IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.10.2015

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THE HON'BLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.No.23425 of 2015
and MP.Nos.1 and 2 of 2015

Mohan Rajes ... Petitioner

Vs.

The Inspector of Police,
CBCID, Salem
(Crime No.709/1997) ... Respondent

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., praying to permit the petitioner to withdraw the amounts lying as Fixed Deposits marked as Ex.P.47, 48 lying with State Bank of India, R.T.Nagar Branch, Bangalore-32 in the above CC.No.79 of 2005, as ordered by the Chief Judicial Magistrate, Salem in the order dated 19.03.2015.

For Petitioner : Mr.S.Sethuraman
For Respondent : Mr.C.Emalias
Additional Public Prosecutor

O R D E R

This Criminal Original Petition has been filed to permit the petitioner to withdraw the amounts lying as Fixed Deposits with the State Bank of India, R.T.Nagar Branch, Bangalore-32 in the above CC.No.79 of 2005, as ordered by the Chief Judicial Magistrate, Salem in the order dated 19.03.2015.

2. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondent.

3. It is the case of the petitioner that he is the proprietor of Moganad Coffee Estate and partner in M/s.Tarus Trading Company. One Mohandas (A1), Naveneetha Krishnan (A2) and Abdul Rahman (A3) were working in M/s.Allana and Sons, Bangalore with whom this petitioner seems to have had business dealings. During the transactions, it is alleged by the petitioner that a sum of Rs.2,83,10,486.50 was cheated by the accused and therefore the petitioner lodged a complaint, based on which, a case in Crime No.709 of 1997 was registered by the

respondent Police and after completing the investigation, final report was filed in C.C.No.79 of 2005 against the three accused.

4. After a full fledged trial before the learned Chief Judicial Magistrate, Salem in C.C.No.79 of 2005, the three accused were convicted and sentenced to various terms of imprisonment. During the pendency of investigation, this petitioner filed a petition under Section 451 Cr.P.C. for return of sum of Rs.32,00,000/-, which was dismissed by the Court below, challenging which, this petitioner filed Crl.R.C.No.62 of 1999 before this Court. In Crl.R.C.No.62 of 1999, on 07.02.2001, this Court had passed the following order:

> "Considering the fact that the final report has not yet been filed, I am of the view that all the fixed deposit receipts and cash certificates cannot be returned to the petitioner, but at the same time, the entire fixed deposit receipts and cash deposits have to be transferred to anyone of the Nationalised Banks in Salem and after encashment, it has to be credited to the account in Crime No.709 of 1997 on the file of the Judicial Magistrate V, Salem, ultimately the successful party in the case is entitled to withdraw the same. Either the petitioner or the Investigation Officer is directed to move the Trial Court to take steps for transfer of the fixed deposit receipts and cash certificates from other state to anyone of the Nationalised Banks situated in the Salem Town limits. Civil Revision Petition is ordered accordingly. Consequently Crl.M.P.No.599 of 1999 is closed."

5. Now it is apparent that the accused has been convicted and there is no embargo for the petitioner to receive the amount. On a reading of the trial Court judgment in C.C.No.79 of 2005 dated 19.03.2015, a finding has been given that, the petitioner will be entitled to the said amount. The respondent have filed a counter wherein in paragraphs 3 and 6, it is stated as follows:

> "3.One of the accused name Raju @ Cylone Raju turned as approver and legal formalities also carried out by us to that effect. At the time of investigation our CBCID Police seized the 46 fixed deposit receipts of A3 for the tune
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> of Rs.32 lakhs. The said fixed deposits were handed over by the A3 Abdul Rahman to the defacto-complainant i.e., the present petitioner/informant, for the purpose of making compromise of this case.

Moreover the above said 46 fixed deposits were purchased by the A3 from the part of amount swindled by him through this offence.

6) The Crime No. mentioned in Para 6 of the affidavit i.e., 702/1977 is not correct. The original Crime No. assigned at the time of F.I.R. is 709/97. It is true that after the investigation the final report was filed, subsequently the said case was transferred on the file of Chief Judicial Magistrate, Salem. After the full fledged trial, judgment was delivered by the said Court on 19.03.2015. All the three accused were convicted with the punishment of three years including fines. Further trial Court in his judgment observed that this petitioner/informant is entitled to receive the above said 46 fixed deposit receipt amounts, which now comes around Rs.72,27,544/- after the appeal time limit or after completion of the appeal."

6. Thus, it is crystal clear that the accused in this case had swindled the money and Rs.32,00,000/- was seized from the petitioner. It is the specific case of the state that A3 had created forty-six deposits with the swindled money belonging to the petitioner and thereafter he had handed over the forty-six deposits to the petitioner. Those 46 deposits amounting to Rs.32,00,000/- was seized from the petitioner. Therefore, in the opinion of this Court, this petitioner will be entitled to get back the sum of Rs.32,00,000/- with interest.

In the result, this Criminal Original Petition is allowed as prayed for.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

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To:

1.The Inspector of Police,
CBCID, Salem.

2.The Public Prosecutor
High Court, Madras.3

3. The State Bank of India,
R.T.Nagar Branch, Bangalore 32.

4.The Chief Judicial Magistrate,
Salem.

+1 cc to Mr.S.Sethuraman, Advocate, sr.56927

ppa co, kra 06/11/2015 Crl.O.P.No.23425 of 2015