner to return the documents or directed the learned Magistrate to issue any directions for the abovesaid purpose and that the order made in Crl.M.P.No.3376 of 2013 dated 05.06.2013 was set aside on the only ground of violation of principles of natural justice, for not having provided an opportunity of hearing to the defacto complainant and that therefore, the Court below ought to have considered both the applications viz., Crl.M.P.No.3376 of 2013 filed by the petitioner and Crl.M.P.No.6187 of 2014 filed by the defacto complainant and passed an order on merits and till such time there cannot be any direction to the petitioner to return the documents to the Court by specifying any time limit, this Court is not inclined to accept the said contentions.

9. Application No.3376 of 2013 has been filed by the petitioner under Section 451 Cr.P.C., to return document Nos.1447 to 1454 of 2011. Earlier as per the directions in Crl.M.P.No.2058 of 2013 the said documents were called from the Sub Registrar, Saidapet. Originals have been produced by the Sub Registrar. The petitioner seemed to have given an undertaking that based on the title deeds, he would not alienate the property. Original documents have been directed to be returned to the petitioner without any opportunity to the defacto complainant. Thus, when she was aggrieved over the order to return the originals to the petitioner, this Court vide order dated 18.12.2013 in Crl.R.C.No.1023 of 2013, has set aside the order made in Crl.M.P.No.3376 of 2013 dated 05.06.2013.

10. Though, there was no such direction by the High Court to return the documents to the lower Court, no sooner the order granting interim custody to the petitioner is set aside, by this Court, in the revision case, he has no right to retain the documents. After the order in Criminal Revision Case, the petitioner should have returned the documents on his own, to the lower Court, which he has not done.

11. Though, Mr.A.Thiyagarajan, learned Senior counsel, disputed that the petitioner had not received the notice dated 31.12.2014, directing the petitioner to return the original documents, even taking it for granted such notice was not served on the petitioner, still he has no right to withhold the documents. His right to retain the documents is extinguished, as the order made in Crl.M.P.No.3376 of 2013, has been set aside by this revisional Court. Further when serious allegations have been made by the defacto complainant in Crl.M.P.No.6187 of 2014, filed under Section 451 Cr.P.C that one Muruganantham and others have created forged documents and using the same, have sold properties to the petitioner and others, unless and until, the right of both the defacto complainant and the petitioner to have interim custody of the documents is decided, petitioner cannot withhold the documents.

12. Under Sections 451 and 457 Cr.P.C., Court is empowered to pass appropriate directions for proper custody of the documents. Till such time, documents have to be in custody of the Court. Hence, for the reasons stated supra, the directions issued by the learned XI Metropolitan Magistrate, Saidapet, Chennai, to the petitioner to return the documents Nos.1447 to 1454 of 2011, to the lower Court within one month from the date of passing of the order i.e. on or before 20.02.2015, cannot be said to be manifestly illegal, warranting interference. Hence, the Criminal Revision case is dismissed. It is open to the learned XI Metropolitan Magistrate, Saidapet, Chennai, to pass suitable orders, if the documents are not returned as directed earlier. Consequently, the connected Miscellaneous Petitions is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The XI Metropolitan Magistrate, Saidapet, Chennai.
2. The the Inspector of Police, Central Crime Branch - Team XVIII, Egmore, Chennai - 8.
3. Public Prosecutor, High Court, Madras.
4. The Chief Metropolitan Magistrate, Egmore, Chennai -8.

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pmk.17.2.2015