

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.04.2018

CORAM

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

**Crl.O.P. No.10213 of 2018
and Crl.M.P.Nos.5202 and 5203 of 2018**

Manimegalai

Petitioner

vs.

1.The State rep. by the
Sub Inspector of Police
Central Crime Branch
Vepery, Chennai 600 007.

2.The Branch Manager
Karur Vysya Bank
Anna Nagar Branch
Chennai 40

Respondents

Criminal Original Petition filed under Section 482, Cr.P.C. to call for the records of the impugned proceedings in C.C.No.16419 of 2008, pending on the file of the learned Special Judge for the trial of CCB Cases at Egmore, Chennai and quash the same.

For petitioner

For R1

For R2

Mr.S.Sathishrajan

Mrs.Kritika Kamal P

Government Advocate (Crl.Side)

Mr.A.V.Radhakrishnan

ORDER

This petition has been filed to call for the records of the proceedings in C.C.No.16419 of 2008, pending on the file of the learned Special Judge for the trial of CCB Cases at Egmore, Chennai and quash the same.

2. For the sake of convenience, the parties will be referred to by their name.

3. Jeyakumar, an NRI, had executed a General Power of Attorney dated 13.05.2005, in favour of his sister-in-law Manimegalai, authorising her to purchase a property in his name and develop the same. Accordingly, Manimegalai purchased a property, vide sale deed dated 27.06.2005, in the name of Jeyakumar. Thereafter, she mortgaged the said property with Karur Vysya Bank and entered into a term loan agreement and also a confirmation of deposit of title deed on 15.10.2005, under which, the original title deeds of the property were handed over to Karur Vysya Bank for the loan raised. While so, Manimegalai, on the strength of the Power of Attorney given by Jeyakumar, has executed a sale deed dated 19.07.2006, conveying a portion of the property to her minor children. On a perusal of the sale deed, it is seen that Manimegalai has acted as the vendor for and on behalf of Jeyakumar and she has also acted as the purchaser for and on behalf of her minor children. Therefore, on the complaint lodged by Karur Vysya Bank, the first respondent police registered a case in Cr.No.474 of 2008 and after completing the investigation, have filed a charge sheet in C.C.No.16419 of 2008 before the Special Judge for trial of CCB Case, Egmore, Chennai , challenging which Manimegalai is before this Court.

4. Heard Mr.S.Sathishrajan, learned counsel for the petitioner, Ms.Kritika Kamal P., learned Government Advocate (Crl.Side) for the State and Mr.A.V.Radhakrishnan, learned counsel for the second respondent.

5. Mr.Sathishrajan, learned counsel submitted that the entire prosecution is an abuse of process of law, inasmuch as the aggrieved person, if at all, can only be Jeyakumar and not the Bank. He further submitted that Jeyakumar has settled the entire loan amount to the Bank and therefore, the prosecution deserves to be quashed. He also contended that for creating an encumbrance on an already mortgaged property, a criminal prosecution cannot be maintained.

6. Per contra, Mr.A.V.Radhakrishnan, learned counsel refuted the contentions put forth by the learned counsel for Manimegalai.

7. It is seen that the property stands in the name of Jeyakumar and that Manimegalai was appointed as Power Agent for the purpose of developing the property. It was Manimegalai who had entered into the term loan agreement with the Bank for and on behalf of Jeyakumar and had deposited the original title deeds of the property. Thus, she had created a mortgage on the said property. Thereafter, she has executed the sale deed in favour of her minor children. This clearly shows her *mens rea* inasmuch as she did not want the Bank to initiate any proceedings in the event of default

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of the loan amount by Jeyakumar. In the sale deed, there is no recital with regard to the mortgage of the property with Karur Vysya Bank. In such view of the matter, this is not a fit case in which prosecution can be quashed.

In the result, this petition is dismissed with liberty to the petitioner to raise all the points before the trial Court after the charges are framed. Whatever is stated above is only for the limited purpose of deciding this quash petition and the trial Court shall proceed without being influenced by the observations made herein. Consequently, connected miscellaneous petitions are closed.

10.04.2018

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To

1.The Sub Inspector of Police
Central Crime Branch
Vepery, Chennai 600 007.

2.The Branch Manager
Karur Vysya Bank
Anna Nagar Branch
Chennai 40.

3.The Special Judge for the trial of CCB Cases
Egmore, Chennai.

4.The Public Prosecutor,
High Court, Madras.

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