



Crl.R.C.(MD).No.587 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 30.06.2023

PRONOUNCED ON : 07.07.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

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The Branch Manager,
City Union Bank,
Kulathur Branch,
Kulathur Taluk,
Pudukkottai District.

... Revision Petitioner/Petitioner

Vs.

State represented by
The Sub-Inspector of Police,
Keeranur Police Station,
Pudukkottai District.
(Cr.No.242 of 2014)

... Respondent/Complainant

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of the Code of Criminal Procedure, to call for the records relating to the order in Crl.M.P.No.1545 of 2023, dated 30.03.2023 in C.C.No.69 of 2016, on the file of the learned Judicial Magistrate, Keeranur and set aside the same in consequences thereof return the jewels weighing 4 Kg 312 grams and Rs.61,10,000/- (Rupees



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Sixty One Lakhs and Ten Thousand only) recovered from the accused to the revision petitioner.

For Petitioner : Mr.P.Ganapathi Subramaniam

For Respondent : Mr.R.Meenakshi Sundaram

ORDER

This Criminal Revision is directed against the order passed in Cr.M.P.No. 1545 of 2023 in C.C.No.69 of 2016, dated 30.03.2023, in dismissing the petition filed under Section 451 Cr.P.C.

2. On the basis of the complaint lodged by the revision petitioner, F.I.R., came to be registered in Cr.No.242 of 2014 for the alleged theft committed in the City Union Bank, Kulathur branch, under Sections 457, 380 r/w 411 I.P.C. The respondent, during the investigation, arrested the accused persons and recovered the looted jewels and also cash from them. When the above said case properties were produced before the jurisdictional court, the same were received and remanded in R.P.Nos.101 of 2015, 117 of 2015, 6 of 2016 and 13 of 2016 and the amount recovered was ordered to be deposited in the Indian Overseas Bank, Keeranur Branch and the same is available in the said Bank. After the



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completion of investigation, a charge sheet came to be filed and the case was taken on file in C.C.NO.69 of 2016 and the same is pending on the file of the Court of Judicial Magistrate, Keeranur. The revision petitioner has filed a petition under Section 451 Cr.P.C., seeking interim custody of the case properties in Cr.M.P.No.5912 of 2015 and the learned Magistrate has passed an order dated 01.10.2015 granting interim custody of the jewels. The revision petitioner has filed the present petition under Section 415 Cr.P.C., seeking permission to dispose of the jewels already entrusted with the petitioner and to encash the deposited amounts of Rs.60,60,000/- and any other amount recovered from the accused.

3. The respondent police has raised objections stating that the petitioner's earlier petition for interim custody of the case properties in Cr.M.P.No.3565 of 2018 was ordered to be dismissed on 21.02.2020, that in case if the properties are handed over to the revision petitioner, there is every possibility for transferring the same to third parties, that there is no scope for handing over the case properties permanently to the revision petitioner, that the Branch Manager, who has filed the petition, will be transferred to some other branch and in that situation there is every possibility for violating the Court conditions and that



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since NBW is pending against the second accused and the case is pending for long time, the revision petitioner is not entitled to get the case properties and as such, the petition is liable to be dismissed.

4. The learned Judicial Magistrate, after enquiry, by simply accepting the objections raised by the prosecution, has passed the impugned order dated 30.03.2023 dismissing the petition. Aggrieved by the dismissal order, the revision petitioner/defacto complainant has preferred the present Criminal Revision Case.

5. At the outset, it is shocking to notice that the prosecution and the learned Magistrate without going through the records of the case, have mechanically observed that Cr.M.P.No.3965 of 2018 came to be filed by the defacto complainant seeking interim custody of the case properties and that the same was ordered to be dismissed on 21.02.2022. But the learned Counsel for the petitioner has produced the copy of the order passed in Cr.M.P.No.5912 of 2015, dated 01.10.2015 and whereunder the learned Magistrate, taking note of no objection stated by the respondent police as well as the accused, has granted interim custody of the jewels remanded in R.P.No.117 of 2015, by imposing



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some conditions and according to the learned Counsel for the revision petitioner, in pursuance of the said order and by complying with the conditions imposed, the defacto complainant has already received 64 items of jewels weighing 4.312kgs and the same are available with them. It is further evident that the defacto complainant has filed a petition in Cr.M.P.No.3565 of 2018, seeking the very same prayer now claimed and the same was ordered to be dismissed for default. Subsequently, the above petition came to be filed in Cr.M.P.No.1545 of 2023 under Section 451 Cr.P.C.

6. The main contention of the revision petitioner is that the accused are adopting delaying tactics for completion of the trial, that since the customers of the petitioner bank, whose jewels were stolen, had pressurised and demanded back their pledged jewels from the petitioner, the petitioner had compensated its customers and paid them the value of the jewels at the then prevailing market value of the pledged jewels by incurring a heavy loss and that the above petition has been filed only to reduce the loss incurred, by selling the jewels and ingots and to encash Rs.60,60,000/- and Rs.50,000/- deposited with the Indian Overseas Bank, Keeranur branch.



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7. Before entering into further discussion, it is necessary to refer Sections 451 and 452 Cr.P.C.

“451. Order for custody and disposal of property pending trial in certain cases.

When any property is produced before any Criminal Court during any inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the Court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of. Explanation.- For the purposes of this section," property" includes-

(a)property of any kind or document which is produced before the Court or which is in its custody,
(b)any property regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence.

452. Order for disposal of property at conclusion of trial.

(1)When an inquiry or trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal, by destruction, confiscation or delivery to any person claiming to be entitle to possession thereof or otherwise, of any property or document produced before it or in its custody, or regarding which any offence appears to have been committed, or which has been used for the commission of any offence.



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(2)An order may be made under sub- section (1) for the delivery of any property to any person claiming to be entitled to the possession thereof, without any condition or on condition that he executes a bond, with or without sureties, to the satisfaction of the Court, engaging to restore such property to the Court if the order made under sub- section (1) is modified or set aside on appeal or revision.

(3)A Court of Session may, instead of itself making an order under sub- section (1), direct the property to be delivered to the Chief Judicial Magistrate, who shall thereupon deal with it in the manner provided in sections 457, 458 and 459.

(4)Except where the property is livestock or is subject to speedy and natural decay, or where a bond has been executed in pursuance of subsection (2), an order made under sub- section (1) shall not be carried out for two months, or when an appeal is presented, until such appeal has been disposed of.

(5)In this section, the term" property" includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise."



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8. A combined reading of both the provisions of Sections 451 and 452 Cr.P.C., would make it clear that they comprehend both types of case properties and their disposal, whereas Section 451 Cr.P.C., deals with properties during enquiry or trial and Section 452 Cr.P.c., deals with the properties at the conclusion of the trial. Section 457 Cr.P.C., will occur in both the stages and gives power to the Court to pass appropriate orders when the properties are not produced before the Court.

9. It is pertinent to note that the Hon'ble Supreme Court in ***Sunderbhai Ambalal Desai vs State Of Gujarat*** reported in ***(2003)1 CTC 175***, has settled the position with regard to the case properties and issued various guidelines for the police and the Court to follow while dealing the case properties. In the said decision, the Hon'ble Apex Court has specifically held that the properties involved in a criminal case has to be prevented from becoming a waste or junk. While dealing with the case properties, the interest of the property owner is to be protected and at the same time, the interest of the prosecution in presenting the required evidence before the Court should also be taken into account.

10. At this juncture, it is necessary to refer a judgment of the Karnataka



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High Court in ***K.W. Ganapathy vs State Of Karnataka*** reported in ***2002 CriLJ***

3867 wherein a car was stolen and after its recovery, the interim custody was given to the car owner, who purchased the same under finance from a Bank and that since he was not able to pay the instalment, he has decided to dispose of the car and apply the sale proceeds towards loan and for that purpose, when he sought permission to sell the car, the Karnataka High Court has granted permission and the relevant paragraphs are extracted hereunder for better appreciation:

4. After hearing the counsel for the State and the petitioner, I find that the grievance made out by the petitioner is genuine. Of course, in the usual course of routine conditional orders are passed while delivering the property to the interim custody. When the property has any evidentiary value, it is to be kept intact and to ensure its production during the course of evidence for the purpose of marking as a material object the condition of non alienation is imposed. However, when the property has no evidentiary value and only the value of the property is to be properly secured for passing of final order under [Section 452, Cr.P.C](#), the necessity of keeping such properties intact by imposing onerous conditions, prohibiting its alienation or transfer would not be necessary in law.

5. The production of property which has evidentiary value during evidence is a part of a fair trial. With the advanced technology, it is



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not necessary that the original of the property inevitably has to be preserved for the purpose of evidence in the changed context of times. The reception of secondary evidence is permitted in law. The techniques of photography and photo copying are far advanced and fully developed. Movable property of any nature can be a subject matter of photography and taking necessary photographs of all the features of the property clearly is not a impossible task in photography and photo copying. Besides, the mahazar could be drawn clearly describing the features and dimensions of the movable properties which are subject matters of criminal trial. Many a time, we find as a routine course, the Courts impose condition of non alienation and to keep the property intact without alteration in any manner. Many a time such conditions act harshly upon rightful owners of the property from exercising their lawful ownership rights.

6. Irrespective of the fact whether the properties have evidentiary value or not it is not necessary that the original of the property has to be kept intact without alienation. As suggested above, the photography or photostat copy of the property can be taken and made a part of the record duly certified by the Magistrate at the time when the interim custody of the property is handed over to the claimant. In the event of the original of the property not produced in the evidence, photograph could be used as secondary evidence during the course of evidence. Ultimately, while passing final orders, it is only the value of the property that becomes a prime concern for the Court. If a person to whom the interim custody is



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granted, is not entitled to the property or its value and if some other person is held to be entitled to have the property or its value by taking necessary bonds and security from the person to whom interim custody is granted, the value could be recovered and made payable to the person entitled to. The rightful, owners, who have lost the property by an act of crime even after detection and recovery are continued to be prevented from beneficial possession and enjoyment of the same by the archaic conditions imposed as a regular routine despite the changed context of scientific developments.

7. To illustrate, a situation one X loses gold jewellery by theft. The police successfully detect and discover the gold jewellery the same is produced before the Court. Production of gold jewellery and marking of the same in evidence to prove the same as corpus delicti is one of the insistence of law as a part of fair trial. Even after the gold jewellery is given to the custody of X to deprive him by imposing the condition of non alienation from exercise of right ownership for unreasonable length of time would be too harsh and one sided, and a non chalant approach towards the victims of crime. It may be that X require the gold jewellery for the purpose of the marriage of his daughter or may be that he may require funds for medical treatment or other genuine needs, when he has no alternative source except by sale of the gold jewellery, the condition of non alienation in such situation would be onerous and unreasonable. The production of property during the trial having incriminating value is a insistence to secure the rights of accused as



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a part of fair trial. At the same time, when there is a possibility of having a secondary evidence of the said property, it is no longer necessary in law to insist that the property to be kept intact without alteration and non alienation.

8. In order to ensure the recovery of value, it is necessary that the trial Court shall take all necessary diligent steps to get the market value of the property, correctly assessed the photography of the property,, properly taken depicting all its features and dimensions and before the property is delivered to the interim custody, the photographs have to be certified by the Magistrate. Further necessary bonds and security to be taken from the person to whom interim custody to be given for the value of the property in order to ensure prompt recovery of value from the person to whom interim custody is given. By following the said safeguards, it is no longer necessary to follow the archaic convention of imposing condition of non alienation. After all the Court while passing a judicial order of interim custody is guided by the investigation material and other prima facie material, which support the claim and title of the person to whom interim custody is given. Having once given the interim custody to the person who is supposed to be the owner of the property, depriving him to effectively use and exercise the lawful ownership rights would be unlawful.”

11. In ***Sundaram Finance Ltd vs The State Of Tamil Nadu*** reported in ***(2011)1 MLJ 191***, a learned Judge of this Court has held that the return of



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vehicles and permission for sale thereof should be the general norm rather than the exception it is today and in cases where return of vehicles is sought and the claim therefor is highly contested, resort to sale of vehicle and credit of the proceeds in fixed deposits pending disposal of the case would be to the common good.

12. In *Sunderbhai Ambalal Desai's case*, the Hon'ble Supreme Court has permitted the production of converted form of its properties and more particularly permitted the photographing of the material object and obtaining the signature of the complainant and also the accused thereof and keep them in the case records to be exhibited at the time of trial.

13. As already pointed out, the alleged theft was committed in the year 2014 and the jewels which were recovered, were handed over to the revision petitioner bank for interim custody in the year 2015 itself. When the objection of the prosecution and the acceptance of the same by the learned Judicial Magistrate that in case of transfer of the Branch Manager, who filed the above petition, there is every possibility for violating the conditions to be imposed by the Court by the successor Manager, was brought to the notice of the learned



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Counsel for the petitioner, he has produced the affidavit sworn by the Deputy General Manager of the City Union Bank, Kumbakonam seeking permission to dispose of the jewels and encash the fixed deposit lying with the Indian Overseas Bank, Keeranur branch. Moreover, the Deputy General Manager has filed another affidavit stating that the jewels of 575 customers had been stolen and the total weight of the jewels pledged is 19,576g and that they have already settled a total sum of Rs.5,36,81,782/- to 574 customers on various dates for the loss incurred by them and that one of the borrower by name Balaji already expired and they will settle the claim after the receipt of the claim from his legal heirs.

14. As rightly pointed out by the learned Counsel for the petitioner, after settling the entire amounts to the customers, they are keeping the jewels in their custody. As already pointed out by the learned Counsel for the petitioner, the revision petitioner had already sustained heavy loss and by keeping the jewels without making use of them, forced them to sustain loss continuously.

15. The learned Counsel for the petitioner would submit that the revision petitioner is restricting his prayer only with respect to the jewels in their custody.



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16. Admittedly, the respondent police has not disputed the ownership of the jewels now in the custody of the revision petitioner Bank. In pursuance of the directions imposed by the learned Magistrate, the revision petitioner has already produced the photographs and Compact Disk with respect to the case properties. As per the dictum laid down by the Hon'ble Supreme Court in ***Sunderbhai Ambalal Desai's case***, the photographs and C.D., can very well be exhibited at the time of trial.

17. It is pertinent to note that the above case is pending from 2014 onwards and despite the lapse of more than 6 years, the case in C.C.NO.69 of 2016 has not been disposed of. It is not in dispute that the first accused had died and the accused 3 and 4 have been appearing before the concerned Court, but whereas NBW is pending against the second accused from 28.10.2020 onwards.

18. Considering the above facts and circumstances and taking note that no purpose will be served in keeping the jewels till the disposal of the criminal case



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and more importantly, when the revision petitioner has already paid the value of the jewels to the customers, directing the revision petitioner to retain the gold jewels in their interim custody, would not only be improper and affects the interest of the Bank. Considering the above and taking note of the dictum laid down by the Hon'ble Supreme Court, this Court is inclined to permit the revision petitioner to dispose of the jewels available with them and no prejudice would be caused to anyone. Hence, this Court concludes that the impugned order dismissing the petition filed under Section 451 Cr.P.C., is liable to be set aside.

19. In the result, the Criminal Revision Case is partly allowed and the order dated 30.03.2023, passed in Crl.M.P.No.1545 of 2023 in C.C.No.69 of 2016, on the file of the learned Judicial Magistrate, Keeranur, only with regard to the jewels is set aside. The revision petitioner is directed to execute a fresh bond for the present value of the jewels to the satisfaction of the learned Judicial Magistrate and that the earlier bond executed for Rs.1,40,00,000/-(Rupees One Crore and Forty Lakhs only) shall stand cancelled. The revision petitioner is at liberty to work out its remedy with regard to the amount lying with the Indian Overseas Bank, Keeranur Branch, at appropriate time.



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To

1. The learned Judicial Magistrate, Keeranur.
2. The Sub-Inspector of Police,
Keeranur Police Station,
Pudukkottai District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR, J.

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Pre-Delivery order made in
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