

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 28.08.2019

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THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.R.C.No.797 of 2019

C.Sekar

.. Petitioner/Third Party

Vs

1. The Superintendent of Police,
Central Bureau of Investigation,
Anti Corruption Branch, III Floor, Shastri Bhawan,
No.26, Haddowa Road, Chennai-600 006.
2. The Inspector of Police,
Central Bureau of Investigation,
Anti Corruption Branch, III Floor, Shastri Bhawan,
No.26, Haddowa Road, Chennai-600 006.

... Respondents/Complainant

Prayer:- This Petition filed under section 397 r/w 401 Cr.P.C., to call for the records in Crl.M.P.No.3794 of 2018 in C.C.No.38 of 2012 and set aside the dismissal order dated 10.05.2019 made in Crl.M.P.No.3794 of 2018 in CC.No.38 of 2012 passed by the learned Special Judge, XI Additional Special Court for CBI Cases, Singaravelar Maligai, George Town, Chennai.

For Petitioner : Mr.S.Annamalai

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

ORDER

The above Criminal Revision has been filed, seeking to call for the records and set aside the dismissal order dated 10.05.2019 made in Crl.M.P.No3794 of 2018 in CC.No.38 of 2012, passed by the learned Special Judge, XI Additional Special Court for CBI Cases, Chennai.

2 Heard both sides.

3 The brief facts leading to the revision petition is that the revision petitioner is a third party and a borrower having taken housing loan for the purpose of purchasing a plot

and construction of house over it through one promoter named G.K.Associates represented by its proprietor G.Kathiresan, who had promoted group home project for employees of State Express Transport Corporation (SETC) in R.D.B.Nagar, R.D.B.Nagar at Yagappachavadi in Soorakkottai Village. The petitioner had purchased Plot No.70 in the scheme measuring an extent of 1500 sq.ft comprised in Survey No.339/2, 341/1A & 341/1B in Soorakkottai Village by a registered Sale deed dated 14.09.2005 bearing Doc.No.1331/2005, registered at Sub Registrar Office, Maharnombuchavadi. While so, the respondents have registered a case in Crime No.RC 35(A)/2011, CBI, ACB, Chennai dated 29.11.2011, against the bank officials and the said G.Kathiresan, Proprietor of G.K.Associates in respect of fraudulent sanction of loans relating to real estate and housing construction business. The petitioner being not aware of the fraudulent transaction done by the said G.Kathiresan in collusion that the bank officials having coming to know that the case was registered had approached the bank officials and informed them that no house was constructed in the said plot belonging to him as agreed by the said G.Kathiresan. However, since proceedings under the SARFAESI Act, was initiated against the petitioner for recovery of the loan amount, the petitioner had settled the entire amount demanded by the bank officials under the OTS Scheme. Based on which the bank also issued a letter of "No Due Cum No Objection Certificate", dated 03.07.2018. In the above letter it had been stated that the original title deed of the petitioner's property was in the custody of CBI, Chennai. Having settled the entire loan amount and having obtained a No Due Cum No Objection Certificate, the petitioner had filed a petition in Crl.M.P.No.3794 of 2018 in C.C.No.38 of 2012, seeking for return of documents belonging to him.

4 The respondents 1 and 2 have filed a counter stating that the document sought for by the petitioner was listed as Doc.No.LD No.13, in the final report filed in the case registered by the respondent and that since the case was still in the pre-charge framing state had objected for a return of documents stating that returning the document at the stage of the petitioner would cause prejudiced to the petitioner. It had been further stated that the original sale deed is essential to prove the element of conspiracy and other overt acts of the accused since, the plot was registered in the name of the petitioner/third party. The Trial Court, after hearing both parties had dismissed the petition stating that the documents sought for was listed as Doc.No.LD No.13 in C.C.No.38 of 2012 and that it could not be returned to the petitioner at pre-charge framing stage. Against the said order, the present revision petition has been filed.

5 The learned counsel for the petitioner would submit that in respect of two other persons in Crl.M.P.Nos.5248 of 2017 and 891 of 2017 dated 05.04.2018, who have been similarly placed the Trial Court had directed return of documents imposing certain conditions namely by substituting the original document by certified copies and further imposing conditions that the petitioners shall not tamper with the documents and shall not encumber the property or sell the property pending disposal of the case in C.C.No.38 of 2012 and that they should furnish the documents whenever directed by the Trial Court to produce pending trial, whereas in the case of the petitioner the Trial Court had dismissed the very same prayer.

6 Per Contra, the learned Special Public Prosecutor (CBI) would submit that the case is at the stage of pre-charge framing and would submit that the documents has been listed as document number L.D.No.13, and that it is very essential for the trial, however, he would fairly concede that the Trial Court had directed return of documents belonging two persons who are similarly placed imposing condition and would submit that the Trial Court may be directed to return the document imposing certain conditions.

7 It is seen that the petitioner is a third party and he is not an accused in this case and he has also settled the entire loan amount to the bank and the bank has also given "No Due Cum No Objection Certificate" to him. The documents belonging two persons similarly placed that of the petitioner have been returned by the Trial Court imposing certain conditions. The order of dismissal dated 10.05.2019 made in Crl.M.P.No.3794 of 2018 in C.C.No.38 of 2012 by the learned XI Additional Special Court for CBI Cases, Chennai is set aside.

8 In view of the above, the trial judge is directed to return the document by imposing the following conditions:-

- a) The petitioner shall substitute the original documents with the certified copy.
- b) The petitioner shall file an undertaking before the Trial Court stating that

he will not tamper with the document or that he will not encumber or alienate the property pending trial and that he will produce the original document before the Trial Court as and when directed by the Trial Court during the pendency of trial.

9 With the above directions, this Criminal Revision is disposed of.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To:

1. The Special Judge,
XI Additional Special Court for CBI Cases,
Chennai.
 2. The Superintendent of Police,
Central Bureau of Investigation,
Anti Corruption Branch, III Floor, Shastri Bhawan,
No.26, Haddowa Road, Chennai-600 006.
 3. The Inspector of Police,
Central Bureau of Investigation,
Anti Corruption Branch, III Floor, Shastri Bhawan,
No.26, Haddowa Road, Chennai-600 006.
 4. The Public Prosecutor, High Court, Chennai.
- +1 cc to Mr.S.Annamalai, Advocate, S.R.No.73672

RGN(CO)
SSM(04/09/2019)

Cr1.R.C.No.797 of 2019

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