IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.6325 of 2016
and
W.M.P.No.5632 of 2016

1.Anandarajan
2.Lakshmi ... Petitioners

Vs.

1.The Inspector of Police,
Crime Branch,
J 2 Police Station,
Adyar, Chennai-600 020.

2.S.Ravi Rathinam
S/o.S.R.Selvaraj,
No.16, Sardar Patel Road,
Adyar, Chennai-600 020.

3.The Sub-Registrar,
Avarapakkam,
Dindivanam Taluk,
Villupuram District.

4.The Sub-Registrar, Joint I,
Chennai South, Chennai.

5.The Sub-Registrar,
Pudukottai.

6.The Sub-Registrar,
Palladam, Coimbatore District.

7.The Sub-Registrar,
Guduvanchery,
Chengalpet District.

8.The Sub-Registrar,
Ashok Nagar,
Chennai.

9.The Sub-Registrar,
Kundrathur,
Chennai.

10.The Sub-Registrar,
Avadi,
Thiruvallur District. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the entire records relating to the order dated Nill passed by the 1st respondent under Section 102 of Cr.P.C., filed before the learned IX Metropolitan Magistrate Court, Saidapet on 27.08.2013 and to quash the same and further to direct the Sub-Registrars concerned to reverse the entry of encumbrance made in their respective records about the order of freezing/cancellation of the order of attachment u/s. 102 of Cr.P.C.

For Petitioners : Mr.D.Shivakumaran

For respondents : Mrs.P.Rajalakshmi,
Government Advocate,

ORDER

This writ petition has been filed by the petitioner praying for issuance of a Writ of Certiorarified Mandamus, calling for the entire records relating to the order dated Nill passed by the 1st respondent under Section 102 of Cr.P.C., filed before the learned IX Metropolitan Magistrate Court, Saidapet on 27.08.2013 and to quash the same and further to direct the Sub-Registrars concerned to reverse the entry of encumbrance made in their respective records about the order of freezing/cancellation of the order of attachment u/s. 102 of Cr.P.C.

2.The brief facts of the case, which are necessary to dispose of this writ petition, are as follows

2.1.The petitioners herein are the husband and wife. The 1st petitioner herein worked in the jewelry shop viz., S.R.S.Thangamaligai, owned by the 2nd respondent herein from 2008-2013 as stock-in-charge. Without any notice to the 2nd respondent, the 1st petitioner abstained from the work. Thereafter, when the statement of accounts were verified for the period from 2008, it came to light that gold ornaments worth several lakhs of rupees were stolen. The 2nd respondent was suspicious about the involvement of the 1st petitioner and some other employees and as such, he gave a complaint to the 1st respondent.

2-2.On the basis of the complaint lodged by the 2nd respondent, a case in Crime No.1339 of 2013 was registered under Section 381 IPC against the 1st petitioner and few others. The 1st petitioner was arrested on 10.08.2013 by the

Special Team formed for the purpose of investigation of the case and he was subjected to an enquiry. During the enquiry, the 1st respondent-Police came to know that the 1st petitioner along with two other employees of the 2nd respondent namely Janakiraman and Prakasam have connived with each other and through a computer software known as "Jilaba" they deleted some details as to the stock of gold in M/s.S.R.S.Thangamaligai and that they have stolen the gold jewels and shared the same among them. The other two persons namely Janakiraman and Prakasam were also arrested and during search operations, 421 gms and 318 gms of gold jewels were seized respectively from those two persons. It is further stated that the 1st petitioner has pledged 1309 gms of stolen gold ornaments at Chennai K.K.Nagar Branch of HDFC Bank and that the same was seized by the Special Team. The 1st petitioner's computer, in which the 1st petitioner has allegedly downloaded the above said 'Jilaba' software to delete stock, was also seized. On arresting the three employees, gold jewellery weighing nearly 2 kgms were seized.

2-3.The 1st respondent-Police produced all the above said three accused on 10.08.2013 before the learned XVII Metropolitan Magistrate Court, Saidapet and they were sent to Judicial custody. Thereafter, the 1st petitioner was taken into police custody on 14.08.2014 and enquired. According to the 1st respondent, the 1st petitioner has given a confession statement as if he has stolen gold from 2008 by deleting the stock, sold some jewels and melt some gold jewels and turned them as ingots and sold at some retail shops at NSC Bose Road. It is further stated that by making use of the money allegedly obtained by sale of gold, the 1st petitioner has purchased the following immovable properties in his name_

> i)A house site measuring 1200 sq.ft for Rs.36,000/- at Molachur Village, Dindivanam Taluk from one Monikutti (Balaiyan) under Doc.No.200804739 registered before the SRO, Avarapakkam.
>
> ii)A land measuring 99.5 cents out of 6.54 acres at Pudukottai from one David Samuvel Prabakaran of Tutukudi under a Sale Deed dated 07.09.2009 under Doc.No.200903290 registered before the SRO, Pudukottai for Rs.2,00,000/-
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> iii)A house site measuring 807.5 sq.ft of land from one Krishnan under Doc.No.200906004 dated 27.11.2009 registered at Chennai South Joint 1, SRO, Chennai for Rs.4,05,000/-
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> iv)A house site measuring 700 sq.ft of land for Rs.3,50,000/- from one Govindasamy under a Sale Deed dated 26.04.2010 registered as Doc.No.201002875 before the Chennai South Joint 1, SRO, Chennai.
>
> v)A land measuring 2.51 acres near

Thuthukudi Airport from one Sendiram & others for Rs.60,900/- under a Sale Deed dated 12.08.2011 as Doc.No.201103934 on the file of the SRO, Pudukottai.

vi)A house site measuring 1560 sq.ft for Rs.3,90,700/- from one Irudhayaraja under Sale Deed dated 18.07.2012 registered as Doc.No.201211656 on the file of the SRO, Palladam.

vii)A house site measuring 2236 sq.ft from one Malarkodi under Sale Deed dated 04.03.2013 as Doc.No.201302989 registered in the office of the SRO, Guduvanchery, Chengalpet District.

viii)A house site measuring 1950 sq.ft from one Krishnakumar under a Sale Deed dated 05.04.2013 registered as Doc.No.201304779 on the file of the SRO, Kundrathur and another property measuring 5063 sq.ft from one Sornalatha Sivakumar under a Sale Deed dated 15.05.2013 registered as Doc.No.201306650 on the file of the SRO, Guduvanchery.

Similarly, the 1st petitioner has purchased the following properties in the name of of his wife, the 2nd petitioner herein_

i)A piece of land measuring 228 sq.ft of land under Sale Deed dated 25.08.2010 registered as Doc.No.201001772 on the file of the SRO, Ashok Nagar from one Thulasi for a sum of Rs.2,30,400/-.

ii)A house site measuring 600 sq.ft from one Chokkammal under a Sale Deed dated 01.06.2011 registered as Doc.No.201101240 in the office of the SRO, Ashok Nagar, Chennai for a sum of Rs.7,26,000/-.

iii)A house site measuring 991 sq.ft of land under a Sale Deed dated 29.03.2012 from one Sudhakar under Doc.No.201204246 on the file of the SRO, Kundrathur for a sum of Rs.3,17,120/-

iv)A house site measuring 1344 sq.ft from one Geetha Kannan under a Sale Deed dated 15.06.2012 for a sum of Rs.38,90,000/- registered as Doc.No.201201366 on the file of the SRO, Ashok Nagar, Chennai.

v)A piece of land measuring 128 sq.ft of land from the same Geetha Kannan under a Sale Deed dated 17.10.2012 for a sum of Rs.3,20,000/- registered as Doc.No.201202229 on the file of the SRO, Ashok Nagar, Chennai.

vi)A piece of land measuring 1245 sq.ft from Maheswari Murugesan under a Sale Deed dated 24.05.2013 registered as Doc.No.201306629 on the file of the SRO, Avadi for a sum of Rs.3,73,500/-.

The impugned order has been passed by the 1st respondent-Police purportedly under Section 102 of Cr.P.C., freezing/attaching the properties which were purchased in the names of the petitioners. Even though the 2nd petitioner is not an accused in the FIR, as she is the wife of the 1st petitioner/accused, she is also aggrieved by the impugned order of the 1st respondent as the properties stand in her name were also frozen/attached. The 1st petitioner came to know about the impugned proceedings only when the 1st petitioner applied for an encumbrance certificate for a property for the purpose of availing a loan. The 1st respondent has passed the impugned proceedings dated Nil and filed the same before the Court of the learned IX Metropolitan Magistrate at Saidapet on 27.08.2013. Hence, the petitioners have come forward with the present writ petition for the relief as stated supra.

3.Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondents and perused the entire materials placed on record.

4.Challenging the impugned proceedings of the 1st respondent, the learned senior counsel would contend that no attachment proceedings were initiated by the 1st respondent-Police till now in the maner known to law and therefore, the impugned proceeding of the 1st respodent is ex facie illegal and liable to be quashed. The learned counsel appearing for the petitioner would also contend that the first respondent, by couching the impugned communication in a camouflaged language, has indirectly attached the property of the petitioner, which is not permissible in law. He would also contend that if at all the first respondent has reason to believe that the property in question belonging to the petitioner was procured from and out of the fund misappropriated from the defacto complainant, he ought to have taken steps to send a report to the Government for intiating action under Section 3 of the Criminal Law (Amendment) Act, 1944 and therefore, the first respondent cannot by himself be empowered to prohibit the transaction of the property by sending the communication to the concerned Sub Registrar office and thereby interfere with the petitioner's right to property. Therefore, the learned senior counsel seeks to quash the impugned proceedings. In support of his contentions, the learned senior counsel relied upon a decision rendered by this Court in "V.Sundaram versus The Deputy Superintendent of Police, Economic Offences & Wing, Kancheepuram District" vide order, dated 27.07.2015 in W.P.No.11221 of 2015.

5. As per Section 3 of the Criminal Law (Amendment) Act, 1944, if a person is involved in an offence under Section 406 or 420 IPC and the victim is a private person, proceedings can be invoked for attaching the properties of the offender where it is believed that such properties have been procured from and out of the fund misappropriated by the offender. The Act provides certain procedure to effect attachment. It is only the State Government that can initiate action by approaching the District Judge of the area where the offender ordinarily resides or carries on business. In fact, the police officer or investigating agency has no role to play in this regard. They can, at the most, submit a report to the State Government, requesting the State Government to initiate action for attaching the property of the offender under the provisions of the Act.

6. In the present case, as could be seen from the impugned proceedings, the first respondent has identified the properties of the petitioner to initiate action for attachment under the provisions of the Act. If at all the first respondent feels it appropriate in order to safeguard the interest of the defacto complainant who was cheated by the petitioners and to ensure that the petitoners shall not derive benefits from the properties, which he procured by means of misappropriated funds, the 1st respondent could very well take steps by sending a report to the State Government seeking to intiate action under Section 3 of the Act for attaching the property. Therefore, as rightly contended by the learned counsel for the petitioners, the first respondent cannot arrogate to himself the power to issue such communication to the sub-registars, thereby prohibit the transaction in respect of the property. In this regard, it is worthwhile to refer the decision of this Court rendered in very similar circumstances, in "V.Sundaram versus The Deputy Superintendent of Police, Economic Offences & Wing, Kancheepuram District" vide order, dated 27.07.2015 in W.P.No.11221 of 2015, wherein, after following the decisions of the Full Bench of Bombay High Court and the Kerala High Court, it has been held as under in para 12 and 13:

> "12. This Court is in complete agreement with the law laid down by the Full Bench of the Bombay High Court and the Kerala High Court with regard to the power of the police office to seize immovable properties under Section 102 Cr.P.C. The Deputy Superintendent of Police, by couching the impugned communication in a camouflaged language, is in fact, indirectly attaching the properties of the accused via the backdoor, which is not permissible. If the Deputy Superintendent of Police is

desirous of safeguarding the interest of the depositors, he should have immediately taken steps to send a report to the Government for initiating action under Section 3 of the Criminal Law Amendment Ordinance and not through such a subterfuge.

"13. The order impugned is indeed arbitrary exercise of power and is therefore, violative of Article 14 of the Constitution of India. It is always open to the Investigating Officer to call for the information from the Sub Registrar about the property holdings of an accused. He can also ask the Sub Register to inform him, if any transaction concerning the properties of the accused is registered. He cannot prohibit the Registrar from registering a document."

7.In view of the above discussion, I am of the view that the impugned proceedings of the first respondent is liable to be quashed. Further, if a document is presented for registration in compliance with the provisions under the Registration Act, the Sub Registrar cannot deny the registration of the same unless there is interim order from the competent Court restraining him from registering the document and he is empowered to deny the registration of the document within the frame of provisions of the Registration Act and Rules framed thereunder, particularly, on the grounds enunciated under Rule 55, viz., if the document is forged, impersonation by the parties, if the executing party is a minor or a lunatice, etc. Therefore, in the absence of any interim order from the competent Court nor any of the grounds available under Rule 55, the Sub Registrar cannot deny the registration.

For the foregoing reasons, the Writ Petition is allowed as prayed for and the impugned proceeding of the 1st respondent is hereby set aside. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

SSV

To

1.The Inspector of Police,
Crime Branch,
J 2 Police Station,
Adyar, Chennai-600 020.

2.The Sub-Registrar,
Avarapakkam,
Dindivanam Taluk,
Villupuram District.

3.The Sub-Registrar, Joint I,
Chennai South, Chennai.

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+1 cc to Government Pleader, sr.17358

W.P.No.6325 of 2016
and
W.M.P.No.5632 of 2016

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