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Crl.R.C(MD)No.527 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 27.11.2024

Pronounced on : 16.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

Crl.R.C(MD)No.527 of 2024

R.S.M.Sapthagiri Finance Ltd.,
represented by
The Branch Manager,
Nagarajan.

... Petitioner

Vs.

1.The State rep. by
The Inspector of Police,
DCB, Nagercoil.
(Crime No.35 of 2022)

2.Rajakumar

... Respondents

PRAYER: This Criminal Revision Case has been filed under Sections 397 r/w 401 of Cr.P.C, to call for the records pertaining to the order passed by the Judicial Magistrate No.1, Nagercoil, Kanyakumari District in Crl.M.P.No. 781 of 2024, dated 21.02.2024 in C.C.No.996 of 2023 and to return the pledged jewels and hand over to the petitioner's interim custody.

For Petitioner : Mr.S.Muthumalai Raja

For R1 : Mr.M.Vaikkam Karunanithi
Government Advocate (Crl.side)

For R2 : No Appearance



ORDER

This Criminal Revision Case is directed against the order, dated 21.02.2024, passed in Crl.M.P.No.781 of 2024 in C.C.No.996 of 2023 on the file of the learned Judicial Magistrate No.I, Nagercoil and to set aside the same and to direct the learned Judicial Magistrate to return the pledged jewels to the petitioner on interim custody.

2.The brief facts of the case:

The revision petitioner is a private non banking finance company. The second respondent Rajakumar obtained a total loan of Rs.8,77,500/- from the petitioner by pledging total of 260.500 gram gold jewels on various dates from 25.06.2020 to 29.03.2021. Later, during the periodical audit, it was known to the petitioner that the pledged jewels were of low quality. Hence, the petitioner filed the petition in Crl.M.P.No.4266 of 2022 U/s.156(3) of Cr.P.C. before the Judicial Magistrate Court No.1, Nagercoil and on the basis of order, dated 14.06.2022, the first respondent registered a case in Crime No.35 of 2022 U/s.420 of IPC against the second respondent. During the course of investigation, the pledged jewels were seized and remanded before the Judicial Magistrate Court No.1, Nagercoil in R.P.R. No.303/2023. The investigation was completed and charge sheet was also filed. Now the case is pending as C.C.No.996 of 2023 on the file of the



Judicial Magistrate Court No.1, Nagercoil. The petitioner filed the petition in CrI.M.P.No.781 of 2024 before the Judicial Magistrate Court No.I, Nagercoil, for interim custody of the jewels and the said petition was dismissed on the ground that the petitioner is not the owner of the property.

3. Aggrieved by that order, the petitioner has come forward with this present Criminal Revision Case.

4. Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Criminal Side) appearing for the first respondent. Though notice was served on the second respondent, the second respondent did not appear either in person or through any counsel.

5. The learned counsel appearing for the revision petitioner has submitted that the petitioner is a non banking finance company, the 2nd respondent/accused approached the petitioner and availed the huge loan amount on various dates by pledging jewels totalling 260.500 gm. Since the petitioner came to knowledge about the low quality of the said pledged jewels during audit, as per direction of the learned Judicial Magistrate in the petition filed U/s.156(3) of Cr.P.C., the first respondent filed the present case against the second respondent U/s.420 of IPC. The first respondent police



did investigation and seized the jewels and also remanded the same into Court. The investigation was completed and the case was taken on cognizance as C.C.No.996 of 2023. The jewels were pledged with the petitioner by the second respondent at the time of loan process. So the petitioner is the present custodian of the jewels till the loans are repaid. Though the second respondent might be the owner of the jewels, he could not made any rival claim over the jewels till the loans are to be settled by him. Therefore, the interim custody of the jewels may be granted to the petitioner.

6. The learned Government Advocate (Criminal Side) appearing for the first respondent would submit that the second respondent is the owner of the jewels, who gave his jewels for security and if the jewels are returned to the petitioner, the petitioner would sell the jewels and the prosecution case would be affected.

7. On hearing and perusal of records, it is clear that the petitioner is the non banking financier. The second respondent pledged the jewels and borrowed loans to the tune of Rs.8,77,500/-. There is no dispute in it. Since the pledged jewels are of low quality, the petitioner gave a complaint against the second respondent and the case was registered U/s.420 of IPC. Now, the



pledged jewels were seized by the first respondent police and remanded into Court. It is not in dispute that the case is now pending as C.C.No.996 of 2023 as the final report has been filed after completion of investigation. It is the claim of the petitioner that the petitioner is the present custodian of the jewels till the loans are settled by the second respondent. On perusal of records, it is clear that the second respondent is an accused in this case and he is also added as second respondent before the trial Court as well as in this Court. On perusal of the impugned order, it is clear that the second respondent did not raise any objection against the petition for interim custody filed by the petitioner. The second respondent has also not appeared before this Court in spite of notice served.

8. The Hon'ble Supreme Court issued guidelines in the **Sunderbhai Ambalal Desai case** reported in **2003 (1) CTC 175** in respect of return of seized properties. In similar nature of this case, the learned Single Judge passed the order in Crl.R.C(MD)No.597 of 2020 on 22.03.2022, in view of the order passed by this Court in Crl.O.P(MD)No.1420 of 2016, dated 21.04.2016. It is pertinent to extract the relevant portion of the order observed in paragraph Nos.5 to 7 in Crl.R.C(MD)No.597 of 2020 is as follows:

"5. Similarly placed matters were already



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ordered by this Court in CrI.O.P(MD)No. 1420 of 2016 on 21.04.2016 as follows:

“9. In the considered opinion of this Court, the existence of corpus delicti may provide a surer foundation for the prosecution case, but the absence of it, can in no way destroy the prosecution assertion, if the prosecution is able to prove the ingredients of [Sections 406](#) and [420](#) IPC by adducing proper evidence. From the perusal of the case diary, it is seen that the Police have recorded the statement of the Branch Manager of Muthoot Finance, Kovilpatti Branch, who is going to speak about the pledge of jewels and other details from the records and in the considered opinion of this Court, it is not necessary for the Police to seize the jewels in the present facts and circumstances of the case. However, the Branch Manager, Muthoot Finance is directed to produce and submit the jewels before the learned Judicial Magistrate No.II, Kovilpatti at the time of giving evidence and the learned Magistrate shall accept the jewels and pass appropriate orders either under [Section 451](#) Cr.P.C. for interim custody or retain the same and pass appropriate orders under [Section 452](#) Cr.P.C. at the time of final judgment. Muthoot Finance shall not bring the jewels to auction until the dispute is finally decided in the prosecution in Crime No.460 of 2013. After the Manager, Muthoot Finance is examined, Meera (the defacto complainant) can be examined or may be recalled and examined under [Section 311](#) Cr.P.C. for identifying the jewels. This is left to the sound discretion of the Trial Court”

6. In view of the above, the impugned order in Cr.M.P.No.2263 of 2019 in C.C.No.124 of 2008 in Cr.No.3 of 2006, passed by the learned Judicial Magistrate No. III, (CCIW), Madurai, on 31.07.2020 is set aside and this Criminal Revision Petition is allowed.



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7. The learned Judicial Magistrate No.III, (CCIW), Madurai is directed to return the jewels, in favour of the petitioner with the following conditions:

(a) that the petitioner shall execute a bond for a sum of Rs.10,00,000/- (Rupees Ten Lakhs only), with two sureties, each for a like sum to the satisfaction of the concerned Court;

(b) that the seized items should be photographed at the cost of the petitioner herein and a list is to be prepared and the same is to be signed by the petitioner;

(c) that the petitioner shall not bring the jewels to auction, till the disposal of trial;

(d) that the petitioner shall produce the jewels before the trial Court as and when required;

(e) If any of the conditions are violated, this order automatically stands cancelled.”

Considering the over all facts and circumstances of the case, this Court is inclined to allow this revision subject to conditions.

9. Accordingly, this Criminal Revision Case is allowed, and the order, dated 21.02.2024, passed in Crl.M.P.No.781 of 2024 in C.C.No.996 of 2023 on the file of the learned Judicial Magistrate No.I, Nagercoil, is hereby set aside. The jewels remanded in R.P.R.No.303/2023 on the file of the trial Court are ordered to be returned to the petitioner on interim custody on the following conditions:

(i) The petitioner shall execute a bond for a sum of Rs.9,00,000/- (Rupees Nine Lakhs only) with two sureties for the like sum to the satisfaction of the learned



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Judicial Magistrate No.I, Nagercoil;

ii) The jewels in question shall be photographed in different angle in the presence of the Head Clerk of the learned Judicial Magistrate Court No.I, Nagercoil at the cost of the petitioner and the petitioner's signature to be obtained in the back side of the photographs and the said photographs and CD shall be kept in the case bundle for the purpose of marking them as material objects during trial;

iii) The petitioner shall not dispose or alienate or change the physical features of the jewels till the disposal of the case and the petitioner shall cooperate with the trial court for disposal of the case;

iv) The petitioner shall produce the jewels before the trial Court as and when required;

v) The petitioner shall not bring the jewels to auction, till the disposal of the case in C.C.No.996 of 2023 on the file of the Judicial Magistrate Court No.I, Nagercoil, and thereafter, if any appeal is preferred, till the disposal of the appeal.

vi) If any of the conditions are violated, this order automatically stands cancelled.

16.12.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

- 1.The Judicial Magistrate No.I,
Nagercoil.
- 2.The Inspector of Police,
DCB, Nagercoil.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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P.VADAMALAI, J.

VSD

Pre - Delivery Order made in
Crl.R.C(MD)No.527 of 2024

16.12.2024