

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.07.2017

PRONOUNCED ON : 04.08.2017

CORAM :

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.RC.Nos.1101 of 2013 and 932 of 2015

Smt.B.Ayisha ... Petitioner in both the revisions

Vs.

1. State rep by, Inspector of Police,
SPE : CBI : ACB: Chennai.

2.S.Basheer Ahmed

3.R.Nalini

(respondents 2 and 3 are impleaded in Crl.RC.1101/13
vide order dated 19.08.2016 in Crl.MP.1 of 2013)

... Respondents in both the revisions

PRAYER : Both the Criminal revisions are filed under Section 397, 401 of the Criminal Procedure Code, to call for the records in Crl.MP.No.7920 of 2012 and 2020 of 2013 respectively in RC MA1 2012 A 0021 dated 10.07.2013, on the file of the Principal Special Judge for CBI Cases, Chennai and set aside the above order and pass appropriate order directing the Special Judge to take cognizance of the offence and proceed with trial.

For petitioner : Mrs.Ayisha, Party-in-person.
Mr.R.Karunakaran, Legal Aid Counsel
in both the cases.

For Respondents : Mr.K.Srinivasan,
Spl.Public Prosecutor, CBI Cases for R1
in both the cases.
Mr.R.Shankar
for R2 – No appearance.
M/s.Royal Law Associates
for R3 - No appearance.

COMMON ORDER

Both the Criminal revision petitions are directed against the common order passed by the learned Principal Special Judge for CBI Cases, Chennai made in CrI.MP.Nos.7920 of 2012 and 2020 of 2013 respectively in RC MA1 2012 A 0021 dated 10.07.2013.

2. For better understanding, CrI.MP.No.7920 of 2012 is filed by the complainant/prosecution under Section 173 Cr.PC praying to close the FIR in RC MA1 2012 A 0021 and CrI.MP.No.2020 of 2013 is filed by the petitioner/defato complainant/B.Ayisha against the closure of FIR and praying to register the FIR against her husband/Basheer Ahmed and postal officials.

3. The brief facts of the case are as follows :-

The petitioner herein filed a private complaint dated 14.04.2011 before the Joint Director of CBI, South zone, Shastri Bhavan, Chennai for taking action against the named accused. The CBI investigated the case and filed a final report in this Court on 24.12.2012 stating that there is no grounds to prosecute the accused and to close the FIR and further directed the complainant to appear before the Court on 24.01.2013 to submit her objections to close the FIR. Subsequently, the complainant approached this Court by way of CrI.OP.No.29132 of 2011 under Section 482 Cr.PC to register the

complaint and this Court by an order dated 08.03.2012 directed the respondent/police to register the case based on the complaint of the petitioner dated 14.04.2011 and to take up the investigation provided any cognizable offence is made out.

4. The main allegations raised in the FIR is that the complainant had purchased 25 National Savings Certificates (NSCs) and two monthly investment schemes (MISs) which would mature after six years from the period of purchasing between 1993-1997 and that her husband Basheer Ahmed and Nalini/Postal Agent in connivance with the postal officials in Chetpet Post Office have withdrawn the matured amount by means of forgery and impersonation.

5. It reveals from the investigation that the petitioner has pledged 23 NSCs out of 25 NSCs with Reserve Bank Employee's Cooperative Bank, Chennai and raised loans. Some of the FDs were surrendered in Chetpet Post Office and the amount credited to the joint account of the petitioner and her husband/Basheer Ahamed/A1 in UCO Bank, Kilpauk, Chennai. The two NSCs purchased from Chetpet post office have not been encashed so far. Five NSCs were discharged and maturity amount of Rs.36,000/- was received in cash. The remaining four NSCs purchased from GPO Mount Road, Chennai have been discharged by the complainant herself and the proceeds are also admitted to have been received by her. The payment of the maturity

amount in cash was in violation of guidelines issued by the postal department for which one Chidambaram, Supervisor is responsible and he retired from service in the year 2007 itself. After completion of the enquiry, the investigating officer filed the final report under Section 173 Cr.PC for closing the FIR, stating that no offences have been made out against the accused.

6. The defacto complainant has filed the protest petition stating that the CBI has not properly investigated into the matter. Even during 1995 she got separated from her husband. A1 in connivance with the postal agent withdrawn the money from the account of the complainant and deposited the same to his personal account.

7. The trial Court has elaborately discussed the final report filed by the prosecution under Section 173 Cr.PC and also the protest petition filed by the defacto complainant. The prosecution has convinced the trial Court with the reasons stated in the final report and made out clear grounds for closure of the FIR and not satisfied with the averments raised in the complaint and in the protest petition, the trial Court dismissed the protest petition filed by the defacto complainant.

8. Aggrieved against the said common order passed by the

Special Court, the petitioner has preferred the present revisions before this Court.

9. Heard the rival submissions made on both sides and perused the available records.

10. The trial Court after considering the circumstances and facts of the case and on careful analysis and scrutiny of the oral and documentary evidences collected during the course of investigation by the CBI. It is noted that 19 NSCs were pledged with RBI Employees Cooperative Bank by the complainant and signed on discharge column as token of security and scientific experts has also opined that the signature found in the discharge column are only that of the complainant and it is crystal clear that no forgery or impersonation had taken place in siphoning off the interest or any amount by husband of the complainant/A1/Basheer Ahmed or by any postal agent.

11. During the course of investigation, it is unearthed that the original account opening form of savings bank account opened jointly by the complainant and her husband/A1 which is still alive, was misplaced by Rajeswari, Post Master of Head Post Office, Park Town is the responsible for the same. Further, the amount matured was discharged as cash by one Prema, the then Supervisor, now got VRS from the department and one Anbalagam, Counter Clerck. The trial

Court has found that there is procedural irregularities in cash payment by the Chidambaram in the year 2000 due to the fact that Section 269T of the Income Tax Act, 1964 was intimated to the postal department only in 2006 and the cash payment of Rs.22,000/- by Anbalagan and Prema against whom no criminal misconduct could be detected and hence recommended for departmental action. It is clear that the matured amount was credited into the joint account of UCO Bank maintained in the names of the complainant and A1, hence the withdrawal of cheque amount deposited due to discharge of NSCs and withdrawal of interest by A1 credited to E or S account maintained at UCO Bank, Kilpauk, Chennai cannot be said to be illegal or by means of forgery and impersonation.

12. After analysing the above aspects and the documents collected during the course of investigation, the CBI has comes to the conclusion that the prima facie case has not been made out against the accused for criminal offences and the faults have been committed by the postal staffs, for which the CBI has recommended for departmental action.

13. It is pertinent to mention that when final report is accepted and protest petition thereto is rejected, the Magistrate can still take cognizance upon a complaint or protest petition, on the same or similar allegations of fact subsequent complaint is not barred.

Further, if the defacto complainant is not satisfied with the report filed by the CBI, it is open to the complainant to give afresh complaint before the Magistrate and proceed with the same as private complaint.

14. Thus, the Special Court has entertained the final report filed by the CBI and also given valid and acceptable reasons for closure of the FIR and rightly dismissed the protest petition filed by the complainant. This Court finds no valid reasons to interfere with the order passed by the Special Judge and the same does not warrants any interference by this Court. The defacto complainant is at liberty to approach the trial Court and file her complaint, if the defacto complainant is advised to do so, then the trial Court is directed to take the cognizance on the complaint filed by the complainant, in the manner known to law.

15. In the result, both the criminal revisions are dismissed. Consequently, connected miscellaneous petitions are closed.

04.08.2017.

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Index : Yes/No.

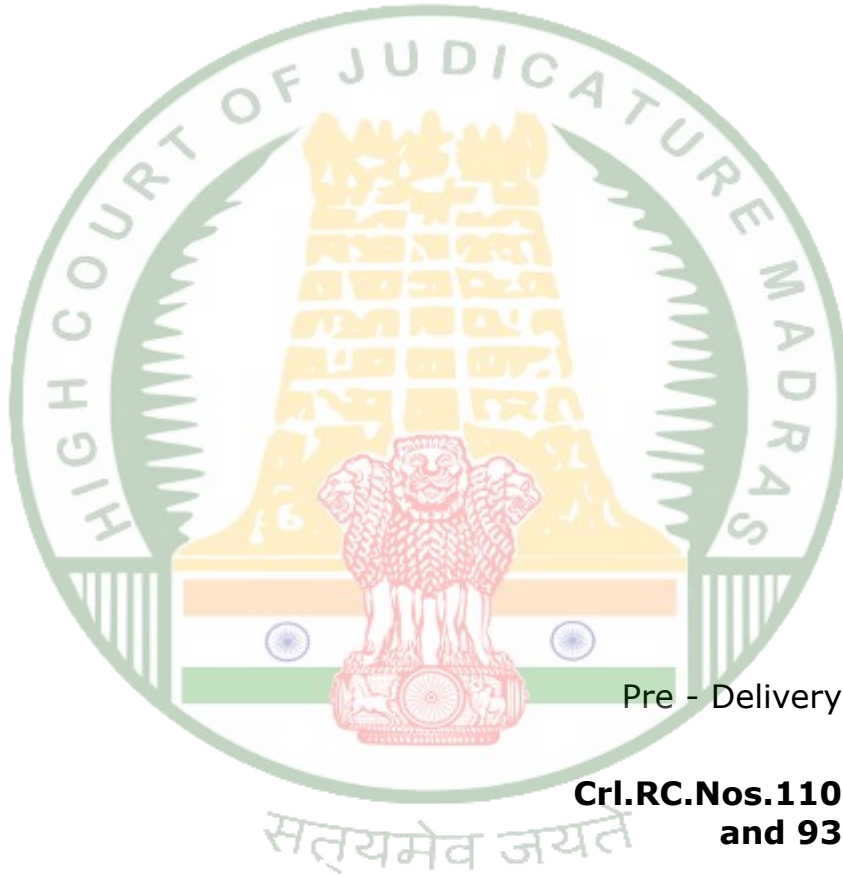
Internet : Yes/No.

To

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

P. VELMURUGAN, J.

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Pre - Delivery Orders in

**Crl.RC.Nos.1101 of 2013
and 932 of 2015**

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