

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order Reserved on : 24.04.2017

Order Pronounced on : 17.05.2017

CORAM

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

Crl.R.C.No.1267 of 2016

Mrs.S.Nithya

... Petitioner

vs

State rep. by its
Inspector of Police,
Central Crime Branch,
Chennai.

... Respondent

Criminal Revision Case filed under section 397 r/w 401 of the Code of Criminal Procedure, to call for the records of the order passed in C.M.P.No.1378 of 2016 dated 03.06.2016 on the file of the learned Judicial Magistrate, Alandur and set aside the same and consequently direct the learned Judicial Magistrate, Alandur to release the Document No.1335 of 2015, Document No.940 of 2015 and Document No.2368 of 2015.

For Petitioner : Mr.Yusuf Esi.Q for
M/s.Nathan and Associates

For Respondent : Mr.R.Ravichandran,
Government Advocate(Crl. Side)
Mr.Anand Venkatesh
Amicus curie

ORDER

The petitioner filed this Criminal Revision Case, challenging the order of dismissal of petitioner's application, filed under Section 451 Cr.P.C., seeking for returning of certain documents seized by the respondent police.

2. The fact of the case, in brief, is as follows:-

The petitioner is the wife of one Samuel, and he is an accused in CCB Crime No.2600 of 2015 for the offence under Sections 406, 419, 420, 468, 471 and 472 IPC. At the time of arrest of her husband, the respondent police seized some original sale deeds stands in her name from her house, which is nothing to do with the above said crime. In the above circumstances, she filed a Petition under Section 451 Cr.P.C. for returning of the above original sale deeds. The Court below dismissed the said petition, stating that as per the prosecution, all the above properties were purchased by the accused using the amount cheated from the public and the above question could be decided only at the time of trial and not at the stage of investigation, in the said circumstances, the documents cannot be returned to the petitioner. Challenging the same, the present criminal revision case has been filed.

3. The respondent police filed a detailed counter affidavit, wherein it is stated that the petitioner's husband one Samuel along with two other persons claiming as an employee of Tamil Nadu Housing Board, issued fake house site allotment orders to various public and collected huge amount cheated them. Hence, a complaint was filed against them and based on the above complaint, a case has been registered in CCB Crime No. 2600 of 2015 for the offence under Sections 406, 419, 420, 468, 471 and 472 IPC. Thereafter, all the accused were arrested and A1, the husband of the petitioner, during investigation confessed that he has purchased the properties in the name of the petitioner, by using the cheated amount received from the defacto complainant and other victims and based on the above statement, the above said documents were recovered from his house. More than Rs.1 crore has been collected by the above accused by issuing fake Housing Board allotment orders, and A-1 has purchased the above properties out of the cheated amount, and the investigation is pending.

4. I have heard Mr.Yusuf Esi.Q for M/s.Nathan and Associates, the learned counsel appearing for the petitioner and Mr.R.Ravichandran, the learned Government Advocate(Crl. Side), appearing for the respondent police and Mr.Anand Venkatesh as amicus curie and perused the materials available on record.

5. The learned counsel appearing for the petitioner would contend that the petitioner is not an accused in the criminal case, and admittedly the sale deeds are stands in her name. In the above circumstances, the respondent police can not seize the properties belongs to her. Even under Section 102 Cr.P.C., the respondent police has no power to seize the immovable property. In support of his contention, the learned counsel appearing for the petitioner by relying upon the Hon'ble Full Bench Judgment of the Bombay High Court in **Crl.W.P.No.3198 of 2009 dated 29.11.2010 (SUDHIR VASANTH KARNATAKI Vs. THE STATE OF MAHARASHTRA)** reported in **2010 SCC Online Bombay 1808** and the Judgment of this Court in **W.P.No.11221 of 2015 (V.SUNDARAM Vs. THE DEPUTY SUPERINTENDENT OF POLICE AND ANOTHER)** dated 27.07.2015 .

6. Per contra, the learned counsel appearing for the respondent would submit that the petitioner is the wife of the first accused and the first accused along with two other persons have cheated the general public by issuing fake Housing Board allotment orders and during the investigation A-1 also confessed that the above properties had been purchased in the name of the petitioner using the amount collected from the public and since the investigation is still pending, the documents cannot be returned to the petitioner at this stage. The learned Government Advocate(Crtl. Side) appearing for the respondent relying

upon the judgment of the Hon'ble Supreme Court in **STATE OF MAHARASHTRA Vs. TAPAS D.NEOGY** reported in **1997(7) SCC 685** and contend that the respondent has power to seize any property which creates suspicion of the commission of any offence.

7. Mr.Anand Venkatesh, the learned counsel appeared as amicus curie in this case, submitted that under Section 102 Cr.P.C., the police cannot seize any immovable property, the learned counsel also relying upon the Full Bench judgment of the Bombay High Court, referred above, and contended that under Section 102 Cr.P.C., the respondent police has no power to seize any immovable property and if at all the property required to be attached, it could be attached only under Criminal Law (Amendment) Ordinance 1944 as amended by Criminal Law (Tamil Nadu Amendment Act,1997).

8. I have considered the rival submissions.

9. Admittedly, the petitioner is not an accused in the criminal case and it is also admitted that all the sale deeds seized by the respondent police are stands in the name of the petitioner. It is the case of the prosecution that the petitioner's husband is one of the accused(A-1) in a criminal case and he along with two others collected more than Rs.1 crore from the general public by issuing fake Housing Board allotment orders and out of the amount collected from the

defacto complainant and other victims, the properties had been purchased by him in the name of the petitioner.

10. Now, the question is whether the police has power to seize the immovable properties belongs to the petitioner. Section 102 Cr.P.C. empower the police officer to seize certain properties and its reads as follows:-

"S.102. Power of Police Officer to seize certain property.(1) Any police officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any offence.

(2) Such police officer, if subordinate to the officer in charge of a police station, shall forthwith report the seizure to that officer.

(3) Every police officer acting under sub-section (1) shall forthwith report the seizure to the Magistrate having jurisdiction and where the property seized is such that it cannot be conveniently transported to the Court, [or where there is difficulty in securing proper accommodation for the custody of such property, or where the continued retention of the property in police custody may not be considered necessary for the purpose of investigation) he may give custody thereof to any person on his executing a bond undertaking to produce the property before the Court as and when required and to give effect to the further orders of the

Court as to the disposal of the same].

(Provided that where the property seized under sub- section (1) is subject to speedy and natural decay and if the person entitled to the possession of such property is unknown or absent and the value of such property is less than five hundred rupees, it may forthwith be sold by auction under the orders of the Superintendent of Police and the provisions of [sections 457](#) and [458](#) shall, as nearly as may be practicable, apply to the net proceeds of such sale.

11. The learned counsel appearing for the petitioner as well as Mr.Anand Venkatesh, the amicus curie submitted that the police has no power to seize any immovable properties invoking Section 102 Cr.P.C., relying upon the Full Bench Judgment of the Bombay High Court referred above, and the Full Bench has held as follows:-

“67. [Section 102](#) basically deals with the manner in which a police officer has to collect evidence for the purpose of proving charge at the trial. It does not deal with penalising an offender or depriving the offender of the benefits of such property because it was derived from crime before he is tried. It would be an abuse of the provision if it were to be interpreted to mean that the property acquired by offenders from crime could be attached by a police officer to prevent the offender from getting the benefit of ill-gotten wealth or proceeds of crime on a mere

suspicion that it was ill-gotten, without any enquiry, since such property in itself could not at all be conceived as creating a suspicion of the commission of any offence.

68. Whether a person acquired any immovable property from his ill-gotten wealth from crime could be proved by documents and not by the seizure of the immovable property itself. Thus, sale deed or any other document whereby immovable property was acquired would be an evidence which would create suspicion of commission of an offence. It is hard to conceive that the immovable property in itself would provide any evidence of its having been acquired from the proceeds of crime.

Therefore, if the argument is that [Section 102](#) of the Code is to be interpreted to include immovable property to ensure that criminals do not walk away with the property acquired from the proceeds of crime, it would amount to attempting to put [Section 102](#) to an use to which it was not intended to provide for."

And the Full bench concluded as Follows:-

84. To sum up, we answer the reference thus:

Q.(a) Whether the words "any property" used in sub-section (1) of [Section 102](#) of the Code of Criminal Procedure, 1973 would mean to include "immoveable property"?

Ans. We, therefore, hold that the expression "any

property" used in sub-section (1) of [Section 102](#) of the Code does not include immovable property. Question (a) is, therefore, answered in the negative.

Q.(b) Whether a police officer can take control of any immovable property which may be found under circumstances which create suspicion of the commission of any offence?

Ans. No.

11. This Court, in a case reported in **CDJ 2015 MHC 4990** in **W.P.No.11221 of 2015 [V.SUNDARAM Vs. THE DEPUTY SUPERINTENDENT OF POLICE AND ANOTHER] dated 27.07.2015**, [P.N.Prakash, J.] considered the above judgment and held that, if at all the property purchased out of the ill-gotten wealth of the accused involved in offences, it could be attached only by invoking the Criminal Law (Amendment) Ordinance, 1944, as amended by the Criminal Law (Tamil Nadu Amendment Act,1977) and held as follows:-

“7. The Legislature has made provisions for tracking down proceeds of crime in various enactments like [NDPS Act](#), [SAFEMA](#), [Prevention of Money Laundering Act](#), Criminal Law Amendment Ordinance, 1944, etc. The prosecution faced by the petitioners herein will fall within the ambit of Criminal Law Amendment Ordinance, as amended by the State of Tamil Nadu. Criminal Law Amendment Ordinance, 1944 was introduced to attach the ill-gotten wealth of accused involved in offences mentioned in the Schedule to the Ordinance. Initially item No.2 and Item No.4 of the

Schedule to the Ordinance provided for attachment of properties, where the offence was committed in relation to the State and its instrumentalities. In other words, where the State or its instrumentalities had been cheated, the provisions of the Ordinance can be invoked for attaching the properties of the offender. The Schedule to the Criminal Law Amendment Ordinance, 1944 was amended by the Criminal Law (Tamil Nadu Amendment Act, 1997) with effect from 12.08.1997 on account of which, the restriction that the offences must have been committed in relation to the State or its instrumentalities was taken away and now, the State of Tamil Nadu has the power to initiate proceedings even in respect of offences against private persons. Thus, if a person is involved in an offence under [Section 406](#) or [420 IPC](#) and the victim is a private person, the provisions of the Criminal Law Amendment Ordinance, 1944 can be invoked in the State of Tamil Nadu for attaching the properties of the offender. The Ordinance provides for procedure to effect attachment. Under [Section 3](#) of the Ordinance, it is only the State Government or the Central Government that can initiate action by approaching the District Judge of the area where the accused ordinarily resides or carries on business. The police officer has no role to play in this. He can, at the most, submit a report to the State Government or Central Government requesting the State Government to initiate action under the Ordinance and he cannot arrogate to himself the power to issue such veiled threats to the Sub-Registrar.”

The judgment relied on by the learned counsel for the respondent in State of Maharashtra v/s. Tapas D. Neogy (supra), the above judgment was elaborately considered by the Full Bench of Bombay High court and held that police has no power to seize the immovable property.

12. From the above, it is clear that the respondent police has no power to seize the immovable property, and the seizure of the above documents are illegal. In the above circumstances, the impugned order passed by the trial Court is liable to be set aside.

13. In the result, the Criminal Revision Case is allowed with the following directions:-

i) The respondent police is directed to return the original sale deeds seized from the petitioner and

(ii) the petitioner is directed not to alienate or encumber the properties till the disposal of the criminal case and the petitioner is directed to produce the above sale deeds as and when required by the respondent police and the Court below.

14. While parting with the case, I appreciate the valuable assistance rendered by Mr. Anand Venkatesh, the learned counsel as amicus curie in this case.

17.05.2017

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To

- 1.The Inspector of Police,
Central Crime Branch,
Chennai.
- 2.The Public Prosecutor,
High Court,
Madras-104.

V.BHARATHIDASAN.J

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Pre Delivery Order
in
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