



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.(MD) No.7777 of 2020

N.Thennagaventhana ... Petitioner

Vs.

1.The Sub Registrar-II (Joint) Office,
Represented by Sub Registrar,
Karaikudi, Sivagangai District.

2.The Deputy Superintendent of Police,
CBCID, Madurai.

3.A.P.Majeedkhan ... Respondents

(R3 has been impleaded as per order dated 22.09.2020
in WMP(MD) No.8385/2020)

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records on the file of the 2nd respondent pertaining to its proceedings bearing Na.Ka.No.30/DSP/OCU-CBCID/MDU/2019 dated 11.12.2019 and to quash the same with regard to the property in S.No.1 that is Survey No.9/61, 9/62 of Chekkarakottai Village, Karaikudi Town, Sivagangai District and consequently direct the 1st respondent to remove the encumbrance recorded pursuant to the same with regard to the said property within a time that may be fixed by this Court.

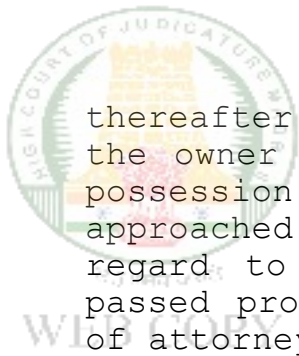
For Petitioner : Mr.S.C.Herold Singh

For Respondents : Mr.K.Sathiya Singh for R1 & R2
Additional Government Pleader
Mr.S.Bharathy Kannan for R3

O R D E R

The petitioner has filed this Writ Petition challenging the order of the 2nd respondent dated 11.12.2019 and for a consequential direction to the 1st respondent to remove the encumbrance recorded pursuant to the same with regard to the property in question.

2. According to the petitioner, the property was purchased by his wife Muthu Nachiyar vide Document No.6302 dated 08.10.2014 and



thereafter by means of a settlement deed, the petitioner has become the owner of the property. From that date, the petitioner was in possession and enjoyment of the property. While so, the petitioner approached the authorities to remove the encumbrance recorded with regard to the property in question. However, the 2nd respondent passed prohibited the petitioner from alienating and issuing power of attorney to any person for the said property till the disposal of the case in Crime No.2/2019 and thereby attaching the property. Challenging the said order, the petitioner is before this Court.

3. The learned counsel for the petitioner would submit that under Section 102 of the Code of Criminal Procedure, the property of the petitioner cannot be attached. It is further contended that the petitioner is no way connected with the said case and a false case has been foisted against him by the police, based on the complaint given by the third respondent and the petitioner is on anticipatory bail. The other accused involved in the case has been arrested and they have come out on bail and that the investigation has not been completed and no charge sheet has been filed so far and before the impugned order came to be passed, neither a notice nor an opportunity has been given to the petitioner and hence, it is submitted that the order impugned has to be interfered with. The learned counsel for the petitioner would further submit that the petitioner has restricted his prayer with regard to attachment and if the attachment is lifted, he would be satisfied.

4. According to the learned Additional Government Pleader appearing for the respondents 1 and 2, the said criminal case in Crime No.2/2019 has been registered for offences under Sections 143, 406, 419, 420, 465, 468, 471, 120(b), 294(b) and 506(ii) IPC and investigation is on.

5. The learned counsel for the third respondent would submit that through online transaction, a sum of Rs.3.49 crores have been transferred and that the petitioner is the key person, who is trying to defraud the third respondent herein. The petitioner is A-4 in the criminal case in Crime No.2/2019 registered on 02.08.2019 and that A-1 M.J.Victor, A-2 Raja Meerah, A-3 Arivarasu @ Arivusudar, A-4 Thennagaventhana, and A-5 Sathiyaseelan shared the amount of Rs.3.49 crores.

6. I have considered the said submissions and perused the materials placed before this Court.

7. In the present writ petition, the scope is very limited. Any of the parties aggrieved would approach only the Civil forum. However, it is seen that now, the petitioner has restricted his relief with regard to attachment alone.

8. A cursory glance of the pleading including the FIR would reveal that the petitioner is a fraudster and all the



accused have duped the impleaded third respondent. Originally, the petitioner was not there and during investigation, the petitioner was arrayed as A-4 and he involved in the transaction and deceived money to the tune of Rs.3.49 Crores from the third respondent, who is 86 years old and hence, the conduct of the petitioner cannot be condoned at all. The online transaction makes it very clear that the amount has been transferred.

9. According to the learned Additional Government Pleader, there are several cases pending against the petitioner, who is a hard core criminal. The records would reveal that the petitioner also involved in the alleged transaction. If the criminal case proceeds further, the petitioner may also have a benefit of doubt. From the records available, it is seen that the petitioner is not a bonafide person, who cannot be given a clean chit.

10. As the above observation are required for this Court to render a finding, where the property within the meaning of Section 102 of the Criminal Procedure Code can be attached by the police.

11. Section 102 of the Code of Criminal Procedure reads thus:

"102. Power of police officer to seize certain property- (1) Any police officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the Commission of any offence (2) Such police officer, if subordinate to the officer in charge of a police station, shall forthwith report the seizure to that officer (3) Every police officer acting under sub-section (1) shall forthwith report the seizure to the Magistrate having jurisdiction and where the property seized is such that it cannot be, conveniently transported to the Court, he may give custody thereof to any person on his executing a bond undertaking to produce the property before the Court as and when required and to give effect to the further orders of the Court as to the disposal of the same."

12. A reading of the judgment reported in **1999 (7) SCC 685** in the case of **State of Maharashtra v. Tapas D. Neogy** makes it very clear that the property cannot be attached.

13. Though the petitioner has got a legal case by interpreting the provision of Section 102 of Cr.P.C., and the police have no right to seize the property, the writ petition is disposed of with the following direction:

"that the attachment made needs to be lifted, but, however, as the petitioner is involved in a serious crime, no further encumbrance would be made in the property in question, as the issue has got to be resolved in the appropriate criminal/civil forum."



No costs. Consequently, W.M.P.(MD) Nos.7260 and 7261 of 2020 are closed.

Sd/-

Assistant Registrar (P&A)

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/ /2020

Sub Assistant Registrar(CS)

RR

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

1.The Sub Registrar-II (Joint) Office,
Represented by Sub Registrar,
Karaikudi, Sivagangai District.

2.The Deputy Superintendent of Police,
CBCID, Madurai.

+1 CC to M/s.GP. (SR-21300[F] dated 05/11/2020)

+1 CC to M/s.S.BHARATHIKANNAN, Advocate (SR-21418[F] dated 06/11/2020)

Order made in

W.P. (MD) No.7777 of 2020

W.M.P. (MD) Nos.7260 and 7261 of 2020

Dated:

04.11.2020

SR(CO)

AP(11/12/2020) 4P 5C