

## Usha Ramachandran Vs The Inspector of Police

**Court:** Madras High Court

**Date of Decision:** Nov. 11, 2014

**Acts Referred:** Criminal Procedure Code, 1973 (CrPC) â€” Section 102, 451, 457  
Penal Code, 1860 (IPC) â€” Section 120(B), 420, 467, 468, 471

**Hon'ble Judges:** R.S. Ramanathan, J

**Bench:** Single Bench

### Judgement

@JUDGMENTTAG-ORDER

R.S. Ramanathan, J.

The petitioner in this revision case is a third party to C.C.No. 3766 of 2011 on the file of the Additional Chief

Metropolitan Magistrate, Egmore, Chennai.

2. The respondent filed a charge sheet in C.C.No. 3766 of 2011 against four persons and the first accused is a private limited company, namely,

M/s. Soft Bank Micro Systems Pvt.Ltd., Chennai, A.2 is S.Sivasubramaniam, one of the Directors of the first accused company, A.4 is

P.Kishore, one of the Directors of the first accused company, and A.3 is one R.Ramachandran.

3. The prosecution filed charge sheet against the aforesaid four persons stating that the first accused committed criminal offences punishable under

Sections 120(B) r/w 420, 467, 468, 471 IPC and substantive offences thereof; the second and third accused each committed criminal offences

punishable under Sections 420, 467, 468 and 471 IPC and the fourth accused committed criminal offences punishable under Sections 420 and

471 IPC.

4. After filing of the charge sheet, trial has commenced and the Investigating Officer was examined as PW.42. On 9.11.2010, during search of the

house of A.3, the Investigating Officer seized the Document bearing No. 1635 of 2010 standing in the name of the petitioner and also came to

know that 3 Fixed Deposit Receipts bearing Nos. 494129, 494130 both dated 01.09.2010 and 0113330 dated 09.11.2009 issued by Canara

Bank, Anna Nagar East Branch, Chennai are also standing in the name of the petitioner and therefore, issued a letter to the said Bank to freeze the

aforesaid Fixed Deposit Receipts, without getting any order from the Court and also did not produce the Document bearing No. 1635 of 2010

before the trial Court nor marked the same during trial. Therefore, the petitioner, who is the wife of the third accused, in whose name the sale deed

Document No. 1635 of 2010 and also Fixed Deposits stand, filed a Petition in CRL.M.P.No. 914 of 2014 under Sections 451 and 457 r/w

102 of Cr.P.C. for return of the Sale Deed Document bearing No. 1635 of 2010, to direct the respondent to withdraw the letter sent to the Sub-

Registrar, Sriperumbadur and to de-freeze the three Fixed Deposit Receipts. The learned Additional Chief Metropolitan Magistrate, Egmore,

Chennai, passed an order directing the respondent to return the Sale Deed Document bearing No. 1635 of 2010 to the petitioner on the basis of

the evidence of PW.42, Investigating Officer. Nevertheless, the learned Additional Chief Metropolitan Magistrate refused to pass any order with

respect to the prayer of the petitioner to withdraw the letter sent by the Investigating Officer to the Sub-Registrar, Sriperambadur, directing the

latter not to register any Document relating to the property covered under the Sale Deed Document bearing No. 1635 of 2010 and so also refused

to de-freeze the Fixed Deposit Receipts in the name of the petitioner. Aggrieved by the same, this Revision Case is filed.

5. It is submitted by the learned counsel for the petitioner, that the respondent police without following the mandatory provisions under Section 102

of the Cr.P.C., by way of letter instructed the Sub-Registrar, Sriperambadur not to register any Document relating to the property covered under

the Sale deed Document bearing No. 1635 of 2010 and also erred in freezing the Fixed Deposit Receipts standing in the name of the petitioner

and therefore, such instructions of the respondent are liable to be set aside. He further submitted that the trial Court having directed the respondent

to return the Sale Deed Document bearing Regn.No. 1635 of 2010 to the petitioner on the basis of the evidence of PW.42, the Investigating

Officer, as the Sale Deed has nothing to do with the crime, ought to have held that the letter issued by the Investigating Officer to the Sub-

Registrar, Sriperambadur has to be withdrawn and therefore, the order of the learned Additional Chief Metropolitan Magistrate in that respect has

to be set aside.

6. He further submitted that as regards the Fixed Deposit Receipts, admittedly, no evidence was let in by the prosecution to the effect that the

Fixed Deposit Receipts were created by siphoning off the funds received as loan from the bank and even according to the evidence of PW.42, he

only felt that the money of A3 was converted into FDR in the name of the petitioner and he has not stated that A.3 had received huge sums of

money from A.2 and A.4. Therefore, in the absence of any evidence produced by the prosecution to the effect that the Fixed Deposit Receipts

standing in the name of the petitioner were purchased from and out of the loan availed by A.1, A.2 and A.4 and the money was siphoned off by

A.1, A.2 and A.4 through A.3, the order of trial Court in respect of Fixed Deposit Receipts is also liable to be set aside.

7. Mr.K.Srinivasan, learned Special Public Prosecutor (for CBI Cases) submitted that the trial has commenced and examination of PW.42 was

over and others have to be examined. He, therefore, submitted that having regard to the stage of the trial, a suitable direction may be given to the

trial Court to dispose of the case within a stipulated period and also direct the trial Judge to give a suitable direction with respect to Fixed Deposit

Receipts which were freezed as per the direction of the Investigating Officer and also to withdraw the letter given by the Investigating Officer to the

Sub-Registrar, Sriperambadur, depending upon the result of that case and therefore, no final order need be passed at this stage.

8. The point for consideration is whether the order of the learned Additional Chief Metropolitan Magistrate in dismissing the prayer of the

petitioner regarding the Fixed Deposit Receipts and withdrawal of the Investigating Officer PW.42's letter addressed to the Sub-Registrar,

Sripermbadur is liable to be set aside?

9. As stated supra, all the four accused were charge sheeted for having committed the offence punishable under Sections 120(B) r/w 420, 467,

468, 471 IPC. A reading of the charge sheet would make it clear that Ramachandran, who is arrayed as A.3 and the husband of the petitioner was

not a Director of the company when the first accused company applied for loan and he offered the property as a third party collateral security and

received two cheques for Rs. 3,00,000/- each issued form the Account of A.1 company signed by only A.2 and A.4. It is further stated that A.3

Ramachandran was a Director in R.M.K.S. Minerals. In November, 2006, he joined as Director of R.M.K.S. Minerals only to offer third party

collateral security. It is further stated that the property given as collateral security by A.3 in respect of the loan availed by A.1 was already

mortgaged by A.3 with Bharath Overseas Bank, Anna Nagar, Chennai and he also offered the sale deed of the property as collateral security in

the loan availed by R.M.K.S.Minerals with State Bank of India, Overseas Branch, Chennai. It is further stated in the charge sheet that the

investigation revealed that A.2 forged the signature of A.4 in cheques in 23 instances and withdrew money by using those cheques. The loan

availed by A.1 was also transferred to various accounts of different companies belonged to A.2, namely, Sakthi Super Stockists, Sakthi Broad

Cast Pvt.Ltd., S.K.Enterprises. It is further stated that A.2 siphoned off Rs. 1.17 crore from the account of A.1 Company. It is also stated that by

the wrongful acts of A.2 and A.4 along with A.3, wrongful loss to the tune of Rs. 374 lakh was caused to the Punjab National Bank and

corresponding gain to themselves. Therefore, they were charge sheeted for the various offences as stated above. Therefore, from the reading of the

charge sheet, it is made clear that the Fixed Deposit amounts were not created from and out of the loan availed by A.1 or by any money siphoned

off by A.2 and A.4. The learned Special Public Prosecutor also submitted that except the evidence of PW.42, Investigating Officer, there is no

evidence to connect the three Fixed Deposit Receipts standing in the name of the petitioner with the offence committed by A.1 to A.4.

10. As stated supra, PW.42 in his evidence only stated that he was of the opinion that the money of A.3 was converted into Fixed Deposit

Receipts in the name of the petitioner. However, there was no basis for arriving at such an opinion by PW.42. Further, he has not stated during

cross-examination that the loan amount availed by by A.1, A.2 and A.4 was converted into Fixed Deposit Receipts in the name of the petitioner

and he has only stated that he was of the opinion that A.3 money was converted into Fixed Deposit Receipts. Therefore, in the absence of any link

connecting the misappropriation of the amount and that of the Fixed Deposit Receipts created, the Inspector of Police has no jurisdiction to freeze

these three Fixed Deposit Receipts. It is also stated except writing a letter to the bank requesting to freeze the Fixed Deposit Receipts, during

investigation, no steps were taken up by PW.42 Investigating Officer to bring those Fixed Deposit Receipts to the trial court and mark the same as

evidence nor any attempt was made by PW.42 to give any evidence to the effect that the Fixed Deposit Receipts were created from and out of the

loan amount availed by A.1, A.2 and A.4.

11. Therefore, in the absence of any evidence adduced by the prosecution to connect the Fixed Deposit Receipts standing in the name of the

petitioner with that of the loan amount available by A.1, A.2 and A.4 and having regard to the allegations made in the charge sheet that A.3 was

not a Director and he only offered his property as collateral security and received commission and also in the absence of any steps taken up by the

prosecution to mark Fixed Deposit Receipts during trial or letting in evidence to the effect that Fixed Deposit Receipts were created from and out

of the loan amount available by A.1, A.2 and A.4, the Fixed Deposit Receipts standing in the name of the petitioner cannot be freezed. This was

not properly appreciated by the trial Court.

12. Though the trial is on the final stage, having regard to the findings rendered above, there is no need to direct the learned Additional Chief

Metropolitan Magistrate to pass any orders with regard to Fixed Deposit Receipts while disposing of the case. As the Fixed Deposit Receipts are

not the subject matter of the criminal prosecution and the Fixed Deposit Receipts are not marked as evidence, nor produced during investigation,

the learned trial Judge cannot pass any orders in respect of those Fixed Deposit Receipts.

13. Hence, the order of the learned Additional Chief Metropolitan Magistrate, Egmore, Chennai, dated 26.8.2014 made in CrI.M.P.No. 914 of

2014 in C.C.No. 3766 of 2011, insofar as Fixed Deposit Receipts are concerned, is set aside. The freezing order issued by the Investigating

Officer to the Canara Bank, Anna Nagar East Branch, Chennai, in respect of Fixed Deposit Receipts bearing Nos. 494129, 494130 both dated

01.09.2010 and 0113330 dated 09.11.2009 standing in the name of the petitioner is set aside. The Additional Chief Metropolitan Magistrate held

that the Document bearing Regn.No. 1635 of 2010 standing in the name of the petitioner was not relevant for the case and therefore, the

Document was not submitted before the Court and the petitioner was entitled to receive the said Document. When the Document bearing

Regn.No. 1635 of 2010 was returned to the petitioner on the ground that the Document has nothing to do with the investigation of the case, the

respondent police had no right to write such a letter to the Sub-Registrar not to register any Document in respect of the property covered under

Document bearing Regn.No. 1635 of 2010 and the same is also set aside.

14. In the result, the Criminal Revision Case is allowed.