

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.07.2020

CORAM:

THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.OP.No.3870 of 2020

Bonita C.Joseph

.. Petitioner

-vs-

1.State Rep. By
Inspector of Police,
G5 Secretariat Colony Police Station,
Chennai - 600 040.

2.Dheeraj Chawla

.. Respondents

Prayer: Criminal Original petition is filed under Section 482 of Criminal Procedure Code, to set aside the order dated 03.09.2019 passed by the learned Principal Sessions Judge, Chennai in Crl.M.P.No20084 of 2018 and cancel the bail for the 2nd respondent/accused granted by the learned XIV Metropolitan Magistrate Court, Chennai, vide order dated 22.03.2016 in Crl.M.P.No.704 of 2016 and direct the 1st respondent to arrest the 2nd respondent/accused.

For Petitioner : Mr.M.C.Subramanian

For R1 : Mr.S.Karthikeyan
Additional Public Prosecutor

For R2 : No Appearance

ORDER

This petition has been filed to cancel the bail granted to the 2nd respondent herein in Crl.MP.No.704 of 2016 dated 22.03.2016 on the file of the learned XIV Metropolitan Magistrate Court, Chennai.

2.The learned counsel appearing for the petitioner would submit that the petitioner is the defacto complainant. She lodged a complaint alleging that the 3rd accused who is a house broker, introduced 1st accused who claimed that he was a care taker of the flat situated at door No.6042, Tower 6th, 4th Floor, No.127/A, Bricklin Road, TVH Lumini Square, Puraisaiwakkam, Chennai - 600 007 and he arranged the said flat for lease for 33 months on payment of Rs.20,00,000/- (Rupees Twenty Lakhs Only). All the accused persons conspired

together and received a sum of Rs.20,00,000/- (Rupees Twenty Lakhs Only) from the defacto complainant. After entering into lease agreement, the petitioner came to understand that the original owner of the flat is one Mrs.Varsha Rengaraj which was let out on lease by the 1st accused who was the only tenant under Mrs.Varsha Rengaraj. Thereby, all the accused persons have cheated the petitioner/defacto complainant to the tune of Rs.20,00,000/- (Rupees Twenty Lakhs Only). The 1st accused/2nd respondent was arrested on 04.03.2016 and remanded to judicial custody. Thereafter, the 2nd respondent filed a bail petition in CrI.MP.No.704 of 2016 and he was granted bail on condition that the 2nd respondent shall deposit a sum of Rs.5,00,000/- (Rupees Five Lakhs Only) to the credit of crime number and also further condition imposed that he shall appear before the the XIV Metropolitan Magistrate Court, Chennai, for 15 days daily at 10.30 a.m. In fact, while pending the bail petition, the mother of the 1st accused filed an affidavit of undertaking that on instructions from the 1st accused, the 2nd respondent herein will deposit a sum of Rs.5,00,000/- (Rupees Five Lakhs Only) and also undertake to withdraw further amount of Rs.13,50,000/- (Rupees Thirteen Lakh and Fifty Thousand Only) within the period of three months from the date of filing of the affidavit dated 21.03.2016. Considering the affidavit filled of the mother of the 2nd respondent, XIV Metropolitan Magistrate Court, Chennai granted bail to the 2nd respondent herein by an order dated 22.03.2016. However, later the 2nd respondent did not comply the undertaking given by his mother and also failed to comply the condition imposed by the Court below since failed to appear before the XIV Metropolitan Magistrate Court, Chennai for interrogation purpose. Therefore, he sought for cancellation bail granted to the 2nd respondent herein.

3.The learned Additional Public Prosecutor would submit that there are totally three accused in which the 2nd respondent is arrayed as 1st accused. All of them conspired together and cheated the petitioner/defacto complainant to the tune of Rs.20,00,000/- (Rupees Twenty Lakhs Only). The 2nd respondent was arrested and remanded to judicial custody on 04.03.2016 and thereafter he was released on bail by an order dated 22.03.2016 on condition that he shall deposit a sum of Rs.5,00,000/- (Rupees Five Lakhs Only) to the credit of crime number and also report before the XIV Metropolitan Magistrate Court, Chennai for 15 days daily at 10.30 a.m., for interrogation. Though, the 2nd respondent complied the 1st condition, but he failed to comply the 3rd condition since he failed to appear before the XIV Metropolitan Magistrate Court, Chennai as he reported only for 10 days and thereafter on verification, the 1st respondent came to understand that the 2nd respondent's whereabouts were not known and his house was permanently locked as he vacated the premises and gone away.

4.Though notice was sent to the 2nd respondent, it was returned with an endorsement that 'no such person' in that the

address. Since the 2nd respondent vacated the premises and his whereabouts were not known and as such the notice was not served on the 2nd respondent.

5. Heard the learned counsel appearing for the petitioner as well as the learned Additional Public Prosecutor appearing for the respondent.

6. The 2nd respondent was arrested and remanded to judicial custody on 04.03.2016 on the complaint lodged by the petitioner registered in Crime No.211 of 2016 for the offences punishable under Sections 419, 420, 465, 468, 471 & 506(ii) of IPC. There are totally three accused, of whom, the 2nd respondent is arrayed as 1st accused. The petitioner alleged that the 3rd accused is a house broker introduced the 1st accused as if he is the care taker of the disputed premises and willing to lease out the said premises to the defacto complainant namely the petitioner herein and received a sum of Rs.20,00,000/- (Rupees Twenty Lakhs Only). Thereafter, the petitioner came to understand that the premises were originally owned by one Mrs.Varsha Rengaraj in which the 1st accused is having only having lease hold rights as tenant. Hence, the accused persons have colluded together and cheated the petitioner/defacto complainant to the tune of Rs.20,00,000/- (Rupees Twenty Lakhs Only). 2nd respondent was arrested and remanded to judicial custody. While his bail petition was pending in CrI.MP.No.704 of 2016 on the file of the XIV Metropolitan Magistrate Court, Chennai his mother filed an affidavit of undertaking thereby undertaking as follows:

"I State that I met my son Mr.Dheeraj Chawala and as per his instructions I am filling this Affidavit on behalf of my son Mr.Dheeraj Chawala.

I state that as per the instructions of my son Mr.Dheeraj Chawala, today I am depositing a sum of Rs.5,00,000/- (Rupees Five Lakhs Only) by way of cash before this Hon'ble Court and Mrs.Bonita C.Joseph can get the above said sum of Rs.5,00,000/- (Rupees Five Lakhs Only) by way of filling appropriate petition before this Hon'ble Court.

I state that apart from it, the Respondent police had recovered a sum of Rs1,50,000/- (Rupees One Lakh and Fifty Thousand Only) cash in the said case and the said Mrs.Bonita C.Joseph can get the above said amount also by way of filling appropriate petition before this Hon'ble Court. And as per my son Mr.Dheeraj Chawala's instructions and on my son's behalf I give no objection for the same.

I state that my son Mr.Dheeraj Chawala, haad instructed me that he will settle the balance sum of Rs.13,50,000/- (Rupees Thirteen Lakhs and Fifty thousand Only) to Mrs. Bonita C.Joseph within three

months from the date of filling this Affidavit i.e.
From 21.03.2016."

7.Considering the undertaking affidavit filed by the mother of the 2nd respondent, the Court below granted bail to the 2nd respondent on condition that the 2nd respondent shall deposit a sum of Rs.5,00,000/- (Rupees Five Lakhs Only) to the credit of crime number and also directed him to report before the XIV Metropolitan Magistrate Court, Chennai for the period of 15 days at 10.30 a.m. On a perusal of the records, the 2nd respondent complied the condition only for 8 days and thereafter he vacated the premises and gone away. Thereafter, he did not comply the condition as imposed by the Court below. Further, as undertaking given by his mother as per instructions of the 2nd respondent he has to settle the remaining amount of Rs.13,50,000/- (Rupees Thirteen Lakh and Fifty Thousand Only) within the period of three months from the date of filing of the undertaking affidavit. The undertaking affidavit filed as early on 21.03.2016, however, even after completion of four years, the 2nd respondent has not fulfilled the condition. Now, on verification by the 1st respondent, whereabouts of the 2nd respondent were also not known as he vacated the premises and gone away.

8.Considering the facts and circumstances and since the conditions imposed have not been fulfilled by the 2nd respondent, it is fit case for cancelling the bail granted to the 2nd respondent by the XIV Metropolitan Magistrate Court, Chennai, in CrI.MP.No.704 of 2016. Accordingly, this Criminal Original Petition is allowed. Consequently, the bail granted to the 2nd respondent by the XIV Metropolitan Magistrate Court, Chennai, in CrI.MP.No.704 of 2016 is hereby cancelled. The 1st respondent is directed to secure the 2nd accused and proceed further in accordance with law.

Sd/-

सत्यमेव जयते
Assistant Registrar (CO)

//True copy//

Sub Assistant Registrar

gbi

To

1.The Inspector of Police,
G5 Secretariat Colony Police Station,
Chennai - 600 040.

2.The Principal Sessions Judge,
Chennai.

<https://hcservices.ecourts.gov.in/hcservices/>

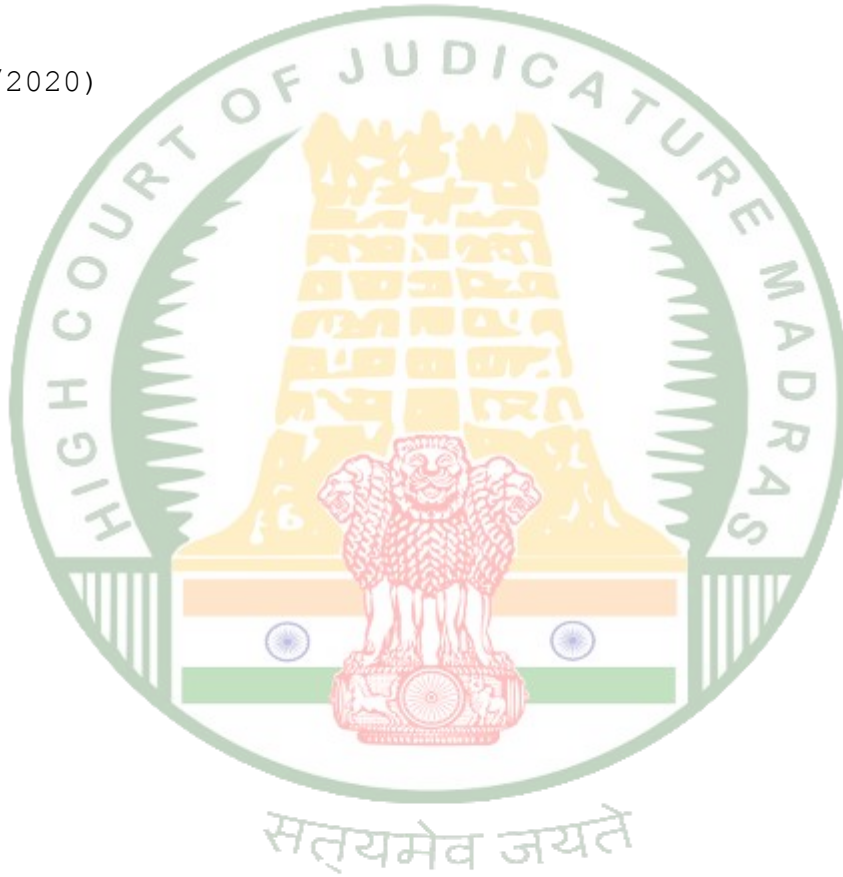
3.The XIV Metropolitan Magistrate Court,
Chennai.

4.The Public Prosecutor,
High Court,
Madras.

+2ccs to M/s.Arul Selvam Associates, Advocate SR.No.25219

CRL.O.P.No.3870 of 2020

RLD(CO)
GMY(06/08/2020)



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