



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **12.09.2019**

CORAM:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN
Cr1.R.C. (MD)No.159 of 2016

WEB COPY

Vellaichamy

: Petitioner

Vs.

State : through
The Inspector of Police,
District Crime Branch,
Dindigul,
Dindigul District.

: Respondent

PRAYER: Criminal Revision Case is filed under Section 397 r/w 401 of the Criminal Procedure Code praying to call for records and set aside the order passed by the learned Judicial Magistrate No.II, Dindigul in Cr1.M.P.No.5442 of 2015 dated 23.11.2015.

For Petitioner
For Respondent

: Mr.M.R.Sreenivasan
: Ms.M.Anantha Devi
Government Advocate [Criminal Side]

O R D E R

The Criminal Revision is filed against the order passed by the learned Judicial Magistrate No.II, Dindigul dated 23.11.2015 in Cr1.M.P.No.5442 of 2015.

2.The learned Judicial Magistrate dismissed the petition filed by the petitioner herein, who is the de-facto complainant, under Sections 105(D) and 105(E) of Cr.P.C. The learned Judicial Magistrate while dismissing the petition, has given a clear reason as found as under:-

"It is the duty of the court to ascertain whether the petition under Section 105-D and 105-E is maintainable for the offence committed inside the country. From the bare reading of the provision of Section 105 Cr.P.C, and especially Section 105-C, there is a clear cut reference in Sub-section (2) thereof to the contracting state, the definition of which is to be found in Section 105-A(a). It is, therefore, clear that the property envisaged in Section 105-C(1) cannot be an ordinary property earned out of ordinary offences committed in India. Where the language is extremely general and not clear, the contextual background has to be taken into consideration for arriving at clear interpretation. Some assistance was tried to be taken from the language of Section 105-B(2) which starts



with the words "notwithstanding anything contained in this Code". However, when the sub-section is read in entirety, it is clear that it makes reference to a person who is in "Contracting State". Therefore, even that reference will not bring in any provision within the scope of general law. We again cannot ignore the express language of Sections 105-B and 105-C which starts with the words "where a court in India". If this chapter was meant for the general offences and the properties earned out of those general offences in India, then such a phraseology would not have been used by the Legislature.

This Court feels that it would be Just and proper to extract the portion of judgment rendered by our Hon'ble Supreme Court in State of M.P vs. Balram Mihani & others, it has been held that

"14. if such a construction as claimed by the petitioner is given then it would mean that even for the offences which are local in nature and committed within the State, still the property connected with those offences shall be forfeited to the Central Government. That would obviously be an absurd result.

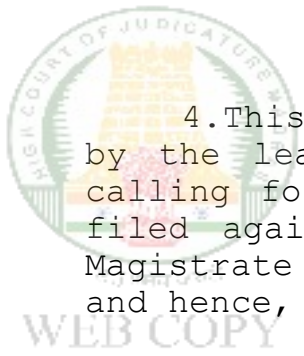
15. Lastly, we cannot ignore the likely misuse of the provisions in Chapter VIIA if the whole Chapter is made applicable to the local offences generally. Such does not appear to be the intendment of the Legislature in introducing Chapter VII A.

In view of the above we approve the judgment of the Madhya Pradesh High Court and confirm the same. The appeals are dismissed."

The decision rendered by our Hon'ble Apex Court referred supra, squarely applicable to the case is our hand.

It is clear and evident that upon the complainant of the petitioner/de-facto complainant, a FIR has been registered u/s 406 and 420 IPC in Cr.No.28/2015. It is also an adulated fact that the investigation is pending. If there is any property recorded by the Investigation Officer during investigation, the petitioner/de-facto complainant has every right to file petition before this Court, under Section 451 or 457 Cr.P.C as the case may be. But to attach or forfeit a property claiming to be proceed of Crime under Section 105-D or 105-E is not maintainable as per the Hon'ble Apex Supreme Court Judgment cited supra."

3. While dismissing the application filed by the petitioner herein, the learned Judicial Magistrate has followed the legal principles laid down by the Hon'ble Supreme Court of India and rightly held such petition is not maintainable.



4.This Court is entirely in agreement with the reasons adopted by the learned Judicial Magistrate and does not find any reason calling for interference. Hence, this Criminal Revision Petition filed against the impugned order passed by the learned Judicial Magistrate No.II, Dindigul, dated 23.11.2015 is without any merits and hence, the same is dismissed.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

Sub Assistant Registrar(CS)

To

- 1.The Judicial Magistrate No.II, Dindigul.
- 2.The Inspector of Police,
District Crime Branch,
Dindigul,
Dindigul District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

ORDER MADE IN
CrI.R.C. (MD) No.159 of 2016
Dated:-12.09.2019

skn

MK (30.09.2019) 3P 4C