IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08-07-2015

Coram :

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No. 480 of 2015
and
M.P. No. 1 of 2015

Ms. N. Pappa .. Petitioner/ proposed Accused

Versus

1. The Inspector of Police
S-9, Palavvanthangal Police Station
Chennai

2. C.K. Selvasekaran
(R2 impleaded as second respondent vide order dated 11.06.2015 made in MP No. 2 of 2015 in Crl.RC No. 480 of 2015) .. Respondent/ Petitioner/ complainant

Criminal Revision Case filed under Section 397 and 401 of Criminal Procedure Code against the Order dated 25.02.2015 passed in CMP No. 1028 of 2015 in C.C. No. 452 of 2013 on the file of Judicial Magistrate, Tambaram.

For Petitioner : Mr. J. Ravindran

For Respondents : Mr. V. Arul
Government Advocate (Crl.side) for R1
Mr. R. Marudachalamurthy for R2

ORDER

The revision petitioner is aggrieved by the order dated 25.02.2015 passed by the learned Judicial Magistrate, Tambaram in CMP No. 1028 of 2015 in C.C. No. 452 of 2013 whereby the petition filed by the prosecution under Section 319 of Cr.P.C. was allowed and she was made to face the trial in the criminal prosecution.

2. The prosecution came to be launched at the instance of the second respondent herein, who is the defacto complainant in this case. According to the second respondent, he had entered into an agreement for sale with Vasanthi Ammal, Sudha and Suguna for sale of Plot No.9, Aruna Nagar comprised in Survey No.19 measuring an extent of 3223 square feet. As the said Vasanthi Ammal and others delayed the execution of the sale deed in his favour, he filed a suit for specific performance in O.S. No. 243 of 2006 on the file of the learned District Judge, Chengalpet on 21.11.2005. The said suit was decreed on 11.04.2007 and as per the order passed by the Civil

Court, the second respondent also deposited the balance sale consideration of Rs.7,25,000/- into the Court on 18.04.2007. Subsequently, for the purpose of getting the sale deed executed in his favour, the second respondent obtained encumbrance certificate and came to know that on 10.03.2006, there was a sale transaction effected in respect of the property in question by executing a document No. 831 of 2006. The said document was created by one Nagaraj (A-1) who had fabricated it by giving fictitious address. On coming to know the transaction took place with respect to the property, the second respondent gave a complaint dated 16.03.2009 to the Commissioner of Police, Chennai. The second respondent was directed by the office of the Commissioner of Police to present the complaint with the first respondent herein. Accordingly, on 25.03.2009, the second respondent presented the complaint to the first respondent based on which the case in Crime No. 101 of 2009 came to be registered against the husband of the revision petitioner herein and others for the offences punishable under Sections 120 (b), 419, 465, 468 and 471 of IPC. Upon completion of investigation, a charge sheet was filed on 09.03.2010 against the husband of the petitioner viz., Nagaraj (A-1) and four others and it was taken on file by the learned Judicial Magistrate, Alandur in C.C. No. 269 of 2010. Subsequently, the case stood transferred and re-numbered as C.C. No. 452 of 2013 on the file of the learned Judicial Magistrate, Alandur.

3. During the course of trial, the prosecution examined as many as 20 witnesses on it's side to prove the guilt against A-1 to A-5. During the course of examination of PW19, who is the Manager of Axis Bank, has deposed there were some amount transferred by the first accused Nagaraj in to the account maintained by the revision petitioner herein. On the basis of the above testimony of PW19, the prosecution has taken out an application in CMP No. 1026 of 2015 to implead the revision petitioner also as one of the accused in the Criminal case. The trial Court, on appreciation of the material evidence placed before it has allowed the CMP No. 1026 of 2015 on 25.02.2015. It is against this order dated 25.02.2015 the present Criminal Revision Case has been filed.

4. The learned counsel appearing for the revision petitioner would vehemently contend that even though PW19 deposed that there were some amount deposited in to the bank account of the revision petitioner, no where he has stated that amount was deposited with the knowledge and consent of the revision petitioner. Merely because PW19 deposed that some amount was deposited into the bank account of the revision petitioner, that by itself will not warrant the trial court to implead the revision petitioner as one of the accused to face the criminal trial. The trial Court failed to consider that neither in the first information report, charge sheet nor in the statement recorded under Section 161 of Cr.P.C. from the witnesses there was any iota of material evidence to implicate the revision petitioner in the criminal case, therefore, at this stage, implicating the revision petitioner is unnecessary. The court below failed to take into consideration the key words appearing in Section 319 of Cr.P.C. viz., "has committed any offence" to implicate the revision petitioner herein. According to the learned counsel for the revision petitioner, the trial court has mechanically allowed

the application of the prosecution to implead the revision petitioner as one of the accused and it warrants interference by this Court.

5. The learned Government Advocate (Criminal side) appearing for the first respondent would contend that there are adequate material evidence made available for impleading the revision petitioner as one of the accused in the form of deposition of the Bank Manager. For the purpose of implicating a person not being an accused, the prosecution is only required to make a prima facie case and the guilt or otherwise need not be proved at this stage. According to the learned Government Advocate (Crl.side), Nagraj (A-1) is the kingpin in conspiring with others to secure unlawful gain and he is instrumental for the commission of the offence. The revision petitioner is the wife of Nagraj and by virtue of the transfer of amount in to her account, she stood as a beneficiary in the commission of offence. At any rate, the trial Court, on being satisfied that a prima facie case is made available against the revision petitioner has rightly allowed the application filed by the prosecution and it needs no interference by this Court.

6. Pending the Criminal Revision Case, the Defacto complainant was impleaded as second respondent. The learned counsel for the second respondent would contend that PW19, Manager of Axis Bank has deposed that the amount obtained through the illegal sale proceeds have been routed through the account of the petitioner's husband who in turn deposited the amount in to the account of the revision petitioner and subsequently withdrew it. This portion of evidence of PW19 would clinchingly prove the role of the revision petitioner in opening a savings bank account to facilitate the other accused to route the money and to subsequently withdraw it by using her bank account. There is a clear nexus between the revision petitioner and A-1 to A-5 in this case which is required to be examined during the course of trial in the calander case. Therefore, the learned counsel appearing for the second respondent/defacto complainant prayed for dismissing the Criminal Revision Case.

7. I heard the learned counsel on either side, perused the material records made available, including the order passed by the trial Court. The main ground of attack made on behalf of the revision petitioner is that the involvement of the revision petitioner in allegedly creating forged and fabricated document has not been made out in a manner known to law.

8. The revision petitioner came to be implicated at the instance of the prosecution which placed strong reliance on the deposition of PW19, Manager of Axis Bank. A perusal of the deposition of PW19, recorded on 16.04.2014, would indicate that amount has been credited into the account of the revision petitioner by her husband Nagaraj (A-1) and it was withdrawn on the next date. According to PW19, one Vasanthi Ammal had opened a bank account with their Madipakkam Bank on 17.03.2006. On 18.03.2006, a sum of Rs.5,00,000/- was deposited into the account of Vasanthi Ammal and on the same day, a sum of Rs.4,90,000/- was withdrawn by Nagaraj (A-1) in this case. It was further deposed by PW19 that one Suguna

had opened a Savings Account with their Madipakkam Branch on 17.03.2006 and on 18.03.2006, a sum of Rs.5,00,000/- was deposited out of which a sum of Rs.4,90,000/- was withdrawn and deposited into the account of the revision petitioner herein on the same day. Similarly, J. Sudha had opened a savings bank account on 17.03.2006 and on 18.03.2006, a sum of Rs.5,00,000/- was deposited into her account out of which Rs.4,90,000/- was withdrawn and deposited into the account of the revision petitioner herein on the same day. It was further deposed that the savings bank account opened in the name of Vasanthi Ammal alone is operational and that the savings bank account of Sudha and Suguna were closed on 15.07.2006 and 11.03.2009 respectively. The prosecution, evidencing the above transaction, marked Exs. P53, P54, P55 and P56 through P19. This would clinchingly prove that the revision petitioner had opened the savings bank account to facilitate the deposit and withdrawal of the amount and this shows her involvement in the transaction with her husband Nagaraj (A-1). Of course, this Court cannot subscribe it's opinion on the above aspect at this stage as it will affect the trial in the criminal case. Therefore, without expressing any opinion as to the role played by the revision petitioner in the commission of offence, this Court can only hold that the prosecution has made available certain material evidence to prima facie show the involvement of the revision petitioner in compliance of Section 319 of Cr.P.C.

9. The trial court, on going through the deposition of PW19 and the material documents, pointed out that the savings bank account of the revision petitioner as well as others mentioned in the deposition of PW19 were opened on 17.03.2006. Further amounts have been deposited and withdrawn within one day in the case of two accounts and four days in the case of other account holder. At any rate, all the amount have been withdrawn and transferred either to the account of the revision petitioner or to the account of her husband Nagraj (A-1). Therefore, the trial court came to a conclusion that there are some materials made available to implicate the revision petitioner as an accused in the criminal case and accordingly allowed the plea of the prosecution made under Section 319 of Cr.P.C.

10. The learned counsel for the revisiion petitioner would contend that the case in Crime No. 101 of 2009 came to be registered against the husband of the revision petitioner herein and others and charge sheet was filed on 09.03.2010, therefore, at this stage, implicating the revision petitioner is unnecessary. Such a contention urged on behalf of the revision petitioner cannot be countenanced. There is no bar for the prosecution to implead any person, against whom materials have been made available, to stand as an accused and to face the trial at any stage. The object of Section 319 of Cr.P.C. is to ensure that no person, against whom there are material evidence placed by the prosecution by making a prima facie case, is not let off from the purview of criminal prosecution. Of course, as and when a person is arrayed as an accused in the Criminal case, it is open for him to disprove the plea of the prosecution and to prove his innocence by participating in the trial. The trial Court, in exercise of the powers conferred under Section 319 of Cr.P.C. and on consideration of the materials

made available in the form of deposition of PW19, has rightly came to the conclusion that impleading the revision petitioner as one of the accused is just and necessary. Such a conclusion arrived at by the trial court cannot be said to be perverse or illegal. I do not find any reasons to interfere with the order passed by the trial Court. However, liberty is given to the revision petitioner to raise all the defence available to her at the time of the trial.

11. With the above observation, the Criminal Revision Case is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

rsh

To

1. The Chief Judicial Magistrate
Kancheepuram

2.The Judicial Magistrate
Tambaram

3. The Public Prosecutor
High Court, Madras

4. The Inspector of Police
S-9, Palavvanthangal Police Station
Chennai

1 cc to Mr.J. Ravindran, Advocate, Sr. 34308
4 ccs to Mr.R. Marudachalamurthy, Advocate, sR. 34425, 34965

Crl.R.C. No. 480 of 2015

CTK (CO)
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