IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.08.2023

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.20332 of 2023
and Crl.M.P.No.13831 of 2023

Dr.Amit Anand Ajgaonkar ... Petitioners

Vs.

1.The State Rep. by
The Inspector of Police,
Entrustment Documents Fraud-1,
Central Crime Branch,
Tambaram City Police Commissionerate,
Sholinganallur, Chennai – 600 119.

2.M/s.Eessa Constructions Pvt Ltd.,
Rep. by its Director,
Mr.K.V.Sridharan,
Having registered office at
7, SS Avenue,
Old Mahabalipuram Road (OMR),
Padur, Chennai – 603 103. ...Respondents

PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the impugned order dated 18.08.2023 in Crl.M.P.No.6819 of 2022 in Crime No.119 of 2022 on the file of the learned Judicial Magistrate-II, Chengalpattu.

For Petitioner : Mr.S.Venkatraman

For Respondents : Mr.A.Damodaran
Additional Public Prosecutor for R1

ORDER

This petition has been filed challenging the order passed by the Court below in Crl.M.P.No.6819 of 2022, dated 18.08.2023 directing the transfer of a sum of Rs.6.25 Crores from the account belonging to the petitioner to the account of the 2nd respondent, based on the application filed by the 2nd respondent for return of the amount of a sum of Rs.6.25 Crores.

2.The 1st respondent has registered an FIR in Crime No.119 of 2022 based on the complaint given by the 2nd respondent. The sum and substance of the complaint is that M/s.Richy Health Care Private Ltd., and its Directors expressed their interest of making investment in the 2nd respondent Company and they also expressed their intention to immediately make an initial investment of Rs.9 Crores out of the total investment of Rs.30 Crores that was promised to be invested. In order to show their bonafides, the petitioner who represents the Company approached the 2nd respondent on 01.03.2022 and showed two Demand Drafts both drawn on ICICI Bank, Siruseri

Branch, Chennai. By showing these Demand Drafts, the 2nd respondent was asked to pay a commission of Rs.6.25 Crores to the investor in order to ensure that the further investments are also made to the Company. Believing the representation made by the petitioner, the defacto complainant parted with a sum of Rs.6.25 Crores which they have borrowed from various sources. Immediately, after this was done, the Demand Drafts were canceled and only at that point of time, the defacto complainant came to know that they have been cheated to the tune of Rs.6.25 Crores and that there is a big scam that is going on.

3.The defacto complainant filed an application before the Court below for transferring the amount of Rs.6.25 Crores that is available in the account of the petitioner on the ground that, that money is the property of the defacto complainant. The Court below allowed the application and directed the transfer of the amount to the account of the defacto complainant. Aggrieved by the same, the present criminal original petition has been filed before this Court.

4.Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor for the 1st respondent.

5.The learned Additional Public Prosecutor submitted that the amount of Rs.6.25 Crores that was taken from the defacto complainant was distributed to nearly 17 accounts and from those accounts, it was transferred to the account of the petitioner. It was also brought to the notice of the Court that the investigation is completed and that the final report will be filed shortly. The learned Additional Public Prosecutor therefore contended that the amount of Rs.6.25 Crores that is now available in the account of the petitioner is the property of the defacto complainant.

6.In the considered view of this Court, the effect of the order passed by the Court below is that a sum of Rs.6.25 Crores is going to be transferred from the account of the petitioner to the account of the defacto complaint. This case cannot be treated like any other case involving return of property. There is no doubt that money/cash is also a movable property and it can also become a subject matter in an application for return of property. However, if this money is going to be taken away from the account of the accused person and transferred to the account of the defacto complainant, the Court has to necessarily hear the accused person before passing any orders. This hearing is for the purpose of ascertaining as to whether the amount that is available in the account of the accused person actually belongs to the defacto complainant or there is any genuine dispute with regard to this amount. The Court below has straight away allowed the application without putting the petitioner on notice. The Court below has also not discussed anything on the facts of the case in order to justify the transfer of the amount from the account of the petitioner to the account of the 2nd respondent. On hearing, the learned counsel for the petitioner, this Court finds that the petitioner also has something to say in this case. Therefore, the Court below ought to have heard the petitioner and discussed about the materials collected by the respondent police and thereafter, should have passed an order. Since the same was not done, this Court is inclined to interfere with the order passed by the Court below in Crl.M.P.No.6819 of 2022, dated 18.08.2023 and accordingly, the same is hereby set aside.

7.The matter is remanded back to the file of the learned Judicial Magistrate-II, Chengalpattu. The learned Judicial Magistrate shall hear the petitioner and take into consideration the stand taken by the petitioner and shall also consider the materials that have been collected by the prosecution in the course of investigation and shall write a reasoned order. This process shall be completed by the learned Judicial Magistrate-II, Chengalpattu, within a period of six weeks from the date of receipt of copy of this order. The amount of Rs.6.25 Crores shall be kept intact in the bank account of the petitioner until final orders are passed by the Court below.

8.In the result, this criminal original petition stands allowed with the above direction. Consequently, connected miscellaneous petition is closed.

31.08.2023

Index : Yes/No
Internet : Yes/No
Speaking/Non-Speaking Order
ssr

To

1.The Judicial Magistrate-II, Chengalpattu.

2.The Inspector of Police,
Entrustment Documents Fraud-1,
Central Crime Branch,
Tambaram City Police Commissionerate,
Sholinganallur, Chennai – 600 119.

3.The Public Prosecutor,
High Court, Madras.

NoteL Issue Order Copy on 04.09.2023

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and Crl.M.P.No.13831 of 2023