

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.10.2018

CORAM:

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.R.C.No.1144 of 2018

Anuraag Jain

... Petitioner

/Vs/

State Rep by:

The Inspector of Police
CBI/BS & FC Bangalore,
RC: 8/E/2008

... Respondent

PRAYER: Criminal Revision Case filed under sections 397 r/w 401 of I.P.C., to set aside the order, dated 10.08.2018 in Crl.M.P.No.2458 of 2017 in C.C.No.45 of 2009 on the file of the XI Additional Principal Sessions Special Judge for CBI cases, Chennai, and return the Documents, Doc.No.111 (Original General Power of Attorney); Doc.No.112 (Original Sale Deed) seized during investigation in R.C.No.8/E/2008.

For Petitioner : Mr. Chandrasekar
Sr. Counsel for Ms.M.F.Shabana

For Respondent : Mr.K.Srinivasan
Special Public Prosecutor(CBI Cases)

O R D E R

This Criminal Revision Case has been filed against the order of the learned XI Additional Sessions Judge for CBI cases, Chennai, in C.C.No.45 of 2009 dated 10.08.2018, dismissing the petition filed by the petitioner under Section 451 of Cr.P.C. seeking return of documents.

2. The learned Senior Counsel for the petitioner would submit that the petitioner has been arrayed as second accused in C.C.No.45 of 2009 on the file of the learned XI Additional Sessions Judge for CBI Cases, Chennai. The petitioner is residing at No.36, Silver Park Apartment, 34, 'B' Block, 6th Floor, Thanigachalam Road, T.Nagar, Chennai-17 along with his brother Nareshkumar and both of them were running a company in the name of National Medicines Private Limited and the property was purchased by his brother in favour of the company during the year 2004 and registered in the office of Sub-Registrar, T.Nagar, Chennai, under the Document No.1897 of 2004. Thereafter, brother of the petitioner passed away on 19.03.2017. The learned Counsel for the petitioner would

submit that two documents viz., Original General Power of Attorney and Original Sale Deed which have been listed as document No.111 and 112 in the charge sheet were offered as Collateral Security for a loan taken from ***Union Bank of India, Mount Road Branch** and during the course of the enquiry, the above documents have been recovered by the respondent from the custody of ***Union Bank of India, Mount Road Branch**. He would further submit that though the documents have been listed as Document Nos.111 and 112, in the final report, the same were not marked during the trial. He would submit that the documents were offered as collateral security for a loan and that the entire loan had been settled and thereby the petitioner had filed a petition seeking return of original documents to him. He would submit that the learned XI Additional Sessions Judge for CBI Cases, Chennai, had dismissed the application stating that the documents have been recovered from the custody of ***Union Bank of India, Mount Road Branch** and since the ***Union Bank of India, Mount Road Branch** has not been impleaded as a party to the petition had dismissed the petition as not been maintainable.

3. The learned Counsel for the petitioner would submit that either the petition or the ***Union Bank of India, Mount Road Branch** will be person entitled for the custody of the documents, and would submit that if an indication had been made by the learned XI Additional Sessions Judge for CBI Cases, Chennai, in C.C.No.45 of 2009, that ***Union Bank of India, Mount Road Branch** is a necessary party, the petitioner would have impleaded the Bank. Whereas, the trial Court without giving an opportunity to the petitioner to implead the Bank, has dismissed the petition. He would submit that this Court can implead the ***Union Bank of India, Mount Road Branch** as necessary party in this criminal revision and after hearing ***Union Bank of India, Mount Road Branch** shall pass appropriate orders.

4. The learned Special Public Prosecutor for CBI Cases would submit that the learned XI Additional Sessions Judge for CBI Cases, Chennai, has dismissed the application stating that the ***Union Bank of India, Mount Road Branch** is a necessary party, since the documents have been recovered from the custody of the ***Union Bank of India, Mount Road Branch**. He would submit that since the documents have been recovered from the custody of the bank, the bank has to be necessarily impleaded as a party and that the trial Court is the proper forum to decide relating to the issue of returning the documents and would submit that if the petitioner so pleases he can file a fresh application impleading the bank as a proper and necessary party and agitate his claim before the trial Court which would be the right forum to decide the issue.

5. At this juncture, the learned Senior Counsel would submit that the order may be set aside and the matter may be

remitted back to the trial Court to hear the matter afresh by affording an opportunity to the petitioner to implead ***Union Bank of India, Mount Road Branch** and agitate the claim. He would also pray that a time frame may be fixed to the trial Court to hear and pass orders on the petition so filed.

6. Taking in to consideration, the facts of the case and the submissions made by the counsels the order dated 10.08.2018 in CrI.M.P.No.2458 of 2017 in C.C.No.45 of 2008 is set aside and the case is remitted back granting liberty to the petitioner to implead ***Union Bank of India, Mount Road Branch** as proper and necessary party and on such impleading application being filed the learned XI Additional Sessions Judge for CBI Cases, Chennai, shall hear all the parties and pass orders on merit preferably within a period of six weeks from the date of receipt of a copy of this order.

6. With this observation the Criminal Revision is disposed of.

Assistant Registrar (CS IX)

Dated: 11.10.2018

*** Corrected as per order
of this court dated 26.10.2018
in CrI.M.P. 14162/2018
in CrI.R.C.No.1144 of 2018.
sd/- Assistant Registrar(CS IX)
Dated: 31.10.2018**

//True copy//

Sub Assistant Registrar

To

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|---|---|
| 1. The XI Additional Principal Sessions
Special Judge for CBI Cases,
Chennai. | To be substituted to
the order already
despatched on
23.10.2018. |
| 2. The Special Public Prosecutor
(CBI Cases),
High Court of Madras. | |
| 3. The Inspector of Police
CBI/BS & FC Bangalore. | |

+1 cc to M/s.M.F.Shabana, advocate,sr73642.

CrI.R.C.No.1144 of 2018

Krd 10/11
SP(31/10/2018)

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