

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09-07-2015

CORAM:

THE HONOURABLE MR. JUSTICE P.DEVADASS

Crl. R.C. Nos.260 and 261 of 2015

Rathi Gurusamy .. Petitioner in Crl.RC 260/2015/  
3rd Party

Mrs.G.Vasanthakumari .. Petitioner in Crl.RC 261/2015/  
3rd Party

vs.

State by Inspector of Police,  
CBI/ACB, Chennai at  
Sastri Bhavan,  
Haddows Road,  
Chennai.

.. Respondent in both Crl.RCs./  
Complainant in both

Criminal Revision Petitions are preferred under Sections 397 and 401 of Criminal Procedure Code, 1973 against the orders dated 18.03.2015 passed in Crl.M.P.Nos.5591 of 2014 and 5590 of 2014 in C.C.No.36 of 2013 by the learned IX Additional and Special Judge, CBI Cases, Chennai.

For Petitioner in both Crl.RCs : Mr.V.Balasubramanian  
Associates

For Respondent in both Crl.RCs : Mr.K.Srinivasan,  
Special Public Prosecutor  
for CBI Cases.

C O M M O N O R D E R

These revisions arise out of the common order passed by the learned IX Additional Judge/Special Judge, CBI Cases, Chennai in Crl.M.P.Nos.5590 and 5591 of 2014 in C.C.No.36 of 2013 concerning A-1 and A-2 and certain third parties on 18.3.2015. Already the matter pertaining to A-1, namely, Gurusamy in Crl.R.C.No.259 of 2015 has been disposed of by this Court. Now this order covers the wife and daughter of the said Gurusamy, namely, Vasanthakumari (Crl.R.C.No.261 of 2015) and Rathi Gurusamy (Crl.R.C.No.260 of 2015).

2. In C.C.No.36 of 2013 before the said Court, the said Gurusamy and certain others are being prosecuted for their alleged commission of certain offences.

3. In the said Court, Gurusamy, his wife, their daughter

have filed Crl.M.P.Nos.5590 and 5591 of 2014 seeking the relief of return of certain items of properties, which includes movable and immovable items.

4. In its impugned order dated 18.3.2015, the Trial Court directed return of certain items and declined to grant relief with respect to certain other items.

5. As I have already stated in his property return petition, Gurusamy's chapter is over, now the fate of the petition of his wife and daughter will be known shortly.

6. The learned counsel for the petitioners contended that the impugned order suffers from legality since items pertaining to Rathi Gurusamy and Vasanthakumari which are much beyond the check period also have been seized.

7. The learned counsel for the petitioners would also contend that Rathi has been employed and was in receipt of Rs.13,86,33,277.01 from her employer and that also has been tagged along with her accused husband's income.

8. The learned counsel for the petitioners also contended that without any basis the locker key of Vasanthakumari also has been taken away. Actually in the locker her personal jewellery lies safely.

9. The learned Special Public Prosecutor, CBI cases drawn our attention to paragraph Nos.8 to 11 in the impugned common order of the Trial Court and would contend that the order does not suffer from any illegality. He would also contend that the contentions now placed by the petitioners are required to be adjudicated before the Trial Court at the appropriate time. If the items pertaining to the present petitioners have no connection with the present case as per law, they will be entitled to the return of those items.

10. The learned Special Public Prosecutor also submitted that the prosecution is proceeding on the allegation that they are proceeds of crime linking Gurusamy. In such circumstances, it is premature to ask for the return of those items.

11. The learned Special Public Prosecutor, CBI also read paragraph 12 of the impugned order and submitted that the Trial Court considered this contention and concluded as against the petitioners.

12. In reply, the learned counsel for the petitioners would submit that CBI cannot say that the Court should withhold items which were much prior to the period concerning the allegations made as against Gurusamy.

13. I have anxiously considered the rival submissions, perused the typed set of papers and the impugned common order.

14. Long back, the Privy Council in its celebrated King Emperor vs. Khawaja Nazir Ahmad {AIR 1945 PC 18} held that in this country the process of investigation is the province of police. The

unfettered right of the police to investigate in a cognizable offence has been recognised also by the Indian Supreme Court in State of Bihar vs. J.A.C.Saldanha (AIR 1980 SC 326 (FB)].

15. However, in Khawaja Nazir Ahmad (supra), the Hon'ble Judicial Members of the Privy Council added that the said power of the police is subject to any mandatory provisions of law or the Rules and it will not also cover mala fide, in such circumstances, court will interfere, but it cannot direct the manner of investigation by the police.

16. 'Investigation' as stated in Section 2(h) of Cr.P.C., means 'collection of evidence'. It will be oral, documentary, material objects, seizure of items which are relevant to the case. They may be case properties. From them, personal properties of the accused and others have to be separated.

17. When the Investigating Agency collects/seizes not case properties, items which are not connected with the case, then the parties can seek redress. In this regard, remedy is provided in Sections 451 and 457 of Cr.P.C. There cannot be quarrel over the proposition that personal property unconnected with the allegations cannot be brought into case.

18. Reading paragraph Nos. 8 to 11 of the impugned order, it is seen that it is in tune with the general principles of law.

19. However, upon hearing the arguments of both sides and upon perusing the additional typed set of papers, some tinkering is required to be done to the order under challenge. It is necessitated because certain items which are much prior to the alleged period of commission of offence also have seized by the Investigation Officer. They cannot be mixed with the case property.

20. The contention of the learned counsel for the petitioners is that nothing incriminating is kept inside the Bank locker except her personal jeweleries. Now she is not wearing the jeweleries. She has too much attachment towards her jewelery, she cannot be made to suffer.

21. The learned Special Public Prosecutor, CBI submitted that the mystery inside the locker is required to be cracked.

22. In the circumstances, the impugned common order of the Trial Court passed in CrI.M.P.Nos.5590 and 5591 of 2014 so far as the petitioners Vasanthakumari and Rathi Gurusamy are concerned is modified to the effect that (i) Sale Deed dated 31.5.1996 in favour of Vasanthakumari by Rathnaraj Vincent for Rs.72,450/-; (ii) Sale Deed No.3061 of 1996 dated 23.9.1996 in favour of S.Gurusamy and Vasanthakumari by Rajammal for Rs.33,600/-; Sale Deed No.3062 of 1996 dated 23.9.1996 in favour of S.Gurusamy and Vasanthakumari by Rajammal for Rs.33,600; and (iv) Sale Deed No.658 of 2011 dated 4.3.2011 in favour of Vasanthakumari by Sivagnanam for Rs.2,80,600/- shall be returned to petitioner-Vasanthakumari.

23. The matter is remanded back to the Trial Court with respect to Bank locker key. The Trial Court will direct the Investigation Officer to take inventory of the contents of the locker in the presence of Vasanthakumari and Rathi Gurusamy, the Investigation Officer shall videograph the items and he will submit his Inventory Report and the video cassettes to the Trial Court. The Trial Court after giving reasonable opportunity to both sides, will decide this locker key issue in accordance with law at an early date.

24. Accordingly, these Criminal Revision Cases are disposed of.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Svn

Copy to:

1. The IX Additional Special Judge for CBI Cases, Chennai.
2. The Special Public Prosecutor for CBI Cases, High Court, Madras.
3. The Inspector of Police, CBI/ACB, Sastri Bhavan, Haddows Road, Chennai.
4. The Section Officer, Criminal Section, High Court, Madras.

+ 2 ccs to M/s. V. Balasubramanian & Associates, Sr.34584, 34585

Crl.RCs 260 and  
261 of 2015

MSM(CO)

Eu 22.07.15

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