BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on: 06.12.2021	Delivered on: 10.12.2021

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THE HONOURABLE **MR.JUSTICE K.MURALI SHANKAR**

Crl.R.C.(MD)No.863 of 2021

T.Pradap ... Revision Petitioner/Petitioner

Vs.

State through
The Deputy Superintendent of Police,
Vigilance and Anti Corruption
Ramanathapuram District
(In Crime No.2 of 2021) ... Respondent/Complainant

Prayer: Criminal Revision filed under Sections 397 and 401 Cr.P.C., to call for the records from the lower Court and set aside the order passed in Cr.M.P.No.166 of 2021 in Cr.No.2 of 2021 dated 30.09.2021 by the Special Judge/Chief Judicial Magistrate, Ramanathapuram, allow the revision petition and order for returning the amount of money to the revision petitioner as claimed by him.

For Petitioner : Mr.T.K.Gopalan
For Respondent : Mr.RMS.Sethuraman,
Additional Public Prosecutor.

ORDER

The Criminal Revision is directed against the order passed in Crl.M.P.No.166 of 2021, dated 30.09.2021 on the file of the Special Court for Prevention of Corruption and Vigilance cases/Chief Judicial Magistrate, Ramanathapuram dismissing the petition filed under Section 457 of Cr.P.C.

2.The Deputy Superintendent of Police, Vigilance and Anti Corruption, Ramanathapuram District has registered a case in Cr.No.2 of 2021 against the two accused namely, Naganathan, who was the Chairman of Bogalur Panchayat Union and his wife Jeyalakshmi for the alleged offence under Sections 13(2) r/w 13(1)(e) of the Prevention of Corruption Act r/w 109 IPC contending that the first accused, who was a public servant as defined under Section 2(c) of the said Act, had amassed wealth, disproportionate to his known source of income. The investigation in the above said case is pending.

3.It is not in dispute that the Inspector of Police, Vigilance and Anti Corruption, who is the Investigating Officer, has filed an application under Section 93 Cr.P.C., seeking permission to search the house of the accused as they were suspecting that incriminating documents and relevant records might be concealed in their residence. The learned Chief Judicial Magistrate, after enquiry, has allowed the said petition vide order, dated 05.08.2021. In pursuance of search warrant issued by the learned Chief Judicial Magistrate, the Investigating Officer had conducted search in the residence of the accused on 06.08.2021, in the presence of the official witnesses. It is also not in dispute that at the time of search, a sum of Rs.14,00,000/- and eight documents were alleged to have been seized under seizure mahazar and the same were produced before the concerned Court through Form-95.

4.The petitioner, who is the third party to the above said case, has filed a petition under Section 4 (Proviso) of Criminal Law Amendment Act r/w Section 457 Cr.P.C., seeking orders permitting him to withdraw the seized amount of Rs.14 Lakhs. The respondent has filed counter statement raising serious objections to grant permission to the petitioner to withdraw the seized amount. The learned Chief Judicial Magistrate, after enquiry, has passed the impugned order, dated 30.09.2021 dismissing the said petition. Aggrieved by the said order of dismissal, the third party has come forward with the present revision.

5.The learned counsel appearing for the revision petitioner would submit that during search, gold jewels, silver vessels and cash of Rs.1,18,810/- were produced by the accused Naganathan and the same were returned to him by the Investigating Officer on the same day and that the said Naganathan has also produced 350 currency notes of Rs.2,000/- denominations and 1400 new currency notes of Rs.500 denominations, totally Rs.14 Lakhs with an explanation that one Pradap Thomas, Malaysian citizen, belonging to Alagankulam, Ramanad District, who was known to him, has entrusted the said amount, one month prior to the date of search, for safe custody. However, the Investigating Officer by rejecting the explanation given by the first accused, had seized the said amount and produced before the concerned Court. He would further submit that the check period for the case registered against the accused Naganathan is for the period between October 2011 and October 2016 and that the seized currency notes to the tune of Rs.14 Lakhs came into existence after printing in the month of November 2016 and therefore, the seized currency notes could not have been given to the accused Naganathan prior to October 2016. He would further submit that since the said Naganathan is the father of the petitioner's classmate Mahesh Boopathy from Mahatma Gandhi School days at Madurai, he has entrusted the said amount for safe custody, that the Investigating Officer has not given any opportunity for the petitioner or for the accused Naganathan to offer their explanation and that the Trial Court has not considered the explanation given by the accused Naganathan, at the time of seizure, which was spontaneous.

6.The learned counsel for the petitioner would submit that the Trial Court has failed to consider the fact that the petitioner's senior maternal aunt Umavathy and her daughter Suganya were helping him to commence I.T. related project and that the petitioner's cousin Suganya, who is in USA had financially assisted the petitioner and while she was in India, had withdrawn a sum of Rs.9,43,000/- from her SBI account and handed over the same to her mother. He would further submit that the petitioner's senior maternal aunt has also pledged her jewels in Indian Bank and obtained a sum of Rs.4 Lakhs and as such, totally Rs.14 Lakhs was handed over to the petitioner. Though the petitioner has filed necessary documents to show that the petitioner's maternal aunt and cousin had necessary funds to help him for his project and the petitioner's cousin Suganya had also sent email communication from USA with respect to the payment made to the petitioner, the amount was seized from the accused Naganathan and the Trial Court has dismissed his petition and that therefore, the petitioner was constrained to approach this Court seeking the aforesaid relief.

7.The learned Additional Public Prosecutor appearing for the respondent would submit that the First Information Report came to be registered against the accused for possessing a sum of Rs.46,46,898/- during the check period between 25.10.2011 and 24.10.2016, which is disproportionate to his known source of income. He would further submit that the Investigating Officer, after getting necessary permission from the Court, had conducted search in the house of the accused and seized Rs.14 Lakhs, that the Investigating Officer has examined the petitioner and his maternal aunt Umavathy and both of them have given contradictory statements and that the petitioner in order to protect the interest of the accused and allow him to escape from the clutches of law, has created a false story and filed the above petition. He would further submit that the Trial Court after considering all the aspects, has rightly dismissed the said petition.

8.As rightly contended by the learned counsel for the petitioner, the only point or aspect that existed in favour of the petitioner is that at the time of seizing of Rs.14 Lakhs in the house of the first accused, he gave a statement that the said amount was belonging to the petitioner herein and the petitioner entrusted the same to the first accused one month prior to the date of search.

9.But, as rightly contended by the learned Additional Public Prosecutor, the first accused Naganathan in his explanation has stated that the petitioner herein, who is the Malaysian citizen and belonging to Alagankulam, Ramnad District, is a known person. But he has not stated that the petitioner herein is the friend of his son Mahesh Boopathy, as now claimed by the petitioner. No doubt, the petitioner has alleged that his cousin had withdrawn a sum of Rs.9,43,000/- from her Bank account and that his maternal aunt by pledging her jewels in Indian Bank, had obtained loan for a sum of Rs.4 Lakhs and that thereby totally Rs.14 Lakhs was handed over to the petitioner to initiate his IT project.

10.As rightly pointed out by the learned Trial Judge, the said Suganya had withdrawn amount from her Bank account from the month of July 2020 to January 2021 and Bank statement produced by the petitioner would reveal that she had withdrawn Rs.88,000/- on 22.07.2020, Rs.80,000/- on 07.10.2020, Rs.2,20,000/- on 09.10.2020, Rs.2,65,000/-on 22.10.2020 and Rs.2,90,000/- on 19.01.2021, totally Rs.9,43,000/-.

11.As rightly contended by the respondent's counsel, it is not the case of the petitioner that his cousin had handed over the said amount, at the time of withdrawal itself. But according to him, Suganya had handed over Rs.9,43,000/- to her mother Umavathy. The petitioner has also produced the Bank statement of Umavathy and wherein there was an entry with respect to withdrawal of Rs.3,95,500/- on 27.04.2021.

12.As rightly contended by the learned Additional Public Prosecutor, there is absolutely no evidence to show that the petitioner's cousin Suganya had paid Rs.9,43,000/- and the petitioner's maternal aunt Umavathy had paid Rs.4 Lakhs all totalling Rs.14 Lakhs to the petitioner. More over, there is absolutely no evidence to show that the amount Rs.14 Lakhs was entrusted with the first accused Naganathan. The petitioner has no where whispered as to when his maternal aunt and cousin had paid the said amount to him and as to when he had entrusted the said amount with the first accused.

13.The petitioner has produced the copy of the email sent to him by his cousin Suganya, informing that as per the request of the petitioner, she has given Rs.10,00,000/- by withdrawing from the State Bank of India, Alagankulam Account. As already pointed out, search was conducted on 06.08.2021 in the residence of the first accused. But the said email was sent by the petitioner's cousin only on 10.08.2021, four days after the search and seizure of the amount, and as such, as rightly contended by the learned Additional Public Prosecutor, no weightage or credence can be given to it.

14.Even according to the petitioner's counsel, she had totally withdrawn Rs.9,43,000/- from the SBI Account. The petitioner has also pleaded that his cousin Suganya has given Rs.9,43,000/-. But in the email sent by the said Suganya, she has stated that she has given Rs.10,00,000/-. As rightly contended by the Prosecution, the amount allegedly given by the said Suganya and her mother Umavathy comes at Rs.13,43,000/- only and the petitioner has not accounted for the balance amount of Rs.57,000/-

15.More over, as rightly observed by the learned Trial Judge, the petitioner has not offered any plausible explanation for entrusting such huge amount with his school friend's father instead of keeping the same with his senior maternal aunt.

16.The learned Additional Public Prosecutor would further submit that the Investigating Officer has examined the petitioner as well as his maternal aunt Umavathy and both of them gave contradictory statements with regard to the payment of the said amount. As rightly contended by the learned Additional Public Prosecutor, the petitioner, who is taking steps to commence his IT project, has not even opened a Bank account in his name, which is hard to believe.

17.In the absence of any evidence to connect the amount owned by the petitioner's maternal aunt and his cousin with the petitioner and in the absence of any evidence to link the amount that was allegedly possessed by the petitioner with the first accused, the present contention of the petitioner that he had entrusted the said amount with the first accused for safe custody, is totally unbelievable and unacceptable.

18.On considering the above facts and circumstances, the Trial Court has rightly observed that the petitioner has filed the above petition only to help the accused. Hence, the decision of the Trial Court in dismissing the petition cannot be found fault with. Consequently, this Court concludes that this criminal revision petition is devoid of merits and is liable to be dismissed.

17.In the result, this criminal revision petition is dismissed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

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Sub Assistant Registrar(CS)

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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 Special Judge/Chief Judicial Magistrate,
   Ramanathapuram.

2. The Deputy Superintendent of Police,
   Vigilance and Anti Corruption
   Ramanathapuram District.

3. The Additional Public Prosecutor,
   Madurai Bench of Madras High Court,
   Madurai.

Copy to :

The Section Officer,
Criminal Section (Records),
Madurai bench of Madras High Court, Madurai.

+1 CC to M/s.T.K.GOPALAN, Advocate (SR-38248[F] dated 10/12/2021)

Pre-Delivery order made in
Crl.R.C.(MD)No.863 of 2021

10.12.2021

USK (27.12.2021) 6P 6C