IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2024

CORAM

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.R.C.No.1934 of 2024

A.Suresh
Proprietor: M/s.H.K.Enterprises,
Saligramam, Chennai – 600 093. ... Petitioners/Accused

Vs.

1.State Represented by,
The Inspector of Police,
Central Crime Branch,
EDF-I, Beta-2,
Vepery, Chennai – 600 007.

2.D.Manivannan
Prop: M/s.D.Manivannan and Co.,
Koyambedu,
Chennai – 600 092. ...Respondents

PRAYER: Criminal Revision Petition filed under Section 438 r/w 442 of BNSS, to set aside the order in Crl.M.P.No.37026 of 2024 dated 22.08.2024 in Crime No.211 of 2021 on the file of learned CCB &

CBCID Metropolitan Magistrate, Egmore, Chennai and return the Item Serial Nos.1, 26, 55, 57, 58, 59, 67.

For Petitioners	: Mr.S.Sudhanthiran
For Respondent-1	: Mr.S.Udaya Kumar Government Advocate (Crl. Side)

For Respondent-2 : Mr.N.R.Elango, Senior Counsel
for Mr.A.S.Aswin Prasanna

ORDER

The revision challenges the dismissal of the petitioner's application under Section 451 r/w 457 of Cr.P.C. for return of certain documents, which was seized during the course of investigation in Crime No.211 of 2021. The petitioner is an accused in Crime No.211 of 2021 for alleged offences under Sections 120B, 34, 406, 420, 465 & 468 of I.P.C. During the course of investigation, the petitioner was arrested on 10.01.2024. On 12.03.2024, a search was conducted in the house of the petitioner and the following documents were seized.

S.No.	Description
1	Original Passport of Mr.Suresh (Passport No.T4287257)
2	Original Seal – For H K Enterprises
3	Original Aadhar card of Mr.Suresh (Aadhar No.2150 1333 9406)
4	Original Aadhar card of Mrs.Eswari (Aadhar No.3305 9506 4318)
5	Original Election ID card of Mr.Suresh (Voter ID-FBC2971224)
6	Axis Bank Debit Card 5223 4601 0530 4753
7	Axis Bank Online Reward Debit card No.4616 8000 4473 6976
8	Indian Bank Debit and Prepaid Platinum Card No.8173 3500 3388 4407
9	H K Enterprises Coal Import and Export Visiting Card – A Suresh Managing Director
10	Photo copy of TNB Fuel Pre-qualification documents – Page no from 1 to

	37
11	Highseas Coal and Minerals PTE LTD concern letter original copy dated August 17, 2018
12	Photo Album 14.08.2010
13	Manapuram Finance Limited Suresh receipt date 19.01.2021
14	RC 16075/2018/N-1 dated 21.08.2018 objection certificate reply letter from Revenue officer Tiruvallur
15	Xerox copy of Axis Bank Cheque clearance webview inquiry dated 21.12.2020, cheque No.307516 A/c No.913020012883117 for HK Enterprises
16	Xerox copy of Axis bank webview cheque inquiry cheque No.276178 Eswari date 15.12.2020 A.C No.189705500077
17	Xerox photocopy of Stop payment advise for account 913030012883117 from HK Enterprises and Mrs.Eswari
18	Acknowledgement letter from Chola to Eswari (Original)
19	Xerox copy of Statement of Account from 2017 to 17.05.2023 name of the borrower Eswari customer ID 91126198
20	Indian Bank Account statement A/c No.831125167, Account holder- S Eswari Saligramam branch
21	Original copy of concern letter dated 03.01.2009 Highseas Coal & Minerals Pvt. Limited Singapore
22	Xerox certificate of Importer Exporter Code (IEC) dated 09.04.2019
23	Xerox copy of Axis bank Limited, A/c holder Eswari A/C No.913010023453133 Virugambakkam branch (Page to 1 to 5)
24	Xerox copy of Memorandum of Deposit
25	Xerox copy of Memorandum of Deposit of Title deeds Document No.2108/2019 (Page 1 to 19)
26	Original Memorandum of Deposit of title of deeds of Document No.1845/2016 and Document No.4155 of 2014 (Page 1 to 14)
27	Xerox copy of Registration certificate – Registration No.33APDPS8360R3Z2
28	Axis Bank concern letter date 18.06.2019 Virugambakkam branch
29	Xerox copy of Home Loan Axis Bank Limited dated 19.03.2019 – Axis Bank A/c PHRV86500056

30	Original copy of H.K. Enterprises Provisional Profit and loss account for the year ended 31st March 2019
31	Xerox copy of Property Tax approved owner transfer notice dated 06.12.2018
32	Empty letter pad of H.K.Enterprises Coal Import and Export
33	Axis Bank A/c 915020051197127 Cheque Leaf 22 Nos
34	Indian Bank A/c SB 837125167 Cheque Leaf 4 A/c 7612369042 cheque leaf 2 and passbook
35	Axis Bank A/c 913010023453133 Cheque book from 432978 to 432990
36	Axis Bank A/c 913010023453133 Cheque book from 464096 to 464110 and passbook
37	Axis Bank A/c 913020012883117 cheque book 398542 to 398640
38	Axis Bank A/c 913-2 –12883117 cheque book 3985112 to 398640
39	Indian Bank A/c 837125167 passbook
40	Xerox copy of Memorandum of deposit title deeds dated 21st April 2016 document No.1845 of 2016 (Pages 1 to 18)
41	Axis Bank Account statement from 01.01.2018 to 03.04.2019 of H K Enterprises A/c No.913020012883117 (Pages 1 to 13)
42	Axis Bank Account statement from 02.01.2018 to 03.04.2019 A/c No.915020012883117 (Pages 1 to 14)
43	Axis Bank Account statement 913020012883117 from 02.01.2018 to 02.07.2019 (Pages 1 to 14)
44	Axis Bank Account statement 913020012883117 from 01.01.2018 to 30.08.2019 (Pages 1 to 46)
45	Axis Bank Account statement 913020012883117 from 01.01.2019 to 31.12.2019 (Pages 1 to 46)
46	Axis Bank Account statement 913020012883117 from 01.01.2020 to 31.12.2020 (Pages 1 to 60)
47	Xerox copy of Axis Bank A/c 913020012883117 from 01.01.2021 to 31.12.2021 (Pages 1 to 30)
48	Xerox copy of Axis Bank A/c 913020012883117 from 01.01.2022 to 04.10.2022 (Pages 1 to 30)
49	Xerox copy of Axis Bank with Aknowledgement due date 11.10.2023 (Page 1 to 8)

50	Axis Bank A/c Statement from 20.02.2000 to 20.02.2023 dated 20.02.2023 (Page 1 to 8)
51	Xerox copy of Account statement from Chola from 01.01.2017 to 25.04.2023 (Pages 1 to 8)
52	Xerox Copy of Loan Account No.2953132 (Pages 1 to 7)
53	Xerox copy of Radiance Realty 21.02.2019
54	Xerox copy of Suresh IT 2017 to 2018 and Eswari IT 2019 to 2021 (Pages from 1 to 26)
55	Original Settlement deed Document No.2342/15 (Pages 1 to 32)
56	Original sale deed of Eswari Document No.5379/20 (Page 1 to 42)
57	Original Settlement deed Document No.855/2015 (Pages 1 to 46)
58	Original Settlement deed Document No.1483/2015 (Pages 1 to 40)
59	Original Settlement deed Document No.1484/2015 (Pages 1 to 50)
60	Original Lease agreement Document No.49AB657857 (Pages 1 to 6)
61	Xerox copy of Settlement deed Document No.1373/2018 (Pages 1 to 38)
62	Xerox copy of Rental Agreement 08.04.2019 (Pages 1 to 4)
63	Original copy of TSLR CA No.109/2021-22
64	Mr.N.R.Maharajan C 900192 Xerox (Page 1 to 96)
65	Xerox copy of sale deed document No.638/00 (Pages 1 to 38)
66	Xerox copy of MoU date 28.11.2018 (Page 1 to 12)
67	Total Cash Rs.3,00,000/- (Rs.500 x 600 Nos)

2.The allegation against the petitioner is that the petitioner had obtained a loan of Rs.3 Crores from the de-facto complainant on the promise that he would invest the said sum in his business and he would return Rs.6 Crores after earning profits in the business; that the petitioner did not keep up his promise; that however, promised that he would purchase a property for the said amount; that instead of purchasing a property for the de-facto complainant he had purchased a property in the name of his wife/A2 for the said sum in the year 2020.

3.The learned counsel for the petitioner would submit that even according to the complaint, the property purchased in the name of the wife can alone be construed as stolen property within the meaning of Section 411 I.P.C. and the other documents that were seized during investigation have nothing to do with the alleged offences and hence, they ought not to have been seized by the respondent in exercise of power under Section 102 of Cr.P.C. and prayed for return of those documents.

4.Mr.N.R.Elango, learned Senior Counsel for the second respondent fairly conceded that except for the title deeds relating to the property purchased out of the loan advanced by the de-facto complainant in the name of the petitioner's wife, the other documents may not be required for the purpose of either investigation or trial.

5.The learned Government Advocate for first respondent also would submit that the documents were seized during the course of investigation in exercise of the power under Section 102 of Cr.P.C. and only after the investigation is concluded, the documents which are not connected to the offence can be returned.

6.It is well settled that before the police exercise their power under Section 102 of Cr.P.C. they must satisfy themselves that the property falls within one of the two categories mentioned in Section 102 of Cr.P.C., which empowers them to make the seizure. This Court in ***Sri. Kanchi Kamakoti Peetadhipathi Jagadguru Sri. Sankaracharya Swamingal Srimatam Samasthanam rep by its Manager vs. State*** reported in ***2005 1 CTC 657*** had held as follows:

> *"30. A reading of the provision clearly indicates the scope of the power under the provision and that it is an exhaustive provision. Only two categories of properties as mentioned, namely, (1) alleged or suspected to have been*

stolen, or (2) which may found under circumstances which create suspicion of the commission of any offence. No other categories can be included or deemed to be included as may otherwise possible in an expansive definition by using certain other expressions in addition such as "as the case may be", "as the authorities deem fit and necessary", etc., which may render the provision an inclusive and illustrative one and not an exhaustive one. The language of Section 102 of Cr.P.C., is very clear and it is clearly an exhaustive provision, as it should be. Otherwise, the provision would be arbitrary and unconnected to the offence and would be liable to be misused for ulterior purpose. Therefore, designedly, the Parliament has restricted the power under Section 102 Cr.P.C., to specific and narrow limits."

7.This position has been reiterated by subsequent judgments of this Court in a number of cases. Therefore, the respondent would have no jurisdiction to seize documents or property, which do not fall within the two categories mentioned above. There is nothing on record to show that the documents or the other properties were stolen or were found under circumstances, which create suspicion of commission of any offence except for the document mentioned in Srl.No.56 above, which is the original sale deed in the name of Eswari bearing Document No.5379 of 2020. Section 102 is very clear and exhaustive. The respondents cannot assume power to seize any property, which cannot be done in terms of Section 102 of Cr.P.C., as that power is liable to be misused.

8. The police officers must remember that the power of seizure under Section 102 of the Cr.P.C., is primarily for the purpose of investigation and to establish the offence committed by the accused. That power is not intended to be an attachment of any property of the accused even assuming that such property was derived out of proceeds of crime, unless it is a stolen property, as defined under Section 410 of the IPC.

9. Section 410 of the IPC defines, stolen property as follows:

> "Property, the possession whereof has been transferred by theft, or by extortion, or by robbery, and property which has been

criminally misappropriated or in respect of which criminal breach of trust has been committed, is designated as "stolen property", whether the transfer has been made, or the misappropriation or breach of trust has been committed, within or without India. But, if such property subsequently comes into the possession of a person legally entitled to the possession thereof, it then ceases to be stolen property."

10. If the property is acquired by commission of any other offence that is not mentioned under Section 410 of the IPC, it would only be the proceeds of crime and not stolen property. In such circumstances, the police officer may take steps for attachment of property under the Criminal Law Amendment Ordinance 1944 or under Section 107 of the BNSS. It may be mentioned that there was no provision similar to Section 107 of the BNSS under the old code i.e., Cr.P.C. 1973. Section 107 of the BNSS reads as follows:

107. Attachment, forfeiture or restoration of property.

(1)Where a police officer making an investigation has reason to believe that any property is derived or obtained, directly or indirectly, as a result of a criminal activity or from the commission of any offence, he may, with the approval of the Superintendent of Police or Commissioner of Police, make an application to the Court or the Magistrate exercising jurisdiction to take cognizance of the offence or commit for trial or try the case, for the attachment of such property.

(2)If the Court or the Magistrate has reasons to believe, whether before or after taking evidence, that all or any of such properties are proceeds of crime, the Court or the Magistrate may issue a notice upon such person calling upon him to show cause within a period of fourteen days as to why an order of attachment shall not be made.

(3)Where the notice issued to any person under sub-section (2) specifies any property as being held by any other person on behalf of such person, a copy of the notice shall also be served upon such other person.

(4)The Court or the Magistrate may, after considering the explanation, if any, to the show-cause notice issued under sub-section (2) and the material fact available before such Court or Magistrate and after giving a reasonable opportunity of being heard to such person or persons, may pass an order of attachment, in respect of those properties which are found to be the proceeds of crime:Provided that if such person does not appear before the Court or the Magistrate or represent his case before the Court or Magistrate within a period of fourteen days specified in the show-cause notice, the Court or the Magistrate may proceed to pass the ex parte order.

(5)Notwithstanding anything contained in sub-section (2), if the Court or the Magistrate is of the opinion that issuance of notice under the said sub-section would defeat the object of attachment or seizure, the Court or Magistrate may by an interim order passed ex parte direct attachment or seizure of such property, and such order shall remain in force till an order under sub-section (6) is passed.

(6)If the Court or the Magistrate finds the attached or seized properties to be the proceeds of crime, the Court or the Magistrate shall by order direct the District Magistrate to rateably distribute such proceeds of crime to the persons who are affected by such crime.

(7)On receipt of an order passed under sub-section (6), the District Magistrate shall, within a period of sixty days distribute the proceeds of crime either by himself or authorise any officer subordinate to him to effect such distribution.

(8)If there are no claimants to receive such proceeds or no claimant is ascertainable or there is any surplus after satisfying the claimants, such proceeds of crime shall stand forfeited to the Government."

11. The power of attachment therefore is vested with the Court and that power also can be exercised only after a notice is issued to the person who is in possession of any property, which is derived or obtained as a result of any criminal activity. The police officer therefore, cannot exercise that power of attachment indirectly by making a seizure under

Section 102 of the Cr.P.C.

12. This Court is of the view that in order to prevent the misuse of the said provision, certain guidelines can be issued.

13. Chapter XXXIV of the Cr.P.C., 1973 among other things provides for disposal of property that is produced before the criminal Court or when a seizure of property by the police officer is reported to a Magistrate. The provisions that are relevant in the said Chapter for the purpose of this case would be Sections 451 and 457 of the Cr.P.C. Therefore, when a property is produced in terms of Section 451 of the Cr.P.C., by the police officer or when a seizure of property is reported, without production of the property, it is imperative for the police officer to inform the learned Magistrate, as to under which of the two categories, the seizure was made i.e., to say

(a) whether the property seized was a stolen property; or

(b) where it was found under circumstances which creates suspicion of the commission of the offence.

14. If the police officer fails to furnish the aforesaid information, the learned Magistrate may direct the police officer to return the property to the person from whom it was seized. This would ensure the application of mind by the police officer and also prevent the misuse of power under Section 102 of the Cr.P.C.

15. Hence, the respondents are directed to return all the properties/documents mentioned in Sl.Nos.1 to 55 and 57 to 67 forthwith. Document mentioned in Sl.No.56 may be kept in custody of the Court, until further orders.

16. In the result, the Criminal Revision Case is partly allowed.

19.12.2024

Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No

Issue order copy by 07.01.2025
rsi/ars

To

1.The Metropolitan Magistrate Court for
Exclusive trial of CCB Cases (Relating to Cheating Cases)
Chennai.

2.The Inspector of Police,
Central Crime Branch,
EDF-I, Beta-2,
Vepery, Chennai – 600 007.

3.The Public Prosecutor,
High Court, Madras.

SUNDER MOHAN, J.

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Crl.R.C.No.1934 of 2024

19.12.2024