

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 05.03.2019
CORAM
THE HONOURABLE Mr.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.5759 of 2019

Directorate of Enforcement,
Govt. of India,
Ministry of Finance, Department of Revenue,
2nd and 3rd Floor, No.84, Murugesu Naicker Office Complex,
Greens Road, Thousand Lights,
Chennai-600 006.
Rep. by its Deputy Director.
..... Petitioner

Vs.

1. Inspector of Police,
J-12, Kanathur Police Station,
Kanathur, Chennai 603 112.
2.B.Velu.
..... Respondents

Prayer: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to set aside the order dated 22.02.2019 in Crl.M.P.No.1179 of 2019 of learned Judicial Magistrate, Alandur and permit the petitioner/Investigating Officer, Deputy Director and two Enforcement Officers to visit Central Jail, Puzhal and examine and record statement of accused/2nd respondent, Mr.B.Velu, aged 37 years, Son of Boopalan, in the presence of Prison authorities of Central Prison, Puzhal in connection with investigation under FEMA, 1999.

For Petitioner : Mr.N.Ramesh
Special Public Prosecutor,
Directorate of Enforcement.

For 1st Respondent: Mr.C.Raghavan,
Government Advocate (Crl.side)

O R D E R

This Criminal Original Petition has been filed challenging the order dated 22.02.2019 passed in Crl.M.P.No.1179 of 2019 by the learned Judicial

Magistrate, Alandur, thereby dismissing the petition filed by the petitioner to permit him alongwith two Enforcement Officers to visit Central Jail, Puzhal and record statement of the second respondent herein in connection with investigation under the provisions of FEMA 1999.

2.The learned counsel for the petitioner submitted that the second respondent was arrested and remanded to judicial custody in respect of Crime No.29 of 2019 on the file of the first respondent herein for the offences under Section 380 IPC. Though the petitioner has no role in Crime No.29 of 2019, the first respondent while arresting the second accused has recovered certain foreign currency and to that extent they also recorded confession statement. In this regard, they initiated proceedings as against the second respondent and the petitioner herein has filed a petition under Section 37 of Foreign Exchange Management Act 1999 to examine and record the statement of second respondent in Prison. Without considering the above facts and circumstances, the learned Judicial Magistrate, Alandur has dismissed the same. Therefore, he prays to set aside the order passed by the learned Judicial Magistrate and seeks permission to examine the second petitioner in Central Jail, Puzhal, as per the provisions under FEMA 1999.

3.The learned Additional Public Prosecutor submitted that the petitioner has no role in Crime No.29 of 2019 registered for the offence under Section 380 IPC, as against the second respondent. But, the 1st respondent Police have recovered the foreign currency from the second respondent and the same was handed over to the petitioner, Directorate of Enforcement, Government of India, Ministry of Finance Department of Revenue, Chennai. Hence, the petitioner wanted to enquire the second respondent in the prison, but the learned Judicial Magistrate did not permit for the same.

4.Heard Mr.N.Ramesh, learned Special Public Prosecutor appearing for the petitioner and Mr.C.Raghavan, learned Government Advocate (Crl.side) appearing for the State.

5.It is seen that the second respondent was arrested and remanded to judicial custody on 02.02.2019, for the offence under Section 380 IPC by the first respondent. On the confessions given by the accused peroson, the first respondent recovered foreign currency from the second respondent and handed over the same to the petitioner

herein. Hence, the petitioner wanted to enquire the second respondent, under the provisions of FEMA 1999. Without considering the same, the learned Judicial Magistrate has dismissed the petition for the reason that the petitioner has no power to arrest or to take custody of the second respondent. The learned Judicial Magistrate further stated that the learned Magistrate Court has no power to summon the accused, who is in judicial custody unless any specific Act authorises to do so.

6. Admittedly, the petitioner has no role in respect of Crime No.29 of 2019 on the file of the first respondent. Whereas, the foreign currencies were seized from the second respondent by the first respondent and the same was handed over to the petitioner and the petitioner has also initiated proceedings under FEMA against the accused and investigation by the petitioner is also in progress. For this, it is essential for the petitioner to enquire the accused and to record statements under Section 37 of FEMA 1999 r/w Section 131 of Income Tax Act 1961 from the accused.

7. Under these circumstances, this Criminal Original Petition is allowed and the order dated 22.02.2019 passed by the learned Judicial Magistrate, Alandur in CrI.M.P.No.1179 of 2019, is hereby set aside. The petitioner is permitted to conduct an enquiry for two days viz., 07.03.2019 and 08.03.2019 along with two enforcement Officers and to record statement of the second respondent, who is in judicial custody in the Central Prison, Puzhal, in the presence of Jail Authorities of Central Prison, Puzhal, in connection with investigation under the provisions of FEMA 1999.

सत्यमेव जयते

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1.The Inspector of Police,
J-12, Kanathur Police Station,
Kanathur, Chennai 603 112.

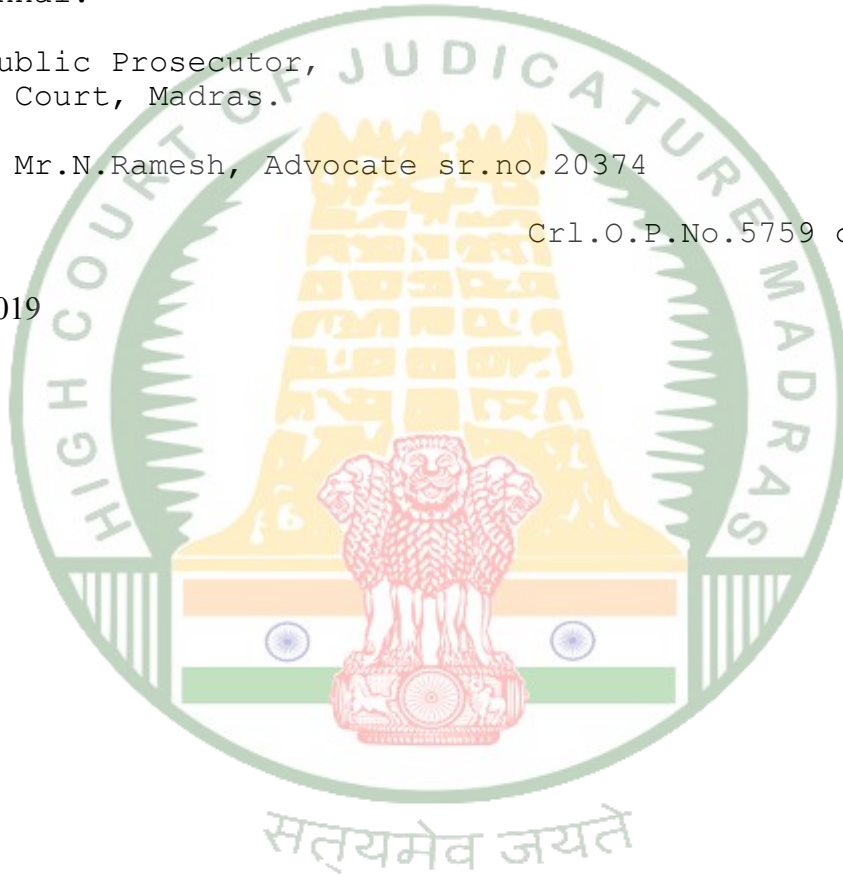
2. The Superintendent,
Central Prison,
Puzhal,
Chennai.

3.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.N.Ramesh, Advocate sr.no.20374

Cr1.O.P.No.5759 of 2019

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