IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2015

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

Crl.R.C.No.349 of 2010

Thomas Selvaraj ... Petitioner

vs.

1. State rep by
   The Inspector of Police
   K-4 Anna Nagar Police Station
   Chennai 40.

2. S.Mohan Kumar ... Respondents

[R2 impleaded as per the order of this Court dated 05.11.2014 in Crl.R.C.No.349 of 2010]

Petition filed under Section 397 and 401 Cr.P.C.to set aside the order dated 05.03.2010 made in Crl.M.P.No.5574 of 2009 in Cr.No.899 of 2009 on the file of V Metropolitan Magistrate, Chennai and order interim custody of the amount seized in Cr.No.899 of 2009 pending investigation on the file of the respondent.

For Petitioner : Mr.Soundar Vijay Arul Ram
For respondent : Mr.P.Govindarajan, [for R1]
Addl. Public Prosecutor
Mr.P.Raghu [ for third party]

O R D E R

Thirty party has been impleaded by the orders of this Court dated 05.11.2014 and he is represented by learned counsel Mr.P.Raghu.

2. Material on record discloses that on the complaint dated 20.10.2009, preferred by one Mr.Kannan, Chennai, stated to be a collection agent, in a Financial Company run by Mr.Mohan Kumar, that a sum of Rs.14,50,000/-, was stolen from him, by three persons, case in Cr.No.899 of 2009 has been registered under Section 392 IPC.

3. Thereafter, police has taken up investigation. On 11.09.2009, Imran S/o Abdul Aziz; Syed Imran S/o Syied Azees; and Mohamed Geyath, have been arrested. On their confessional statement, Rs.6,00,000/- has been recovered from Imran. Rs.50,000/- each has been recovered from Syed Imran and Mohamed Geyath. On 12.11.2009, an Advocate by name Dinesh, has been arrested. On 13.11.2009, one Ruby Christy has been arrested. Sum of Rs.7 lakhs is stated to have been recovered from her.

4. Prosecution has further stated that after taking note of the confessional statement of the above named persons, it came to light that one Mr.Mohan Kumar and Ruby Christy, were doing finance business. Ruby Christy, used to borrow money from Mr.Mohan Kumar for lesser interest and lend the same for an higher interest. One Mr.Sridhar, has borrowed Rs.90 lakhs from Mr.Mohan Kumar for interest, and also pledged the title deeds of the properties belonging to him. He had also borrowed a sum of Rs.90 lakhs from Ruby Christy for interest, but it was without any proper security. Coming to know that the said Sridhar was to clear the dues with Mr.Mohan Kumar, she had requested Mohan Kumar not to return the title deeds to Sridhar, but instead, to give it to her. This was not accepted by Mohan Kumar. Prosecution has also stated that Mohan Kumar had also refused to give loan to a party, jointly identified by Ruby Christy and one Mr.Dinesh, Advocate. According to them, this appears to be the motive to teach a lesson to Mohan Kumar and thus, all the accused, have planned to rob the money collected by the agent. They have engaged Imran, who in turn, had engaged Syed Imran and Mohammed Geyath. A sum of Rs.14,50,000 lakhs has been recovered from the accused. Thereafter, the Inspector of Police [Crimes], K-4, Anna Nagar Police, has requested, the learned V Metropolitan Magistrate, Chennai, to alter the offences to Sections 397 r/w 120-B IPC.

5. Material on record discloses that sum of Rs.14,50,000/-, recovered, has been directed to be in Court deposit. Crl.M.P.No.4706 of 2009 has been filed by Mohan Kumar under Section 451 Cr.P.C., for return of the cash to him. Ruby Christy has been arrayed as Accused No.1 in Crime No.899 of 2009. Thomas Selvaraj, husband of Ruby Christy, has also filed an application Crl.M.P.No.5574 of 2009, for return of the above said sum, contending inter alia that it was his money and in support of the same, he has also produced a document to prove that a sum of Rs.15,00,000/- was withdrawn from a Bank.

6. Material on record discloses that both the applications have been disposed of on 05.03.2010, by separate orders. Prosecutor has submitted, that when two rival parties have sought for return of money, in the interest of justice, the money recovered shall be with the Court deposit. Before the Court below, Kannan, the complainant, has objected for the return of cash to Thomas Selvaraj, who is the husband of Ruby Christy, the first accused. After considering the documents, the learned V Metropolitan Magistrate, Chennai has observed that the recovery of the above said sum, by the Police was only from the accused 1 to 5. In the above said circumstances, by further observing, that only after the filing of the charge sheet and examination of the witnesses, return of the cash, could be decided, dismissed Crl.M.P.No.5574 of 2009, filed by Thomas Selvaraj. On the same day, i.e. on 05.03.2010, learned V Metropolitan Magistrate, Chennai has also dismissed Crl.M.P.No.4706 of 2009 filed by Mohan Kumar.

7. Material on record discloses that Mohan Kumar, stated to be the Financier, has not chosen to challenge the order made in Crl.M.P.No.4706 of 2009, dated 05.03.2010.

8. Though Mr.Soundar Vijay Arul Ram, learned counsel for the petitioner/Thomas Selvaraj, assailed the correctness of the order refusing to return the cash on the grounds inter alia that the Court below, has failed to consider the documentary evidence, viz., withdrawal of the money from the Bank and further contended that the money, was not recovered from the accused, but recovered only from the petitioner, this Court is not inclined to accept the said contentions. After perusal of the documents, in particular, the document, relating to seizure, the learned V Metropolitan Magistrate, Chennai has categorically observed that money has been recovered only from accused 1 to 5. Though the petitioner, has produced, a document dated 11.11.2009, certifying that a sum of Rs.15 lakhs has been withdrawn from the account of Mr.Thomas Selvaraj, in the light of the specific case of the police that money has been recovered from only from the accused, the matter is for evidence, before the Court. Therefore, as rightly observed, that unless and until a charge sheet is filed and witnesses are examined, it would be in the interest of justice, the amount should be in the Court custody, now stated to be deposited in a Bank.

9. At this juncture, it is also to be noted that sensing that the petitioner has not made out a case, learned counsel for the petitioner wanted to withdraw the criminal revision case. On merits, this Court finds that there is no material illegality in the impugned order, warranting interference. Hence, request to withdraw the criminal revision case is denied. Criminal Revision Case is dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Gms

To

1. The V Metropolitan Magistrate, Chennai.

2. The Public Prosecutor, Madras.

+1cc to Mr.P.Raghu, Advocate, S.R.No.14912
+1cc to Mr.R.C.Paul Kanagaraj, Advocate, S.R.No.14913

Crl.R.C.No.349 of 2010

PA(CO)
CA(30/03/2015)