



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 17.03.2022

Coram:

THE HONOURABLE MR.MUNISHWAR NATH BHANDARI, Chief Justice
and
THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.A.No.592 of 2022
and
C.M.P.No.4217 of 2022

K.Chitra

... Appellant

Vs.

1. The Superintendent of Post Offices,
Department of Posts,
Namakkal Division,
Namakkal-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

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 06.10.2021 passed by the learned Single Judge in W.P.No.23498 of 2018 on the file of this Court.

Prayer in W.P.No.23498 of 2018:-

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.



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For appellant : Mr.N.Manoharan

For respondents: Mr.P.Muthukumar,
State Govt. Pleader for RR-2 and 3
No appearance for R-1

JUDGMENT

(The Judgment of the Court was delivered by The Hon'ble Chief Justice)

By way of this Writ Appeal, challenge is made to the order dated 06.10.2021, whereby, the Writ Petition preferred by the appellant/writ petitioner challenging the orders dated 07.02.2018, 08.03.2018 and 06.06.2018 passed by the first respondent was dismissed by the learned Single Judge.

2. Learned counsel for the appellant/writ petitioner submitted that the order of attachment to freeze the property from alienation, has been passed by the authority not competent for the aforesaid. In view of the above, the challenge to the orders was made, yet, the Writ Petition was dismissed ignoring the arguments raised by the writ petitioner.

3. Coming to the facts of the case, it is submitted that the writ petitioner purchased the property in question in the year 2007 while crime was reported in the year 2012. In view of the above, it could not have a correlation over the purchase of the property by the petitioner to be part of the crime proceeds, which was reported in the year 2012. The appellant/writ petitioner was otherwise involved in the crime case, but a favourable order was passed by the learned Magistrate, though reversed by the District Judge, but the High Court ultimately set aside the order passed by the Principal District and Sessions Judge and restored the order of the Magistrate. Accordingly, the petitioner is not found involved in the crime.

4. In the light of the aforesaid, there was no reason to freeze the property purchased by the petitioner in the year 2007. The learned Single Judge has ignored all the issues.

5. This Writ Appeal has been opposed by the respondents, challenging the order passed by them, along with the order under challenge in the Writ Petition.



6. We have considered the submissions made on either side and perused the records.

7. The facts on record show that the crime case was registered bearing No.43 of 2012 for the offences under Sections 417, 420, 468 and 471 IPC, in which the petitioner's husband was arrayed as first accused and the writ petitioner is fourth accused. After completion of the investigation, a final report was filed, followed by cognizance of the offences under Sections 406, 408, 465, 471 and 420 read with Section 120-B IPC. The petitioner was discharged by the learned Chief Judicial Magistrate. The First Appellate Court however set aside the order of the Magistrate, but on further challenge before this Court, the order passed by the learned Magistrate was restored. This is the fact in reference to the criminal case and presently pending trial against the petitioner's husband. The respondents found that the property purchased out of the crime proceeds, was transferred to the petitioner, and taking note of the aforesaid, a request was made to freeze the property so that it may not be further alienated. It is taking note of the fact that immediately, after taking the property out of the crime proceeds by none else than the petitioner's husband, it was transferred to the writ petitioner herein. The purpose and intention of the accused, i.e. the petitioner's husband, is writ large.

8. Taking the aforesaid into consideration, a request was made that the petitioner's property comprised in S.No.22/3A (New S.No.22/3A1B), measuring 4182-3/4 Sq.Ft. be freezed. It was found that the property aforesaid was settled by the petitioner's husband, vide settlement deed, dated 01.02.20213, vide registered document No.427 of 2013 in favour of the appellant/writ petitioner. It was not a purchase of the property by the writ appellant in the year 2007. The aforesaid deed was subsequent to the registration of the offences against the petitioner's husband and even the petitioner. It was alleged by the petitioner that the said property had no nexus to the FIR lodged against her husband and even herself, and therefore, prayer was made to remove the encumbrance created by the respondents having no authority for it. The petitioner had given reference to certain judgments to show that it is only the Court which has power to freeze the property for alienation. The learned Single Judge has considered the issues aforesaid and even in reference to Section 3 of the Criminal Law Amendment Ordinance, 1944, where the argument was raised by the petitioner that it is only the Government which is competent to initiate action by approaching the District Judge of the jurisdiction,



where the accused ordinarily resides, or carries on his business. In the instant case, the move was not made by the State Government for necessary orders by the District Judge in whose jurisdiction the property is located. The learned Single Judge however found that the move was made by the respondent No.1 on behalf of the State Government, though per-se, the finding aforesaid cannot be accepted, but we cannot shut our eyes to the manner the events have taken place and noted by the learned Single Judge. It is more so that the second accused in the crime case categorically admitted the guilt insofar as the deposit made by one R.Subramanian to the tune of Rs.11 lakhs. He fabricated the Passbook and disbursement of the interest of the Post Office. He further admitted that one Srinivasan and Rajakokila also were issued pass books without depositing the amount to the Post Office and admitted the guilt. The argument was thus made that so far as the petitioner and her husband are concerned, they have not committed any offence.

9. The issue aforesaid was noted in reference to the arguments of the respondents. It was clarified that the first accused, i.e. the husband of the petitioner was a Postal Agent and committed fraud by misusing the Postal Deposits and the fraud had started from the year 1997. Detailed facts of the case have been given by the learned Single Judge to show in what manner the fraud was committed or cheating took place, because of which the licence granted to the accused, was cancelled by the District Collector in the year 2012 itself, followed by the complaint of fraud. The specific allegation was made against the petitioner's husband and other two persons, for commission of fraud and purchase of the property out of it. The trial Court has already taken cognizance of the offences against the petitioner's husband and it is only to escape from the liability, the first accused and the petitioner's husband executed the settlement deed after registration of the FIR. The facts aforesaid show the conduct of the petitioner on the face of it, as also the petitioner's husband. The arguments have been made by the side opposite in regard to the petitioner's husband's conduct, because, the property said to have been freezed, is out of the settlement deed created by the petitioner's husband in favour of his wife.

10. Taking the aforesaid into consideration, we do not find any illegality in the action of the respondents, rather, we find reason to pass an order to freeze the property till the completion of the trial. It is to ensure that ends of justice



are met, otherwise, this Court is cognizant of the sufferings of the innocent persons on account of the commission of cheating and fraud.

11. The Court cannot shut its eyes to the facts referred to above and the facts of this case. It is not a case where the petitioner has bona-fidely purchased the property out of her proceeds, but in an unusual manner the petitioner's husband created a settlement deed in favour of his wife after registration of the FIR. The reason for creation of settlement deed becomes obvious and remains apparent on the face of the record to save the liability.

12. Taking over all facts of this case into consideration, we do not find any reason to cause interference in the impugned order passed by the learned Single Judge, rather, to save the property, we are passing the order to freeze it. It is looking to the exceptional circumstances and to meet the ends of justice.

13. The Writ Appeal accordingly fails and is dismissed. No costs. Consequently, C.M.P. is closed.

SD/-
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

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To

1. The Superintendent of Post Offices,
Department of Posts,
Namakkal Division, Namakkal-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.

+1cc to Mr.N.Manokaran, Advocate Sr.18390
+1cc to the Government Pleader Sr.18195

W.A.No.592 of 2022

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