IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2024

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THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.R.C.No.1725 of 2024
and
Crl.M.P.Nos.14236 & 14239 of 2024

K.Chandrasekaran ... Petitioner/A4

Vs.

1. State by
The Inspector of Police,
Central Crime Branch, Team-XVI,
Vepery, Chennai – 7. … Respondent / Complainant

2. Tmt. Sharma @ Sharma Sivaprakasam ... Respondent / Defacto complainant

PRAYER: Criminal Revision Case filed under Sections 438 r/w 442 of the BNSS, to call for the records and set aside the order passed by the learned Metropolitan Magistrate for Exclusive Trial of CCB Cases relating to Cheating cases in Chennai and CBCID Metro Cases, Egmore, Chennai in Crl.M.P.No.37352 of 2023 dated 10.09.2024 in C.C.No.5740 of 2023.

For Petitioner : Mr.A.Nagarajan

For Respondents : Mr.V.J.Priyadarsana (for R2)
Government Advocate (Crl.Side)

No appearance (for R2)

ORDER

The Criminal Revision Case has been filed challenging the order dated 10.09.2024 passed by the learned Metropolitan Magistrate for Exclusive Trial of CCB Cases relating to Cheating cases in Chennai and CBCID Metro Cases, Egmore, Chennai in Crl.M.P.No.37352 of 2023 dated 10.09.2024 in C.C.No.5740 of 2023, dismissing the discharge petition filed by the petitioner who is facing trial in C.C.No.5740 of 2023, for the alleged offences under Sections 419, 420, 465, 467, 468, 471 r/w 120 of the IPC.

2. The case of the prosecution is that the property belonging to the *defacto complainant* was sold by A1 by impersonating her through a power agent to A5 and A6 and that the petitioner who was employed under A5 and A6 has signed as a witness in the said sale deed and also in the general power of attorney said to have been executed by the impersonator. The further allegation is that the petitioner/A4, A5 and A6 were aware of the fact that A1 had impersonated the *defacto complainant* and had the sale deed executed in their favor and therefore, the accused had conspired to grab the property of the *defacto complainant* and thus,

committed the offences alleged.

3. According to the petitioner, he was employed under A5 and A6 and was originally working as Deputy Secretary in the Government of Tamilnadu. On the instructions of A5 and A6, he had signed as one of the witnesses in the general power of attorney and the sale deed. He had filed the petition to discharge him from the case on the ground that the case against A5 and A6 was quashed by this Court and that he being an employee of A5 and A6 had no other role except for carrying out the instructions of A5 and A6.

4. The learned Magistrate on the basis of the materials available held that there is a *prima facie* evidence against the petitioner/A4 for framing charge and dismissed the said petition.

5. The learned counsel for the petitioner would submit that though the petitioner is a person who had worked as Deputy Secretary in the Secretariat, Government of Tamil Nadu, after retirement, due to his family circumstances had joined the company of the persons arrayed as A5 and A6 in the final report; that as an employee of those two persons, he was directed to cooperate in execution of the documents and hence, he

had signed as a witness in the power of attorney and in the sale deed; and that there is no evidence in the final report to show that the petitioner had knowledge of the alleged impersonation by A1 of the *defacto complainant.*

6. The learned counsel would further submit that since the case against A5 and A6 had been quashed by this Court on the ground that they have re-conveyed the property to the *defacto complainant,* the petitioner/A4 who had a lesser role should also be exonerated from the charge.

7. The learned Government Advocate (Crl. Side) would submit that it is a fact that the petitioner was working as a Senior Executive Officer in the office of A5 and A6 and he had signed as a witness in the power of attorney. However, he would submit that the question as to whether he was aware of the impersonation or that he had committed any other act to hold him guilty of conspiracy or the other offences alleged against him, has to be decided only in the trial and prayed for dismissal of the revision.

8. Though notice to 2nd respondent/*defacto complainant* has been served through the police and her name is printed in the cause list, none has entered appearance.

9. Heard the learned counsel for the petitioner/A4 and the learned Government Advocate (Crl.Side) appearing for the 1st respondent/State.

10. On perusal of the impugned order, it is seen that the learned Magistrate had observed that the witnesses LW1 and LW2 have spoken about the role of the petitioner. Their statements only reveal that the petitioner had signed as a witness in the General Power of Attorney and in the sale deed, which is not disputed by the petitioner. This Court had specifically considered the role played by A5 and A6 in the quash petition filed by them viz., in Crl.OP.Nos.18411 & 10969 of 2019 and had observed that their conduct in re-conveying the property on coming to know of the fraudulent act of A1 would show that they are innocent. This Court had also observed in the said order that if A5 and A6 were aware of the fraudulent deed of A1, there was no need for them to part with huge sale consideration of Rs.3.25 Crores, which is evident from the fact that the said sale consideration was either paid by way of cheque or

demand drafts. Therefore, this Court had quashed the proceedings against A5 and A6 and had observed as follows in the order dated 18.07.2019.

> "11. This Court had the advantage of examining all the parties who were present before this Court. The defacto complainant categorically stated that she enquired and found that the petitioners themselves were victims in the hands of the accused persons. The defacto complainant also stated that the conduct of the petitioners in cancelling the mortgage deed and thereafter, facilitating the defacto complainant to sell the property to a 3 rd party, clearly showed that the petitioners did not have any role to play in the Crime.
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> 12. This Court also had the advantage of going through the documents that were collected by the respondent police in the course of investigation. A careful reading of the sale deed dated 22.12.2014 that was executed by A1 in favour of the petitioner shows that the total sale consideration has been fixed at a sum of Rs.3.5 Crores. It was paid in the following manner :- (a) Rs.25 lakhs by way of Cash. (b) Rs.75 lakhs by way of three cheques. (c) Rs.2.50 Crores by way of Demand Draft from HDFC Bank, after the property was mortgaged.
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> 13. If really the petitioners wanted to grab the property, it was not necessary for the petitioner to have paid the sale consideration to an extent of Rs.3.25 Crores by way of cheques and demand drafts."

11. When this Court specifically put a question to the learned counsel for the petitioner as to why this petitioner who was employed under A5 and A6 had not joined them in filing the quash petition, the learned counsel submitted that the company was wound up after the instant case was initiated and the relationship between the petitioner and A5 and A6 thereafter got snapped and therefore, the petitioner could not join.

12. Considering the fact that this Court had observed that A5 and A6 were themselves victims of the crime; that the petitioner was employed under A5 and A6; and that he acted as per their instructions, the order passed by this Court in the quash petitions i.e., order dated 18.07.2019 made in Crl.OP.Nos.18411 & 10969 of 2019, should enure in favour of the petitioner as well, as admittedly there is no other material to suggest that the petitioner had played any other role to implicate him for the alleged offences. Hence, this Court is of the view that the order passed by the learned Magistrate is liable to be set aside and the petitioner deserves to be discharged.

13. Accordingly, the Criminal Revision Case stands allowed. The order dated 10.09.2024 passed by the learned Metropolitan Magistrate for Exclusive Trial of CCB Cases relating to Cheating cases in Chennai and CBCID Metro Cases, Egmore, Chennai in Crl.M.P.No.37352 of 2023 dated 10.09.2024 in C.C.No.5740 of 2023, is set aside. The petitioner/A4 is discharged from all charges levelled against him in C.C.No.5740 of 2023. Consequently, the connected Criminal Miscellaneous Petitions are closed.

21.11.2024

Index: Yes/No
Speaking/Non-speaking order
Neutral citation: Yes/No.
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To

1. The Metropolitan Magistrate for Exclusive Trial
   of CCB Cases relating to Cheating cases in Chennai
   and CBCID Metro Cases,
   Egmore, Chennai.

2. The Inspector of Police,
   Central Crime Branch, Team-XVI,
   Vepery, Chennai – 7.

3. The Public Prosecutor,
   High Court, Madras.

SUNDER MOHAN, J.

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