IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.10.2015

CORAM

THE HONOURABLE MR. JUSTICE B.RAJENDRAN

Crl. R.C.Nos. 308 & 515 of 2015
and
M.P.Nos.1,1 & 2,2 of 2015

K.P.Viswanathan ... Petitioner/Accused-7 in Crl.R.C.No.308 of 2015

Indra Mukundan ... Petitioner/Accused-2 in Crl.R.C.No.515 of 2015

Versus

The Deputy Superintendent of Police,
Economic Offence Wing,
Omanathurar Government Estate,
Chennai 600 002. ... Respondent/Complainant in both the Crl.Rcs.

Criminal Revision Cases filed under Sections 397 & 401 of Criminal Procedure Code to call for the entire records in connection with the Crl.M.P.No. 1899 and 1898 of 2014 in C.C.No.29325 of 2004 respectively on the file of the learned Chief Metropolitan Magistrate, Egmore, Chennai and to set aside the order dated 11.03.2015

For Petitioner in Crl.R.C.No.308 of 2015 : Mr. E.Kannadasan

For petitioner in Crl R.C.No.515 of 2015 : Mr. V.Lakshminarayanan for M/s. R.Vasudevan

For respondent in both Crl.R.Cs. : Mr. Mohammed Riyaz, Government Advocate (Crl.side)

COMMON ORDER

The petitioners are the accused in C.C.No.29325 of 2004 and the respondent in both these cases are one and the same, therefore, these two revision Cases are taken up together and are disposed of by this common Order.

2. The revision petitioners herein are the accused 7 and 2 in C.C.No.29325 of 2004 before the trial Court. Pending C.C. No. 29325 of 2004, the petitioners have filed Crl.M.P. Nos. 1899 and 1898 of 2014 before the trial Court under Section 239 of Cr.P.C. to discharge them from the purview of prosecution. Both the petitions were dismissed by the trial Court by separate orders on 11.03.2015, against which the present Criminal Revision Cases are filed.

3. The case of the prosecution is that the petitioner in Crl.R.C. No. 308 of 2015 has purchased the property situated at No.8/37, Madapalli College post, Oanchiyam Village, Nathapuram Road, Vadakara Taluk, Kozhikodu by a sale deed dated 09.02.2014 and the petitioner in Crl.R.C. No. 515 of 2015 has sold the property situated at No.5, Flowers Road, Kilpauk, Chennai. According to the prosecution, the petitioners have purchased and/or sold the aforesaid properties knowing fully well that the aforesaid properties are the subject matter of the criminal proceedings in C.C. No. 32 of 2000 before the learned Special Court under TNPID Act, Chennai especially when the aforesaid properties have been attached by a process of the Court.

4. The learned counsel appearing for the petitioner would contend that the petitioner in Crl.R.C. No. 515 of 2015 has sold the property after entering into a settlement with the depositors before the TNPID Court only to settle the dues payable to the depositors. The said sale was made after entering into a compromise with the depositors and therefore the question of cheating does not arise. After sale of the property, the petitioner in Crl.R.C. No. 515 of 2015 has made a deposit of Rs.40 lakhs to settle the depositors. At the time of entering into compromise, no objection has been raised by any of the depositors, therefore, the present complaint made by third party to the compromise is vexatious.

5. Mr. V. Lakshmi Narayanan, learned counsel appearing for the petitioner in Crl.R.C. No. 515 of 2015 would submit that the allegations levelled against the petitioners is totally basleess. The property in question had already been seized of by a competent authority. When that being the case, there is no room for transacting the said property without the knowledge of the authority. The third party complaint that the property, which was in attachment, has been sold is merely vague and vexatious one. It is also submitted that the petitioners have acted as per the directions of the Court and even if it is taken into account the allegations made are correct, there cannot be any parallel proceedings on the same subject matter. It is also contended that the court below had not taken into account the subsequent orders passed by this

Court in discharging the other accused. For the purpose of settling the dues of the depositors, the alleged sale had been made and without pursuing the documents filed, particularly the deposit receipts, the court below had erroneously dismissed the petitions for discharge.

6. The learned counsel for the petitioners also brought to the notice of this Court that the Accused Nos. 3 and 4 in C.C. No. 29325 of 2004 have approached this Court by filing Crl.R.C. No. 982 of 2006. This Court, by an order dated 05.12.2012 discharged them from the purview of Criminal Prosecution. As the petitioners are also similarly placed persons like the accused Nos. 3 and 4, they are also entitled to the benefit of the order dated 05.12.2012.

7. On the above submission of the learned counsel for the petitioners, this Court heard the learned Government Advocate.

8. I heard the learned counsel appearing for the respective petitioners and the learned Government Advocate (Crl.side) for the prosecution. On careful perusal of the entire documents as well as the orders passed by the court below, it is clear that a similar stand has been taken by the accused Nos. 3 and 4 in C.C. No. 29325 of 2004 which culminated in an order dated 05.12.2012 passed by this Court in Crl.R.C. No. 982 of 2006. By the order dated 05.12.2012, the order passed by the court below refusing to discharge the accused 3 and 4 was discharged by this Court.

9. As far as Crl.R.C. No. 308 of 2015 is concerned, the petitioner therein stands on a better footing. The petitioner in Crl.R.C. No. 308 of 2015 is a purchaser of the property. In fact, after purchase, it came to light that the property has been attached and he voluntarily surrendered the property. Thereafter, the complaint has been made by the defacto complainant in this case. In such circumstances, the court below ought to have discharged the petitioner in Crl.R.C. No. 308 of 2015 and non-consideration of the same vitiates the impugned order.

10. In the very same case in C.C. No. 29325 of 2014, the accused Nos. 3 and 4 have filed Crl.R.C. No. 982 of 2006. By an order dated 05.12.2012, this Court allowed the petitions for discharge filed by them. The relevant portion of the order dated 05.12.2012 is as follows:-

> 12. The offence complained against the petitioners is that they have purchased one of the properties purchased by the accused in Crime No. 8 of 2000 and therefore they are guilty of the offences punishable under the Tamil Nadu

Protection of Interests of Depositors (in Financial Establishment) Act, 1997 (Tamil Nadu Act 44 of 1997). According to the prosecution, one among the properties purchased by the accused in Crime No. 8 of 2000 was purchased by the petitioners thereby the depositors were made to suffer. According to the prosecution, even in the year 2004, the petitioners have purchased the property for Rs.25 lakhs when the value of the property was worth more than a crore. It was also the case of the prosecution that when the properties belonged to the accused in Crime No. 8 of 2000 were attached, the petitioners ought not to have purchased the same.

13. At the outset, it is to be mentioned that the first and second accused in Crime No. 8 of 2000 have been exonerated by this Court by judgment dated 25.06.2012 in Crl.A. No. 401 of 2006 taking note of the subsequent developments. The third accused was acquitted by the trial court itself. In fact, the properties purchased by Maruti Finance, A-1 in Crime No. 8 of 2000 was attached for non-payment of the amount invested by the depositors. However, the depositors, who have lost their money, have formed an association among themselves and such association was paid Rs.40 lakhs towards full and final settlement on 25.02.2004 i.e., even before the trial court could convict the accused in Crime No. 8 of 2000 on 09.03.2006. Thus, it is evident that only a sum of Rs.45 lakhs remained to be settled to the depositors at that point of time and the same was also settled to the purchasers by the 2nd accused in Crime No. 8 of 2000.

14. As mentioned above, the properties, which were attached by the Government was also subsequently raised by the order dated 08.06.2010 by accepting the offer made by the second accused in Crime No. 8 of 2000 to pay Rs.1.50 crores in lieu of attachment of the property. Thereafter, the offence against the first and second accused in Crime No. 8 of 2000 was compounded and the same was also recorded.

15. It is seen from the records that the application for discharge was dismissed on the ground that the guilt or otherwise of the petitioners can be determined only after trial and therefore the trial court refused to discharge the petitioners. As mentioned above, when the accused 1 and 2 in Crime No. 8 of 2000

were exonerated of all the charges, the petitioners, who have purchased the properties at the time when the attachment was in force, have to be discharged in view of the subsequent development.

16. The accused in Crime No. 8 of 2000 were prosecuted for not repaying the depositors the amount and the petitioners herein have only purchased a property from the accused in Crime No. 8 of 2000. Subsequently, the depositors have been settled and all the properties, which were purchased by the accused in Crime No.8 of 2000, have been lifted on payment of money. It is also to be noted that out of 30 properties attached, 18 properties have been sold through auction sale by the Court, amount have been realised and paid to the depositors, Thereafter, the offence, for which the A-1 and A-2 in Crime No. 8 of 2000 were charged has been compounded and they were exonerated of the charges. Therefore, in view of the above subsequent developments, the petitioners, who are subsequent purchasers of the property from the accused in Crime No. 8 of 2000, have to be discharged. Furthermore, the offences for which the petitioners have been charged cannot be regarded as a criminal offence with any intention to cheat any one. In fact, the petitioners have to be considered to be bonafide purchasers of the property for a valuable sale consideration.

17. In this connection, it is useful to refer to the decision of the Honourable Supreme Court reported in (Principal Chief Conservator of Forest and another vs. J.K. Johnson and others) 2011 CIJ 617 ALJ wherein in para Nos. 28, 33, 37 and 39, it was held as follows:-

> "28. One thing is clear that the statutory provisions noticed above do not in explicit terms provide for the forfeiture of the seized items by the departmental authorities from a person who is suspected to have committed offence/s against the 1972 Act. Chapter VI-A which has been inserted in the 1972 Act by Act 16 of 2003 that provides for forfeiture of property derived from illegal hunting and trade is entirely different provision and has nothing to do with forfeiture of the property seized from a person accused of commission of offence against the 1972 Act. Insofar as Section 39(1)

(d) of the 1972 Act is concerned, it provides that every vehicle, vessel, weapon, trap or tool that has been used for committing an offence and has been seized under the provisions of the Act shall be the property of the state government and in a certain situation, the property of the central government. The key words in Clause (d) of Section 39(1) are "..... has been used for committing an offence .....". What is the meaning of these words? The kind of absolute vesting of the seized property in the state government, on mere suspicion of an offence committed against the 1972 Act, could not have been intended by the Parliament. It is not even scarcely disputed that every enactment in the country must be in conformity with our Constitution. In this view, it is not sufficient - nor the law-makers intended to make it - to deprive a person of the property seized under the 1972 Act on accusation that such property has been used for committing an offence against the Act. Section 39(1)(d) does not get attracted where the items, suspected to have been used for committing an offence, are seized under the provisions of the Act. It seems to us that it is implicit in Section 39 (1)(d) that for this provision to come into play there has to be a categorical finding by the competent court of law about the use of seized items such as vehicle, weapon, etc. for commission of the offence. There is merit in the submission of the learned counsel for the respondent nos. 1 to 3 that if the construction put upon Section 39(1)(d) by Mr. R. Sundervardhan is accepted, the expression `has been used for committing an offence' occurring therein has to be read as, `is suspected to have been used for committing an offence'. In our view, this cannot be done.

33. Now, we have to see whether Section 54(2) of the 1972 Act, after its amendment by Act 16 of 2003, empowers the specified officer to order forfeiture of the property, in respect of the offences against the Act suspected to have been committed by such person, on composition of such offence. In other words, whether in the absence of any specific provision in Section 54(2) that the property seized shall be released, the

specified officer empowered to compound offences is authorized to order forfeiture of the seized property and not return the property to the person from whom it has been seized.

37. Section 54(2) of the 1972 Act, prior to the amendment by Act 16 of 2003, authorized the empowered officer, on payment of value of the property liable to be forfeited, to release the seized property, other than the government property. The provision underwent changes w.e.f. April 1, 2003 and the provision for release of the seized property has been deleted. Does the provision in new Section 54 (2) authorize the empowered officer to order forfeiture of the seized property to the state government? We think not. In the first place, by deletion of such expression, it cannot be said that the Parliament intended to confer power on the specified officer to order forfeiture of the seized property which is nothing but one form of penalty in the context of the 1972 Act. Had the Parliament intended to do so, it would have made an express provision in that regard. Such conferment of power of penalty upon the specified officer cannot be read by implication in Section 54 (2). Secondly, any power of forfeiture conferred upon Executive authority merely on suspicion or accusation may amount to depriving a person of his property without authority of law. Such power cannot be readily read by relying on the Statement of Objects and Reasons (Act 16 of 2003) without any express provision in the statute.

39. It is true that by Act 16 of 2003, the Parliament has consciously deleted from Section 54 the provision concerning release of seized property liable to be forfeited on payment of value of such property but the plain language that is retained in Section 54 (2) after amendment which reads, `on payment of such sum of money to such officer, the suspected person, if in custody, shall be discharged and no further proceedings in respect of the offence shall be taken against such person' does not show that the Legislature intended to empower the specified officer under Section 54 to forfeit the seized property used by the suspected person in

commission of offence against the Act. There is no replacement of the deleted words by any express provision. Section 54 substituted by Act 16 of 2003 does not speak of seized property at all - neither its return nor its forfeiture - while providing for composition of offence. The property seized under Section 50(1)(c) and Section 50(3A) has to be dealt with by the Magistrate according to law. This is made clear by Section 50(4) which provides that things seized shall be taken before a Magistrate to be dealt with according to law. Section 54 substituted by Act 16 of 2003 does not empower the specified officer to deal with the seized property. In this view of the matter, we are unable to accept the submission of the learned senior counsel for the appellants that a comparative reading of pre-amended Section 54(2) and Section 54 (2) as substituted by Act 16 of 2003 makes the legislative intent clear that seized articles shall be forfeited on composition of the offence under the 1972 Act. When the language of the statutory provision is plain and clear no external aid is required and the legislative intention has to be gathered from the language employed. In our view, neither Section 54(2) of the 1972 Act by itself nor Section 54(2) read with Section 39(1)(d) or any other provision of the 1972 Act empowers and authorizes the specified officer under Section 54, on composition of the offence, to deal with the seized property much less order forfeiture of the seized property used by the person suspected of commission of offence against the Act."

18. From a reading of the judgment of the Honourable Supreme Court, it is very clear that when once the accused were allowed the offence to be compounded and compounding fee was also paid, the authority has no right to order for forfeiture or confiscating the vehicle and they have to only surrender the vehicle before the Magistrate concerned who shall deal with it in accordance with law. Therefore, applying the analogy of the above decision to the facts of the present case, the petitioners are liable to be discharged in view of the subsequent development in this case by which the offence committed by

the said Mukundan was compounded. Even under the Tamil Nadu Protection of Interests of Depositors (in Financial Establishment) Act, 1997 also, provisions have been made to compound the offence against the accused and therefore, since compounding of the offence is permitted under the Act and the accused in in C.C. No. 8 of 2000 also complied with all the conditions, he was acquitted of all the charges. In the present case, when once the attachment of the property has been lifted, after payment of money, the petitioner cannot be said to have committed any offence and therefore, they are entitled to be discharged from the criminal prosecution.

19. In the light of the above discussion and in view of the subsequent developments narrated above, the order dated 02.08.2006 passed in C.M.P. No. 1221 of 2006 in C.C. No. 29325 of 2004 on the file of the Chief Metropolitan Magistrate, Egmore, Chennai refusing to discharge the petitioners from the case in Crime No. 11 of 2004 is set aside and the Criminal Revision Case is allowed.

11. In the light of the earlier order passed by this Court, the petitioners are also entitled to the benefit of discharge. Accordingly, the orders dated 11.03.2015 passed in Crl.M.P. Nos. 1899 and 1898 of 2014 in C.C.No.29325 of 2004 on the file of the learned Chief Metropolitan Magistrate, Egmore, Chennai are set aside and the Criminal Revision Cases are allowed. Consequently, Crl.MP Nos. 1899 and 1898 of 2014 respectively in C.C. No. 29325 of 2004 on the file of the learned Chief Metropolitan Magistrate, Egmore, Chennai stands allowed. Consequently, connected Miscellaneous Petitions in both the Revision Cases are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

Smi/rsh

To

1. The Chief Metropolitan Magistrate,
   Egmore, Chennai

2. The Public Prosecutor,
   High Court, Madras.

3. The Deputy Superintendent of Police,
   Economic Offence Wing,
   Omanathurar Government Estate,
   Chennai 600 002.

+1cc to Mr.R.Vasudevan, Advocate, S.R.No.56239
+1cc to Mr.E.Kannadasan, Advocate, S.R.No.56240

Crl. RC. Nos. 308 & 515 of 2015

VSN(CO)
CA(07/01/2016)