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CMA No. 378/ 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

C.M.A. No. 378 of 2022
and C.M.P.No.2673 of 2022

Shri.M.Anandaramakrishnan

... Appellant/Respondent

Versus

1.State of Tamil Nadu,Rep.by
The Deputy Superintendent of Police
Economic Offences Wing – II
Head Quarters, Anna Nagar
Chennai – 600 040.

2.M/s.Maduvanthi Finance Company Pvt.Ltd.
Having office at
No.7, 6th Cross Street
Dhandeeswaran Nagar
Velecherry, Chennai – 600 042.

...Respondents/Petitioners

PRAYER : Civil Miscellaneous Appeal filed under Order 41 Rule 1 of Code of Civil Procedure seeking to set aside the order and decretal order dated 30.11.2018 passed in Criminal Original Petition No.2 of 2013 before the Hon'ble Chief Judge, Court of Small Causes, Chennai.



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For Appellant : M/s. Srinath Sridevan

For Respondents : Mr. Edwin Prabhakar
Additional Government Pleader for R1

J U D G M E N T

The appeal has been filed challenging the order passed by the learned Chief Judge, Court of Small Causes, Chennai in CrI.O.P.No.2 of 2013.

2. The facts reading to the filing of the above appeal are as follows:

(a) A case in Crime Nos.1154 of 1996 and 203 of 1997 were registered against the appellant and others under Sections 409, 420 and 506(ii) r/w 120 - B of the Indian Penal Code, by the Deputy Superintendent of Police, Economic Offences Wing II Head Quarters, Anna Nagar, Chennai – 600 040.

(b) The first respondent/Deputy Superintendent of Police filed an application in CrI.O.P.No.2 of 2013 under Section 3 (1) of the Criminal Law Amendment Ordinance 1944, on 30.07.2013 stating that the



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appellant was managing the affairs of the Company by name Maduvanthi Finance Company Private Limited; that the said Company had collected deposits from the general public to the tune of Rs.1.6 Crores and did not repay the depositors; that the appellant purchased a property from out of the collected deposits which is a proceeds of crime; that hence, the said property is liable for attachment and hence, prayed for attachment of the property belonging to the appellant.

(c) The second respondent in the said Crl.O.P.No.02 of 2013/appellant herein filed a counter stating that he was a Company Secretary and was a salaried employee of various companies; that the Company M/s.Madhuvanthi Finance and Investment (P) Ltd., was started by his brother and his wife in 1991; that his father was made a Director of the Company in the year 1996; that he was never involved in the business of the said Company; that he had purchased the property sought to be attached in the year 2001, for a sale consideration of Rs.14,00,000/- (Rupees Fourteen Lakhs only) in instalments and through a loan obtained from State Bank of India; that the property was not purchased from any deposit collected and that he had nothing to do with the alleged offence committed by the Company.



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(d) The learned Chief Judge, Small Causes Court, Chennai passed an order in CrI.O.P.No.2 of 2013 observing that the final reports have been filed on the basis of investigation before the concerned learned Chief Metropolitan Magistrate, Chennai in C.C.Nos.9503 and 9504 of 2022; that though the appellant is not a Director of the Company, since he is a Company Secretary, the question whether he was involved in the affairs of the company or not is for the Criminal Court to decide; that though the appellant produced Xerox copies of certain documents, he had not produced copy of the sale deed to show whether it was purchased by means of an housing loan; that in any case, those facts can be decided by the Criminal Court; that if the attachment of the property is raised, the investors' interest would be prejudiced and therefore, the attachment has to be made absolute and it is for the appellant to establish before the Criminal Court, the source of the funds for the property acquired by him.

3. Mr.Srinath Sridevan, the learned Senior Counsel for the appellant/ submitted that the impugned order passed by the learned Chief Judge, Court of Small Causes, Chennai is liable to be set aside on two grounds:



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(i) The learned Chief Judge, Court of Small Causes, Chennai has not decided the objections and had observed that the appellant has to establish his innocence before the Criminal Court. Under Section 5 of the Criminal Law Amendment Ordinance, 1944, the District Judge while investigating the objections raised by the property owners should follow the procedure and exercise all the powers of the Court in hearing the Suit under Civil Procedure Code. However, in the instant case, the learned Chief Judge, Court of Small Causes, Chennai had disposed of the application on the basis of a petition and counter and no opportunity was given to the appellant to adduce evidence. The learned senior counsel relied up on the Judgment of the Hon'ble Bombay High Court in ***State of Maharashtra and another Vs. Laxman Ramji Bade*** reported in ***1980 SCC Online Bom 73***.

(ii) The offence is alleged to have taken place prior to 1997. Therefore, the provision of Criminal Law Amendment Ordinance, 1944 would not be applicable since the offences said to have been committed by the appellant was not a scheduled offence, at the time of its alleged commission.



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4. Mr.Edwin Prabhakar, the learned Additional Government Pleader for the first respondent, *per contra*, submitted that though the learned Chief Judge, Court of Small Causes, Chennai in his impugned order had stated that the appellant should establish his innocence before the Criminal Court, no evidence was produced on behalf of the appellant to show that the property sought to be attached had nothing to do with the alleged offence. The order would further show that no witnesses were examined either on the side of the appellant or the first respondent. Since the appellant had opportunity to adduce the evidence, it cannot be said that the order passed by the learned Chief Judge is erroneous. The learned Additional Government Pleader further submitted that the appellant had not raised the point with regard to applicability of the Provisions of the Criminal Law Amendment Ordinance, 1944 before the learned Chief Judge, Court of Small Causes, Chennai. Hence, the order cannot be assailed on that ground.

5. The question before this Court is whether the order passed by the District Judge making the interim order of attachment absolute is in accordance with law.



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WEB COPY 6. This Court on a reading of the order finds that the learned Chief

Judge has not considered the question whether the property was procured by means of an offence. Section 3 of the Criminal Law Amendment Ordinance, 1944 makes it clear; that if the Government has reasons to believe that any person has committed a scheduled offence, it can authorise the making of an application to the District Judge for an attachment of the property which the Government believes the said person to have procured by means of the said offence, or if such property cannot be attached any other property equivalent to the value of the aforesaid property. Section 4 of the Criminal Law Amendment Ordinance, 1944 provides for circumstances under which an order of interim attachment can be made. Section 5 of the Criminal Law Amendment Ordinances provides for dealing with objections to the order of attachment. Section 5 of the Criminal Amendment Acts/Ordinances reads as follows:

“5. Investigations of objections to attachment – If no cause is shown and no objections are made under Section 4 on or before the specified date, the District Judge shall forthwith pass an order making the ad



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interim order of attachment absolute.

(2) If cause is shown or any objections are made as aforesaid, the District Judge shall proceed to investigate the same, and in so doing, as regards the examination of the parties and in all other respects he shall, subject to the provisions of this Ordinance, follow the procedure and exercise all the powers of a Court in hearing a suit under the Code of Civil Procedure, 1908 (5 of 1908) and any person making an objection under section 4 shall be required to adduce evidence to show that at the date of the attachment he had some interest in the property attached.

(3) After investigation under subsection (2), the District Judge shall pass an order either making the ad interim order of attachment absolute or varying it by releasing a portion of the property from attachment or withdrawing the order: Provided that the District Judge shall not-

(a) release from attachment any interest which he is satisfied that the person



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believed to have committed a scheduled offence has in the property unless he is also satisfied that there will remain under attachment an amount of the said person's property of value not less than that of the property believed to have been procured by the said person by means of the offence, or

(b) withdraw the order of attachment unless he is satisfied that the said person had not, by means of the offence, procured any money or other property.

7. The above provision would show that while considering the objections, the District Judge concerned shall conduct an investigation to ascertain if the order of interim attachment can be made absolute. While conducting an investigation, the learned District Judge shall examine parties and follow the procedure prescribed for hearing a Suit under Civil Procedure Code. After such investigation, the learned District Judge has to render a finding as to whether the property sought to be attached had been procured by means of the offence said to have been committed by him. In the instant case, it is seen that the learned District Judge has not done such an exercise.



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WEB COPY 8. The respondent in the first place ought to have shown *prima facie* as to how the property was procured by means of an offence. Thereafter, the respondent ought to have been given an opportunity to adduce evidence in support of his objection. The learned Chief Judge, Small Causes Court in the impugned order had observed as follows:

“6... In case of raising attachment if the criminal court later come to a conclusion as this property is also proceeds of the crime, the investors interest will be prejudiced. On the other hand, this respondent is having opportunity to establish the nature of the property by producing original documents and by examining bank officials before the trial Court.”

9. The above observation would make it clear that the learned District Judge has left it to the Criminal Court to decide whether the property sought to be attached was procured by means of the crime. The learned Judge has proceeded on the basis that if the interim



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attachment is not made absolute, then the investors would suffer and observed that the appellant will have sufficient opportunity before the Criminal Court to establish that he had not procured the property by means of the offence. This approach is contrary to the object and the scope of provisions of Criminal Law Amendment Ordinance, 1944. The District Judge is bound to examine the issue as to whether the property sought to be attached was procured by the means of the offence or that it is a property which is equivalent to the property procured by means of the offence. This exercise cannot be done by the Criminal Court. The Criminal Court is concerned with the commission of the offences mentioned in the final report. Therefore, this Court is of the view that the order of the Chief Judge, Court of Small Causes, Chennai, is liable to be set aside and the matter has to remanded back before the Chief Judge, Court of Small Causes, Chennai, to adjudicate the issue in terms of the provisions of Criminal Law Amendment Ordinance, 1994, after giving sufficient opportunity to both the appellant and the first respondent.

10. With the above observations, the Civil Miscellaneous Appeal is allowed remanding the matter back to the Chief Judge, Cause of Small



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Court, Chennai therein for fresh consideration, after giving opportunity to all the parties concerned. Consequently, the connected Miscellaneous Petition is closed. It is also made clear that the order of interim attachment made in CrI.M.P.No.1415 of 2013 shall continue until such disposal of the CrI.O.P.No.2 of 2013 by the learned Chief Judge, Court of Small Causes, Chennai. No costs.

24.07.2023

dk

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

1.The Chief Judge, Court of Small Causes,
Chennai.

2.The Deputy Superintendent of Police,
Economic Offences Wing II
Head Quarters
Anna Nagar,
Chenna – 600 040.



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SUNDER MOHAN, J

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