

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2015

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH

CrI.O.P.Nos.23007 of 2015

M.Marimuthu

...Petitioner/Defacto Complainant

Vs

Inspector of Police,  
J5, Sastri Nagar Police  
Station, Chennai-600 090

... Respondent/Complainant

The Criminal Original Petition filed under Section 482 Cr.P.C. to direct the trial Court to issue proclamation under Section 82 Cr.P.C. for the absconding accused A3 and A4 and for consequential orders of attachment under Section 83 Cr.P.C. attaching the property of A3 and A4 i.e. 13/500 undivided share of land in Yamuna Homes, Plot No.12, Parameswari Nagar, 4th Street, Adyar, Chennai-600 020, pending disposal of C.C.No.4048 of 2012 (on the file of the IX Metropolitan Magistrate, Saidapet, Chennai-600 015).

For Petitioner : Mr.R.Shanmugam for  
M/s.Shanmuga Associates

For respondent : Mr.C.Emalias,  
Addl.Public Prosecutor

ORDER

The present criminal original petition has been filed by the petitioner seeking a direction to the learned IX Metropolitan Magistrate, Saidapet, Chennai-600 015, to issue proclamation under Section 82 Cr.P.C. for the absconding accused / A.3 and A.4 and for consequential orders of attachment under Section 83 Cr.P.C. attaching the property of A.3 and A.4 i.e., 13/500 undivided share of land in Yamuna Homes, Plot No.12, Parameswari Nagar, 4th Street, Adyar, Chennai-600 020, pending disposal of C.C.No.4048 of 2012.

2. It is the case of the petitioner that he has lodged a complaint with the respondent police and the same was registered in Crime No.1060 of 2012. In the said case, A.3 and

A.4 obtained anticipatory bail in Crl.M.P.No.12711 of 2012 from the Principal Sessions Court, Chennai, by furnishing false residential address. Hence, the petitioner filed a petition in Crl.M.P.No.1911 of 2013 to cancel the anticipatory bail granted to A.3 and A.4 and the same was dismissed by the learned Principal Sessions Judge, Chennai, against which the petitioner filed a revision petition before this Court in Crl.R.C.No.712 of 2013. This Court, by an order dated 25.7.2013 dismissed the said revision thereby confirming the order dated 26.4.2013 passed in Crl.M.P.No.1911 of 2013. As against the order of dismissal made in Crl.R.C.No.712 of 2013, the petitioner filed an appeal in Criminal Appeal No.2187 of 2014 before the Hon'ble Supreme Court and the Hon'ble Supreme Court by an order dated 13.10.2014 set aside the anticipatory bail granted to A.3 and A.4. Now, on completion of investigation, charge sheet was filed and it was taken on file as C.C.No.4048 of 2012. In the meantime, the respondent filed a report before the trial Court to declare that A.3 and A.4 are absconding accused. Even after the order of the Hon'ble Supreme Court in Crl. Appeal No.2187 of 2014, cancelling the order of anticipatory bail granted to A.3 and A.4, they have not surrendered themselves till date. While so, the petitioner has filed a petition before this Court in Crl.O.P.No.9464 of 2015 seeking a direction to the respondent police to seize the passport from A.4 at the time of surrender by A.3 and A.4 and impound the passport and place the same in the custody of the trial Court in compliance of the order of the Hon'ble Supreme Court made in Crl.Appeal No.2187 of 2014. In the said petition, this Court by an order dated 17.4.2015, has observed as follows:-

" 5. A direction to the respondent police to seize the passport of the said Prasad cannot be granted, because passport is the document of Union of India and it could be impounded only in the manner known to law, as laid down in the Passport Act. It is open to the Court while granting bail to Prasad to impose a condition that he should deposit his passport before the concerned Magistrate. Such an order cannot be passed now for this application under Section 482 Cr.P.C. "

In the light of the said order, the petitioner has filed the present petition for a direction to the learned IX Metropolitan Magistrate, Saidapet, Chennai-600 015, to issue proclamation under Section 82 Cr.P.C. for the absconding accused A.3 and A.4 and for consequential orders of attachment under Section 83 Cr.P.C. attaching the property of A.3 and A.4 i.e. 13/500 undivided share of land in Yamuna Homes, Plot No.12, Parameswari Nagar, 4th Street, Adyar, Chennai-600 020, pending disposal of C.C.No.4048 of 2012.

3. Considering the facts and circumstances of the case, I am of the opinion that this Court cannot give such a positive direction to the trial Court to issue proclamation order. However, the petitioner is at liberty to work out his remedy before the trial Court by filing appropriate application. The criminal original petition is disposed of accordingly.

Sd/-  
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

1. Inspector of Police,  
J5, Sastri Nagar Police  
Station, Chennai-600 090.
2. The IX Metropolitan Magistrate,  
Saidapet,  
Chennai-15.
- 3.-Do- Thro The Chief Metropolitan Magistrate,  
Egmore,  
Chennai.
4. The Public Prosecutor,  
High Court, Madras.

+1cc to Mr. Shanmugha Associates, Advocate, S.R.No.66177

Cr1.O.P.No.23007 of 2015

ug(CO)  
srg(05/01/2016)

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