

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.11.2019

CORAM:

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

Crl.RC.No.931 of 2019

Mr.Debadatta Sahu ... Petitioner/Third Party
/Defacto complainant

Vs.

1.K.Manavalan ... 1stRespondent/Petitioner

2.The State represented by
The Inspector of Police,
D2, Anna Salai Police Station,
Chennai. .. 2nd Respondent/Respondent/Complainant

3.K.Mohan

4.Kumudhavalli ... Respondents 3 & 4/Accused 1 & 2

PRAYER: The Criminal Revision Petition has been filed, under Sections 397 read with 401 of Cr.P.C, to set aside the order passed in Crl.M.P.No.5603 of 2019, dated 26.06.2019, on the file of the learned II Metropolitan Magistrate, Egmore, Chennai.

For Petitioner : Mr.K.Seetharam

For R1 : Mr.R.Bharadwajaramasubramaniam

For R2 : Mr.Mohamed Riyaz
Additional Public Prosecutor

For R3 and R4 : No appearance

J U D G M E N T

This Criminal Revision has been filed by the third party/defacto complainant challenging the order passed by the learned II Metropolitan Magistrate, Egmore, Chennai, Crl.M.P.No.5603 of 2019, in Crime No. 894 of 2016, dated 26.06.2019, directing the interim custody of property documents viz., original Sale Deed dated 25.05.2018 to the claimant/first respondent herein.

2 The brief facts of the case are as follows:

On the complaint given by the the petitioner/third party/defacto complainant, a case in Crime No.894 of 2016 had been registered against the accused viz., K.Mohan and Kumudavalli, for the offences under Sections 406 and 420 of

IPC. During the course of enquiry, the respondents have seized the documents from the accused and produced them before the Trial Court. During the pendency of the proceedings, the first respondent/petitioner had filed Crl.M.P.No.5603 of 2019 seeking for return of documents viz., original Sale Deed bearing No. 5133 of 2018, dated 25.05.2018, pertaining to the house property situated at Survey No. 49/5C1A2, Kanathur Reddykuppam, Tamil Nadu, measuring about 697.5 Sq.ft., and the parent document relating to the house property of the petitioner. The Trial Court after hearing the first respondent/petitioner and without notice to the revision petitioner/defacto complainant had passed the impugned order directing handing over of interim custody of the documents to the petitioner. As against the same, the present revision has been filed by the third party/defacto complainant.

3 The learned counsel for the revision petitioner would submit that the petitioner is the defacto complainant. Based on his complaint, a case was registered by the police and the documents were recovered from the accused. He would submit that the accused had availed loans from M/s.Sri Ram City Union Finance by equitable mortgage by deposit of title deeds and the petitioner after clearing the loans took possession of the original documents and thereafter, the accused have also executed a power of attorney in favour of the defacto complainant. While so, without his knowledge, the accused have sold the property to the first respondent viz.,K.Manavalan, who had purchased the property without the original documents. He would submit that though the said K.Manavalan is also a victim, the case has been registered based on the complaint given by the petitioner/third party/defacto complainant and thereby, the petitioner being a victim is a person interested in the prosecution and entitled to be heard. The Trial Court without putting the petitioner on notice and without hearing him, had passed the impugned order. Thereby, he would seek for setting aside the order.

4 The learned counsel for the first respondent would submit that the first respondent after following the legal formalities and after paying an amount of Rs.21,00,000/- to the owners of the property K.Mohan and Kumuddhavalli, the 3rd and 4th respondents, had purchased the property by a valid Sale Deed dated 25.05.2018. He would submit that the first respondent is the claimant before the Trial Court and he is also an victim and that he is entitled to return of the documents. He would submit that the Trial Court finding that the certified copies of the documents are sufficient for trial, had directed the return of original documents seized from the first respondent for the interim custody subject to conditions and that there is no infirmity in the order.

5 The learned Additional Public Prosecutor would submit that the 2nd respondent had objected to return the documents to the 1st petitioner, contending that after handing

over the original documents to the defacto complainant, the 1st accused by fabricating documents, had settled the property in favour of the 2nd accused and thereafter sold the property to the claimant Manavalan and that the case was registered on 04.05.2016 only based on the Protest petition filed by petitioner/defacto complainant in Protest Petition No. 11 of 2016. Further, the original document No. 51/2018 was seized from the petitioner only. However, the Trial Court without issuing notice or putting the petitioner/defacto complainant on notice, had passed the order.

6 Heard both counsels and perused the materials available on record.

7 This Court has carefully gone through the order passed by the Trial Court.

8 The petitioner/third party being the defacato complainant and victim is a necessary party to the proceedings. However, the Trial Court has passed the order returning the documents without putting the revision petitioner/defacto complainant on notice.

9 This Court is of the opinion that the impugned order passed without notice to the revision petitioner/defacto complainant deserves to be set aside and the case has to be remitted to the Trial Court to be heard afresh after putting all the interested parties on notice. Without expressing any opinion regarding the merits of the case, this Court sets aside the order passed by the learned II Metropolitan Magistrate, Egmore, Chennai, dated 26.06.2019 in CrI.M.P.No.5603 of 2019. The first respondent/petitioner is directed to return the documents to the Trial Court within two weeks from the date of receipt of a copy of this order. The Trial Court shall after issuing notice to all the parties conduct enquiry afresh and pass orders in accordance with law.

10 In the result, the Criminal Revision Case stands allowed, with the above observations.

Sd/-
Assistant Registrar(CS-VI)

//True copy//

Sub Assistant Registrar

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To

1.The Inspector of Police,
D2, Anna Salai Police Station, Chennai.

2.The II Metropolitan Magistrate,
Egmore, Chennai

3.The Chief Metropolitan Magistrate,
Chennai

4.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.K.Seetharam, Advocate SR.No.95453

+1cc to Mr.RS.Diwagar Advocate SR.No.95430

Crl.RC.No.931 of 2019

KK(CO)
GMY(30/01/2020)

