IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 09.09.2015

Coram

The Honourable Mr. Justice A.SELVAM

Crl. R.C.No.902 of 2015
& M.P.No.1 of 2015

Adithya Cholan
.. Petitioner

vs.

1. The Dy.Supdt.of Police
CBI, ACB, Chennai

2.Shri Manuneethi Cholan

3. Dr.M.A.M.Ramasamy .. Respondents

Revision under Sections 397 and 401 of Criminal Procedure Code to call for the records relating to the order of dismissal dated 7.8.2015 passed by the Principal Special Judge for CBI Cases in Crl.M.P.No.1575 of 2015 in RC MA 1 2014/A 0037 and set aside the same and to consequently direct the first respondent to return the sum of Rs.24,81,000/- seized from the residence of the 2nd respondent to the petitioner herein.

For petitioner : Mr.N.R.Elango, Senior Counsel for Mr.R.Umasuthan

For respondent-1 : Mr.K.Srinivasan, Spl.Public Prosecutor

O R D E R

This Criminal Revision Case has been directed against the order dated 7th day of August, 2015 passed in Crl.M.P.No.1575 of 2015 in RC MA 1 2014/A 0037 by the Principal Special Judge for CBI cases, Chennai.

2. The revision petitioner herein, as petitioner, has filed Crl.M.P.No.1575 of 2015 in RC MA 1 2014/A 0037 under section 451 of

Code of Criminal Procedure, 1973 praying to return the amount mentioned therein.

3. It is averred in the petition that the petitioner is the owner of the amount mentioned in the petition and he has no connection whatsoever with the offences alleged to have been committed by his father. The first respondent, without considering the fact that the petitioner is the owner of the amount mentioned in the petition, has erroneously seized the same on 26.08.2014. Under the said circumstances, the petition in question has been filed for getting the relief sought for therein.

4. The Court below, after considering the divergent contentions raised on either side, has dismissed Crl.M.P.No.1575 of 2015. Against the dismissal order, the present Criminal Revision Case has been filed at the instance of the revision petitioner.

5. The learned counsel appearing for the petitioner has contended that the mother of the petitioner has given a Power of Attorney Deed so as to plot out the lands comprised in Survey Nos.232/1 and 232/2 and accordingly, the petitioner has plotted out the same and also made arrangements for selling plots to various persons by way of receiving advance amount. Under the said circumstances, money in question belongs to the petitioner and the Court below, without considering the source of the petitioner as well as his ownership, has erroneously dismissed the petition and therefore dismissal order passed by the Court below is liable to be set aside.

6. Per contra, learned Special Public Prosecutor has contended that against the father of the petitioner, a case has been registered with regard to disproportionate wealth and further, money in question has been seized from the house of the prime accused, who is none other than the father of the petitioner. Under the said circumstances, the Court below has rightly dismissed the petition and therefore, dismissal order passed by the Court below does not require any interference.

7. On the side of the revision petitioner, certain documents have been filed for scrutiny of the Court. The first and foremost document is the registered Settlement Deed dated 18.2.2013 alleged to have been executed in favour of one Chithiraivadivu, who is none other than the mother of the petitioner, wherein it has been clearly stated that Survey Nos.232/1 and 232/2 are settled in her favour. On 18.2.2013, the said Chithiraivadivu has executed a registered General Power of Attorney Deed in favour of the petitioner, wherein he has been permitted to plot out the lands mentioned therein and he has also been permitted to sell house plots in his name. Further, on the side of the petitioner, certain unregistered sale agreements as well as cash receipts have been filed.

8. The main objection made on the side of the first respondent is that all sale agreements filed on the side of the revision petitioner are not registered and therefore, no credence could be attached to the same.

9. It is true that all sale agreements are not registered in accordance with law and apart from sale agreements, certain cash receipts have been filed. At this juncture, the Court has to look into the Settlement Deed as well as General Power of Attorney Deed and both documents have come into existence on 18.2.2013 and the alleged seizure has been made on 26.8.2014.

10. Considering the fact that the Settlement Deed as well as Power of Attorney Deed have come into existence even prior to alleged seizure, the Court cannot belittle both the Settlement Deed as well as General Power of Attorney Deed. Therefore, it is quite clear that the revision petitioner has shown prime facie source so as to prove his alleged ownership of the amount in question. Further, the Court can impose the following conditions:

In fine, this Criminal Revision Case is allowed. The impugned order dated 7.8.2015 passed in Crl.M.P.No.1575 of 2015 in RC MA 1 2014/A 0037 by the Court below is set aside and the petition filed in Crl.M.P.No.1575 of 2015 is allowed.

The petitioner is permitted to get the amount mentioned in the petition on fulfuling the following conditions:

(A) The petitioner is directed to produce a Bank Guarantee for a sum of Rs.25 Lakhs.

(B) The petitioner should file an affidavit by way of stating that he is ready to produce the amount in question as and when it is required by the Court and the same should be kept in force till the disposal of case.

Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (CO)

/true copy/

ajr Sub Asst. Registrar

To

1. The Principal Special Judge for CBI Cases
2. 1. The Dy.Supdt.of Police
    CBI, ACB, Chennai
3.The Public Prosecutor,   High Court, Madras.

+1 cc to Mr.R.Umasuthan, Advocate, sr.49944
+1 cc to Mr.R.Aneesan, Advocate, sr.17328 (28/09/2015)

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