IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.10.2021

CORAM

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

W.P.No.23498 of 2018
and
W.M.P.No.27429 of 2018

K.Chitra ...Petitioner

Vs

1. The Superintendent of Post Offices,
   Department of Posts,
   Namakkal Division,
   Namakka; - 637 001.

2. The District Registrar,
   Namakkal - 637 003,
   Namakkal District.

3. The Joint Sub Registrar II,
   Sub Registrar Office,
   Mohanur Road,
   Namakkal - 637 001. ...Respondents

Prayer :- Writ Petition is filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus, calling for the records relating to the impugned orders dated 07.02.2018, 08.03.2018 and 06.06.2018 made in F1/IV-2/15-16 passed by the 1st respondent quash the same and consequently direct the respondents 2 and 3 to delete entry of the encumbrance created over the petitioner's property measuring 4182 3/4 sq.ft., comprised in S.No.22/3A (New S.No.22/3A1B) Kondichettipatti Village, Namakkal District.

For Petitioner : Mr.N.Manokaran

For Respondents : Mr.G.Ilangovan
Central Govt.Senior
Standing Counsel for R1

Mr.M.R.Gokul Krishnan,
Govt.Advocate for R2 & R3

ORDER

The writ petition has been filed to issue a writ of certiorarified mandamus, calling for the records relating to the impugned orders dated 07.02.2018, 08.03.2018 and 06.06.2018 made in F1/IV-2/15-16 passed by the first respondent, quash the same and consequently direct the respondents 2 and 3 to delete entry of the encumbrance created over the petitioner's property measuring 4182 ¾ sq.ft., comprised in S.No.22/3A (New S.No.22/3A1B) Kondichettipatti Village, Namakkal District.

2. The case of the petitioner is that the petitioner and her husband served as Small Savings Agents in the Postal Department. On the complaint lodged by one Mrs.Thilagavathi, dated 18.10.2021, the case was registered in Crime No.43 of 2012 for the offences under Sections 417, 420, 468 and 471 of IPC, in which the petitioner's husband is arrayed as first accused and the petitioner is arrayed as fourth accused. After completion of the investigation, the Inspector of Police, District Crime Branch, Namakkal, filed a final report and the same has been taken cognizance for the offences under Sections 406, 408, 465, 471 and 420 read with 120 B of I.P.C. However, the petitioner filed petition in C.M.P No.7495 of 2017 for discharge from the prosecution under Section 239 Cr.P.C., and the same was allowed. Though it was set aside by the first Appellate Court, again by an order dated 10.02.2021 in Crl.O.P No.2210 of 2021, this Court restored the order passed by the learned Judicial Magistrate No.I, Namakkal. However, considering the same, the first respondent has issued impugned proceedings dated 07.02.2018 directing the second respondent to take necessary action to freeze the property stood in the name of accused persons to prevent any sale, mortgage etc. In the said order, insofar as the petitioner is concerned, no details of the property was mentioned. However by the impugned proceedings, the third respondent has treated the petitioner's property comprised in S.No.22/3A (New S.No.22/3A1B) measuring 4182 ¾ sq.ft., situated at Kondichettipatti Village, Namakkal, which was settled by her husband by the Settlement Deed dated 01.02.2013 vide registered Document No.427 of 2013 in favour of the petitioner. The said property has no nexus with the offences alleged in C.C.No.111 of 2017. In fact, even assuming that the property involved in the crime, the petitioner was discharged from all the charges. Therefore, the petitioner had sent a detailed representation to the second respondent to remove encumbrance entry made by the third respondent in respect of the suit property. The second respondent has requested the first respondent to pass a consequential order for removal of the entries made in the encumbrance certificate. However, the first respondent has passed the impugned proceedings dated 06.06.2018, by reiterating

the earlier orders. Again the petitioner has sent a representation to remove the encumbrance and the said request was rejected by an order dated 19.07.2018.

3. The learned counsel for the petitioner would submit that the respondents have no power to proceed as against the property under Section 3 of the Criminal Law Amendment Ordinance, 1944. The Government alone is the Competent Authority to initiate action by approaching the District Judge of the jurisdiction where the accused ordinarily resides or carries on business. Therefore, neither the Police Officer nor the respondents have no role to play in this regard. The impugned order has been passed without giving opportunity of hearing or serving a copy of an order and it is violative of principles of natural justice. The right of the property cannot be infringed except in compliance with the procedure contemplated under Article 300 A of the Constitution of India. Therefore, the impugned orders are arbitrary exercise of power, which is nothing but violative of Article 14 and 21 of the Constitution of India.

3.1. The learned counsel for the petitioner further submitted that the statement of second accused reveals that he categorically admitted the guilt insofar as the deposit made by one, R.Subramanian, to the tune of Rs.11,00,000/-. He fabricated pass-book and disbursement of interest. Further he admitted that one Srinivasan and Rajakokila also were issued passbook without depositing amount with Post Office and admitted the guilt. Therefore, the petitioner and her husband namely the first accused did not commit any offence as alleged by the prosecution. Though the first accused purchased the subject property on 16.11.2007, the alleged crime occurred only in the year 2012 and as such the property was not purchased from the crime proceeds. The said property was purchased by the first accused with lawful ordinance and duly settled in favour of the petitioner herein on 01.02.2013. In support of his contentions, he relied upon the following judgments:

1. Nevada Properties Private Ltd., vs. State of Maharastra & Ors
   reported in 2019 (20) SCC 199
2. Opto Circuit India Ltd., vs. Axis Bank & Ors
   reported in 2021 (6) SCC 707
3. Sudhir Vasant Karnataki vs. State of Maharastra
   reported in Manu/MH/1561/2010 FB
4. V.Sundaram & Another vs. The DSP, EOW, Kancheepuram & Anr.
   in W.P.No.11221 of 2015

4. Per contra, the learned counsel for the first respondent filed counter and submitted that the first accused was being the postal agent had committed fraud by misusing postal deposits and

the fraud was committed in the year 1997. They were functioning as MPKBY & SAS agents appointed by the District Collector, Namakkal, for mobilizing deposits from the public under the Small Savings Scheme and attached to Namakkal Head Office and its Sub-Offices. The licenses granted to them were cancelled by the District Collector, Namakkal, vide letter dated 17.10.2012 and 22.02.2013 following the complaint of frauds committed by them. One Mrs.Thilagavathy, lodged a complaint on 18.10.2012 alleging that the amount to the tune of Rs.4,05,000/- given to the agents were not deposited in Post Office. She categorically made allegations as against A1 to A3 namely the petitioner's husband and two others. The husband of the petitioner is the prime accused. After registration of the crime, charge-sheet filed and also taken cognizance by the trial Court in C.C.No.111 of 2017 on the file of the Judicial Magistrate No.1, Namakkal and it is pending for trial. Though the petitioner was discharged from the charges only from the crime proceeds, the subject property was purchased by the first accused on 16.11.2007. After registration of FIR, to escape from the liability, the first accused cleverly executed settlement deed in favour of the petitioner herein on 01.02.2013. He further submitted that there are totally 13 victims and all are senior citizens. They also approached the District Consumer Redressal Forum, Namakkal and by an order dated 05.07.2019 in C.C.No.60 of 2013, complaint was allowed and complainant is entitled to refund of Rs.11,00,000/- with interest at 9% per annum from the opposite parties. The accused persons and others are jointly liable to pay the said amount. Though the petitioner was discharged from the criminal liability, the property which was settled in her favour is the only property to realise the misappropriated amount from her husband and the petitioner herein. Therefore, the action has been taken under the Revenue Recovery Act. Accordingly, the second respondent was addressed by the first respondent by letter dated 07.02.2018 and requested to take necessary action to freeze the properties stood in the name of the accused persons. Therefore, the first accused to avoid the attachment of the subject property, executed settlement deed in favour of the petitioner herein. Therefore, he prayed for dismissal of the writ petition.

5. Heard Mr.N.Manokaran, learned counsel appearing for the petitioner and Mr.G.Ilangovan, learned Central Government Senior Standing Counsel for the first respondent and Mr.M.R.Gokul Krishnan, learned Government Advocate for respondents 2 & 3.

6. The petitioner and her husband are working as postal agents appointed by the District Collector for mobilizing deposits from the public under the Small Savings Scheme and attached to Namakkal Head Office and its Sub-Offices. On the complaint received from Mrs.Thilagavathi, The Inspector of

Police, District Crime Branch, Namakkal, registered FIR under Crime No. 43/2012 for the offences under Sections 417, 468, 471 and 420 IPC against the three accused persons, in which the first accused is none other than the husband of the petitioner herein and after completion of the investigation, final report was filed in Crime No.43 of 2012 and the same has been taken cognizance in C.C. No.111 of 2017 on the file of Judicial Magistrate-I, Namakkal. The petitioner was also arrayed as 4th accused. Though the petitioner was discharged from the charges, the subject property which was purchased by the first accused namely the husband of the petitioner herein by the registered sale deed dated 16.07.2007 was settled in favour of the petitioner herein by the settlement deed dated 01.02.2013. As per Rule 17 (9) (iii) of Post Office Savings Bank Manual Volume II, in the event of any misappropriation of investors money by an agent appointed by the Officer of a State Government, that State Government will bear the loss. Therefore, the releasing of the property will hamper settlement of the claims of the victims who had placed their faith on the State Government and lost their hard earned money. Therefore, the first respondent is directed to freeze the subject property so as to prevent any sale, mortgage etc., by the petitioner.

7. The victims had filed consumer complaint before the District Consumer Disputes Redressal Forum, Namakkal, as against the accused persons, Postal Departments and also the State Government for settlement of their claims. The petitioner and her husband namely the first accused are shown as opposite parties and by an order dated 05.07.2019 in C.C.No.60 of 2013, held that the opposite parties are jointly and severally liable to pay the amount which was deposited by each victim with interest @ 12% and also ordered a sum of Rs.50,000/- towards mental agony and Rs.10,000/- towards cost. Thereafter, the licenses of the agents including the petitioner's husband were cancelled and directed to seize the properties of the accused and also issued necessary direction for recovery of loss through Revenue Recovery Act.

8. On perusal of charge sheet in C.C.No.111 of 2017 revealed that the victims have deposited their hard earned money in the year 2005 itself. The accused persons had received the huge amount and without depositing the said amount under the Post Office Savings Scheme, they misappropriated the entire amount and fabricated deposit receipt and account statements, thereby misappropriated huge sum from several victims. The subject property was purchased by the first accused on 16.11.2007, by the registered sale document No.3598 of 2007 and the rectification deed dated 18.03.2009 vide document No.897 of 2009. In the year 2012, one of the victim lodged a complaint and the same was registered in Crime No.43 of 2012 for the offences

under Sections 417, 420, 468 & 471 IPC on the file of the Inspector of Police, District Crime Branch, Namakkal.

9. While pending investigation, the first accused settled the subject property in favour of the petitioner by the settlement deed dated 01.02.2013 registered under the Document No.427 of 2013 on the file of the third respondent to escape from the clutches of recovery proceedings. Therefore, according to the first respondent, the said property was purchased from the crime proceeds and after registration of the FIR it was settled in favour of the petitioner in order to avoid attachment proceedings.

10. The learned counsel for the petitioner heavily relied upon that the Government alone is the competent to initiate action by approaching the District Judge of the Jurisdiction where the accused ordinarily resides or carries on business. Neither the Police Officer nor the respondents have no role to play. The respondents have no right to proceed against the property on a stretch even under Section 3 of the Criminal Law Amendment Ordinance, 1944.

11. In support of his contentions, he relied upon the judgment of Hon'ble Supreme Court of India in the case of Nevada Properties Pvt., Ltd., vs. State of Maharastra & Ors reported in 2019 (20) SCC 119. The Hon'ble Supreme Court held that when any Court has reasonable grounds to believe that any property has been obtained by any person directly or indirectly from the commission of an offence, the Court can make an order for attachment or forfeiture of such property. The power of attachment and forfeiture is given to Courts and not to Police Officer.

12. He also relied upon the Order of this Court in W.P.No.11221 of 2015, in the case of V.Sundaram & Anr., vs The DSP, EOW, Kancheepuram & Anr, wherein, this Court held that the provisions of the Criminal Law Amendment Ordinance, 1944 can be invoked in the State of Tamil Nadu for attaching the properties of the offender. The Ordinance provides for procedure to effect attachment. Under Section 3 of the Ordinance, it is only the State Government or the Central Government that can initiate action by approaching the District Judge of the area where the accused ordinarily resides or carries on business. The Police Officer has no role to play in this. He can, at the most, submit a report to the State Government or Central Government requesting to initiate action under the Ordinance and he cannot arrogate to himself to the power to issue such veiled threats to the Sub Registrar.

13. In the case on hand, no Police Officers have directed the second and third respondents to keep the subject property in freezed condition. The first respondent is being the Superintendent of Post Office, directed the second and third respondents to take necessary action to keep the subject property in freezed condition so as to prevent any sale, mortgage etc. Therefore, the above judgments are not helpful to the case on hand. On the letters received by the State Government Authorities in connection with the seizing of the properties, action has been taken under the Revenue Recovery Act. Therefore, on behalf of the State Government, the first respondent issued the letter to the respondents 2, 3 and 4 to take necessary action to keep property in freezed condition so as to prevent any sale, mortgage etc. That apart, there is evidence to show that the first accused had purchased the subject property from the crime proceeds and after registration of the F.I.R., the first accused settled the property in favour of the petitioner herein. Therefore, the transaction appears to be a calculated design to defeat the recovery with motive of putting the property out of reach of the authorities. Though the petitioner was discharged from the charges, A1 to A3 have committed very serious offences against general public and as per Rule 17 (9) (iii) of Post Office Savings Bank Manual Volume II, in the event of any misappropriation of investors money by the agent appointed by an Officer of a State, that State Government will bear the loss. Therefore, the first respondent rightly directed the second and third respondents to keep the subject property in freezed condition.

14. In view of the above, this Court finds no infirmity or illegality in the orders passed by the first respondent and this writ petition is liable to be dismissed. Accordingly, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

True Copy//

Sub Assistant Registrar

Pns

To

1. The Superintendent of Post Office Department of posts
   Namakkal Division,
   Namkkal 637 001.

2. The District Registrar,
Namkkal 637 003,
Namkkal.

3. The Joint Sub Registrar-II,
Sub Register Office,
Mohanur Road,
Namakkal 637 001.

4. The Inspector of Police,
District Crime Branch,
Namakkal.

5. The Judicial Magistrate No.I,
Namakkal.

6. The District Collector,
Namakkal.

7. The District Consumer Redressal Forum,
Namakkal.

+1cc to Mr.G.Ilangovan, Advocate, S.R.No.52385
+1cc to Mr.N.Manokaran, Advocate, S.R.No.52417
+1cc to the Government Pleader, S.R.No.52783

W.P.No.23498 of 2018

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