

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 26.08.2019

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THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.R.C.No.751 of 2019

Thomas Balan ... Petitioner/Accused NO.254
Vs

State represented by
The Superintendent of Police,
SPSE/CBI/ACB/Chennai
Crime No.RC MA/1/2014/A/0012. ... Respondent/Complainant

Prayer:- This Petition filed under section 397 Cr.P.C., r/w 401 to call for the records from files of the XI Additional Special Judge for CBI Cases, Chennai in Crl.M.P.No.4186 of 2019 in C.C.No.3 of 2019 and revise the order dated 19.06.2019 and to set aside the condition imposed for return of Original Sale Deed in Doc.No.2078/2002 dated 10.08.2002.

For Petitioner : Mr.K.M.Ramesh

For Respondent : Mr.K.Srinivasan
Special Public Prosecutor

(CBI)

ORDER

The above Criminal Revision has been filed, seeking to call for the records from the XI Additional Special Judge for CBI Cases, Chennai in Crl.M.P.No.4186 of 2019 in C.C.No.3 of 2019 and revise the order dated 19.06.2019 and to set aside the condition imposed for return of Original Sale Deed in Doc.No.2078/2002, dated 10.08.2002.

2 Heard both sides.

3 The Revision Petitioner is arrayed as A-254 in C.C.No.3 of 2019, pending trial before the learned XI Additional Special Judge for CBI Cases, Chennai for the offences u/s.120-B IPC r/w 420, 467, 468, 471 IPC and u/s.7 and 13(2) r/w 13(1) (d) of the Prevention of Corruption Act, 1988. The offences are alleged to have been committed

during the period of 2011-2013, and during the search conducted, after registration of the cases several documents were recovered from the premises of the petitioner. The respondents have seized the original Sale Deed registered as Doc.No.2078/2002, dated 10.08.2002, registered in the name of the petitioner's wife namely D.Mercy and had also taken another xerox copy of the Sale Deed registered as Doc.No.690/1998, dated 28.04.1998 and a Fixed Deposit Receipt. The Sale Deeds have been listed as Doc.Nos.7146 and 7147 in the Final Report filed before the learned Trial Court. Since, Sale Deed pertains to the wife of the petitioner, the petitioner had filed a petition seeking for return of documents and the learned Trial Judge had passed an order in Crl.M.P.No.4186/2019, dated 19.06.2019, directing to return the documents, however, imposing a condition on the petitioner to file an affidavit of undertaking before the Court stating that whenever, those documents are sought for by the Trial Court, they would be produced before the Court below. Further, a direction was also imposed, directing the petitioner to execute a bond for a sum of Rs.50,000/- (Rupees Fifty Thousand Only). Against the said condition imposed by the Trial Court, the present Criminal Revision Petition has been filed.

4 The learned counsel for the petitioner would submit that the Doc.No.2078/2002, dated 10.08.2002, is in the name of the petitioner's wife who is not an accused in the case and the same had been purchased by her during the year 2002, much prior to the alleged period of offence and would submit that it is not the case of the prosecution that the property was purchased out of the proceeds of crime in this case. He would submit that the petitioner has undergone heart surgery and a stent has been fixed in his heart and that the petitioner had incurred debt for medical expenses to the tune of more than Rs.4,00,000/- (Rupees Four Lakhs Only) and that the petitioner is continuously taking treatment for his heart ailment. He would further submit that the petitioner has no other source of income and he is not having any other earning member in the family and that the property has to be either mortgaged or disposed to settle the loans taken during treatment and for further medical expenses and he would submit that the condition imposed that the documents should be produced whenever sought for by the Trial Court, onerous and has to be set aside. He would submit that the petitioner is prepared to replace the original document by filing certified copy of the original before the Trial Court and the petitioner is also prepared to execute a bond for a sum of Rs.50,000/- (Rupees Fifty Thousand Only) and

that the wife of the petitioner, who is the owner of the property, will appear before the Trial Court and file an affidavit of undertaking that she will substitute the original document by a certified copy. He would submit that the petitioner is not pressing the petition in respect of return of the xerox copy of the document and also return of the Fixed Deposit Receipt.

5 The learned Additional Public Prosecutor would submit that the present document which is sought for by the learned counsel for the petitioner has been listed as item No.7146 in the final report and that it will be needed to be marked at the time of trial before the Court. He would fairly submit that the document pertains to the year 2002.

6 It is seen that the document sought to be returned and listed as LD 7146, pertains to the wife of the petitioner and that it was purchased during the year 2002. It is not the case of the respondent that the said property has been purchased from out of the proceeds of crime. This Court is of the opinion that the original document cannot be held by the Court. If at all it is to be marked during the trial it can be done by marking the certified copy of the same. Further, since the document is of the year 2002 and it also belongs to the wife of the petitioner, this Court is of the opinion that the original document may be returned without imposing any condition to produce the same before the Trial Court at the time of trial.

7 In view of the same, the condition imposed by the learned Trial Judge, directing the petitioner to file an affidavit of undertaking that the documents will be produced before the Court, whenever it is sought for by the Court, as well as directing the production of the original Sale Deed Certificate, whenever it is called for either by the Court or by the respondent, Vide Order dated 19.06.2019 in CrI.M.P.No.4186 of 2019 in C.C.No.3 of 2019 is set aside, and the same is modified to the effect, that the petitioner shall substitute the Sale Deed listed as LD 7146, by the certified copy of the same and on such, substitution the Original Sale Deed shall be returned to the petitioner.

8 In view of the above, this Criminal Revision is disposed of.

Sd/-
Assistant Registrar (CS VI)

//True Copy//

Sub Assistant Registrar

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To:

1.The Superintendent of Police,
SPSE/CBI/ACB/Chennai.

2.The Public Prosecutor, High Court, Chennai.

+1cc to Mr.K.M.Ramesh , Advocate SR.No. 72812

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A.SK(03/10/2019)



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