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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2015

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THE HONOURABLE MR.JUSTICE S.MANIKUMAR

Crl.R.C.No.73 of 2015
and M.P.No.1 of 2015

Suganthi

.. Petitioner/Accused

Vs

The State by
Inspector of Police,
Pallavaram Police Station, Chennai.

.. Respondent/Petitioner

Criminal Revision filed under sections 397 and 401 of Criminal Procedure Code to call for records pertaining to the order dated 29.07.2013 passed by the Hon'ble Judicial Magistrate Court, Tambaram made in CMP No.8921/2013 in Crime No.3825 of 2012 on the file of the respondent and set aside the same by allowing the Criminal Revision Petition.

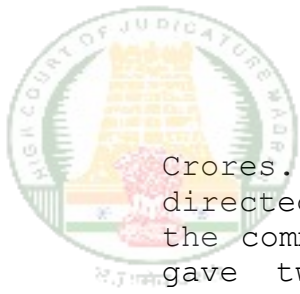
For Petitioner : Mr.I.C.Vasudevan

For Respondent : Mr.P.Govindarajan
Additional Public Prosecutor

O R D E R

Criminal Revision Case is filed against the order dated 29.07.2013 passed by the learned Judicial Magistrate Court, Tambaram made in CMP No.8921/2013 in Crime No.3825 of 2012.

2. Case of the prosecution is that one Mr.Nangamuthuraj, has given a complaint against one Suriyaprakash and another alleging that Suryaprakash has promised to make arrangements to get loan on meagre interest. According to the complainant, he is the President of Central Government Officials and State General Administrators Housing Welfare Association. There are five thousand members. There was negotiation to purchase three hundred acres of land at Rs.75 Lakhs, per acre for a value of Rs.225 Crores. Complainant has further stated that a sum of Rs.6.5 Crores was given as advance. Mobilisation of funds were assured by Mr.Suryaprakash and another. He insisted for 1% commission, as against loan amount of Rs.75



Crores. The said loan was stated to have been arranged. They directed the complainant and others to bring the money to a hotel and the commission amount was given. In return, Suryaprakash and another gave two big bags, which were kept in the car, in which the complainant and others travelled. Thereafter, they noticed that the bag contained only fake currency notes and thus the complainant and others have been cheated. On the basis of the complaint dated 20.10.2012, a case in Crime No.3825 of 2012 has been registered on the file of S.5, Pallavaram Police Station and it is under investigation.

3. It is the further case of the petitioner that the respondent police conducted a search in the house, where the petitioner resided, seized money, documents and the keys of the house. Properties seized were produced before the lower Court. Seeking return of the key, CMP No.8921 of 2013 has been filed in Crime No.3825 of 2012 on the file of the Judicial Magistrate, Tambaram.

4. Inspector of Police has made strong objections for the prayer sought for on the grounds that the petitioner's husband/accused in Crime, has received his share of Rs.20 Lakhs from and out of the cheated money and thereafter, purchased the property in the name of the petitioner. The learned Public Prosecutor has also made strong objections to handover the key to the petitioner. After perusal of the records and the confessional statement, the Court below, has observed that the petitioner herself in the confessional statement has admitted that the property was purchased and registered on 30.10.2012 at Kundrathur Sub Registrar office. As the property is stated to have been purchased from and out of the money cheated, the learned Judicial Magistrate, Tambaram, vide order dated 29.07.2013, has rejected the prayer for return of key. Being aggrieved the present revision petition is filed.

5. Assailing the correctness of the order, refusing to return the key, Mr.I.C.Vasudevan, learned counsel for the petitioner submitted that the alleged incriminating material cannot be put against the petitioner at this juncture for considering interim custody of the keys of the house. He also submitted that in the absence of any order of attachment to be passed by the Court below, and which can be done only after an assessment of evidence and conclusion, if any, to be arrived at against the accused, the Court ought to have returned the keys.

6. In addition to the above, Mr.I.C.Vasudevan, learned counsel for the petitioner submitted that after the key was taken by the respondent police, the petitioner and her two year old child, have no proper place to reside. He further submitted that no prejudice would be caused to the respondent if the keys are directed to be returned.



7. Per contra, Mr.P.Govindarajan, learned Additional Public Prosecutor submitted that the petitioner herein has been arrayed as A5, in the criminal case. Offence is stated to have been committed on 20.10.2012. Property has been purchased on 30.10.2012 and registered on the file of the Sub Registrar Office, Kundrathur in the name of the petitioner/A5. She has also given confessional statement. As the property is alleged to have been purchased out of the money, subject matter of commission of offence under Section 420 IPC, learned Additional Public Prosecutor made serious objections.

8. Heard the learned counsel for the parties and perused the materials available on record.

9. As rightly contended by the learned counsel for the petitioner, the alleged confessional statement cannot be put against the petitioner at this juncture, on the aspect of interim custody of the keys. As per the prosecution case, offence is alleged to have been committed on 20.12.2012. Property has been purchased on 30.12.2012. Though, there may be proximity in time and chain of events to presume that the subject property could have been purchased from and out of the amount cheated, yet, unless and until the same is proved, after the conclusion of the trial, it would not be appropriate to keep the house under lock and key, more particularly, when the petitioner alongwith her child have been residing in the said house. Money and title deeds are said to have been seized. Prosecution could produce the same as evidence to support the case. Though the petitioner is stated to have been arrayed as A5 in Crime No.3825 of 2012, that cannot be an embargo to keep her away from residing in the house, unless and until an order of attachment is passed by the Court below after the conclusion of trial. No serious prejudice also would be caused to the respondent.

10. For the reasons stated supra, this Court is inclined to set aside the impugned order order dated 29.07.2013 made in CMP No.8921 of 2013 in Crime No.3825 of 2012, on the file of the learned Judicial Magistrate Court, Tambaram.

11. Consequently, there shall be a direction for return of the keys of the petitioner's house, on the petitioner filing an undertaking before the learned Judicial Magistrate, Tambaram that she will not encumber/mortgage/alienate or create any interest in favour of anybody in respect of the subject property alleged to have been purchased from and out to the amount involved in the crime. The petitioner shall not enter into any lease / licence or any other transactions creating interest in favour of any third party.



12. With the above directions, the Criminal Revision Case is allowed, accordingly. Consequently, the connected Miscellaneous Petition is closed.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate, Tambaram
- 2.-do- The Chief Judicial Magistrate, Kanchipuram
2. The Inspector of Police, Pallavaram Police Station, Chennai.
3. The Public Prosecutor, High Court, Madras.

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pmk.9.2.2015