

(2016) 02 MAD CK 0023
In the Madras High Court
Case No : Criminal O.P. No. 28006 of 2015

P. Karuppusamy

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 29-02-2016

Acts Referred:

Citation : (2016) 1 MadWNCri 341

Hon'ble Judges : Dr. P. Devadass, J.

Bench : Single Bench

Advocate : Mr. AR. L. Sundaresan, Senior Counsel, for the Petitioner; Mr. K. Srinivasan, Spl. P.P, for the CBI

Final Decision : Disposed Off

Judgement

Dr. P. Devadass, J.—Petitioner, a third party seeks direction under Section 482 Cr.P.C to the respondent to return his property documents viz., Document No. 97 of 1980, dated 11.02.1980, Document No.98 of 1980 dated 11.02.1980, Document No.1164 of 1979, dated 30.11.1979, Document No.1165 of 1979, dated 30.11.1979, Document No.335 of 1995, dated 04.04.1995 and Document No.664 of 1986, dated 04.06.1986.

2. Based on a complaint, CBI registered a case in RC.6(E) of 2010. In the course of investigation, CBI raided the premises of one Srinivasan/A2, Managing Director of M/s. Sri Pamba Spinning Mill in Udumalpet. CBI seized several records. It included the documents stated at the outset. Admittedly, they belong to the petitioner.

3. Concluding the investigation, CBI filed its Final Report under Section 173(2) Cr.P.C before the learned II Additional Sessions Judge/Special Judge (CBI Cases), Coimbatore. The learned Special Judge took cognizance thereon in C.C.No.15/2011. The case is still pending.

4. The petitioner filed C.M.P.No.1253 of 2012 in the trial Court seeking return of his property documents. It was dismissed on 15.2.2013 since they are vital

documents to prove the guilt alleged as against the accused. As against that, petitioner came by way of revision to this Court in CrI.R.C.No.688 of 2013. However, he did not pursue it. Thus, it was dismissed on 08.7.2014.

5. In the meanwhile, on the same issue, there were some parallel proceedings under Arbitration and Conciliation Act as between the petitioner and A2. The sole arbitrator directed A2 to return the property documents to the petitioner. As against that, A2 filed Ar.O.P. No.21 of 2012. On 05.10.2012, the learned Principal District Judge, Tiruppur dismissed it. Aggrieved, A2 filed C.M.A. No.3109 of 2012 in this Court. It was dismissed. Thus on the civil side, petitioner had won. It is pertinent here to note that the said documents were not readily available with A2 because they are in the possession of CBI in connection with RC-6(E)/2010.

6. Now, petitioner has filed this criminal original petition under Section 482 Cr.P.C.

7. The idea behind introducing the said Section 482 Cr.P.C is that no Code will be complete. No code envisaging criminal procedure can foresee each and every circumstance. But "to do justice", (ex debito justice) courts must be expressly endowed with necessary powers. That is why Section 482 Cr.P.C has been introduced in the New Code of 1973.

8. Actually, the jurisdiction under Section 482 Cr.P.C has not been conferred on the High Courts by the New Code of 1973. This inherent jurisdiction is already there. This court possess such power by the very establishment of it as a court of justice. This inherent jurisdiction of this court to do justice has been saved by the New Code of 1973. This jurisdiction is to do justice and also to prevent injustice.

9. Though the power is so wide, it is not uncanalised. The parameters to exercise this power has been prescribed in Section 482 Cr.P.C itself. This Court can exercise its said jurisdiction (1) to implement any order passed under the Code, (2) to prevent abuse of process of any court, (3) or otherwise to secure the ends of justice. No doubt, this power has to be exercised sparingly, but when it is necessary, the Court has to exercise it.

10. Now, in this case, certain property documents of the petitioner were seized by C.B.I in the course of investigation relating to RC-6(E)2010. After finalising the investigation, the CBI filed Final Report under Section 173(2) Cr.P.C as against A2.

11. For the purpose of Section 207 Cr.P.C, by way of a list, prosecution has to furnish details of oral evidence (statement of witnesses recorded under Section 161 Cr.P.C), documents which are proposed to be relied on as against the accused. It is to give a prior opportunity, knowledge to the accused to facilitate him to defend himself effectively which is guaranteed to him under Article 22(1) of the Constitution of India. It is an extension of principles of natural justice to criminal law.

12. In pursuing a crime reported, the investigating agency go in for collection of materials [see Sections 154, 156, 157 Cr.P.C]. In these type of cases usually

maze of materials are collected. CBI peruse the records, analyse them with the imputations against the accused. It may find that some of them may not be relevant, may not be necessary to substantiate the allegations levelled against the accused. Some of those documents may belong to some third parties. In such circumstances, retaining such documents by the Investigating Agency or court becomes unnecessary, unless acceptable reasons are given.

13. In this case, the petition mentioned documents are not listed under Section 207 Cr.P.C. Thus, they are not proposed to be relied on as against the accused. No acceptable reason has been stated by the CBI to retain those documents.

14. These documents are property documents. Now, right to hold property though not a fundamental right became a legal right under Article 300-A of the Constitution of India. Though it is a private right, it has constitutional recognition. Without holding the property document, there is no pride in having a property. Thus, one's right to hold the property document itself is a legal right. It can be taken away only in a manner known to law, *de hors law*, a person's property document cannot be taken away.

15. Now, in this case, already there is judicial direction to return the documents to the petitioner in the proceedings initiated under the Arbitration and Conciliation Act.

16. The learned Special Public Prosecutor referring to paragraph 10 of the counter submitted that petitioner could apprise this position to the trial Court and seek relief there. The learned Special Public Prosecutor also submitted that the said documents were seized from A2.

17. Courts should not promote dilatory process. Where in a case, a strong case has been made out to exercise the jurisdiction under Section 482 Cr.P.C, this Court has to exercise it. Where in a case this Court is required to exercise its inherent jurisdiction, it has to do it because Section 482 Cr.P.C begin with the non obstante clause "Nothing in this Code shall be deemed to limit or affect powers of the High Court."

18. It cannot be denied that the said property documents belong to the petitioner. It also cannot be denied that directions have been issued by this Court in C.M.A. No.3109 of 2012 to A2 to return the said documents to the petitioner. Thus, in the interest of justice, the documents are required to be returned to the petitioner.

19. In view of the foregoing, it is ordered as under:

(i) the respondent will hand over the documents viz., Document No. 97 of 1980, dated 11.02.1980, Document No.98 of 1980 dated 11.02.1980, Document No.1164 of 1979, dated 30.11.1979, Document No.1165 of 1979, dated 30.11.1979, Document No.335 of 1995, dated 04.04.1995 and Document No.664 of 1986, dated 04.06.1986 to the learned II Additional Sessions Judge/Special Judge (CBI cases), Coimbatore.

(ii) The learned Judge will return the said documents to the petitioner, after obtaining an undertaking from him that he will produce them as and when so ordered by the Court.