

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2015

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Cr1.O.P.No.10937 of 2015

Paulraj @ Balraj

... Petitioner

Vs

State rep by
Inspector of Police
B2, R.S.Puram Police Station,
R.S.Puram, Coimbatore

... Respondent

Criminal Original Petition filed under Section 482 Cr.P.C. to direct the second respondent police to produce the valuable materials in Crime No.895 of 2014 subject matter of the offence of theft before the learned Judicial magistrate No. 1, Coimbatore to enable the petitioner to move for their interim custody pending enquiry.

For Petitioner : Mr.S.Dhanasekaran

For respondent : Mr.C.Emalias,
Addl.Public Prosecutor.

ORDER

The present criminal original petition has been filed to produce valuable materials in Crime No.895 of 2014, which is the subject matter of the offence of theft pending before the learned Judicial Magistrate No.1, Coimbatore to enable the petitioner to move for their interim custody.

2. In the petition, it has been stated that the petitioner is the lawful tenant at Door No.39-A, Devanga Pettai Street, Archana Theatre Back Side, Coimbatore - 641 001 hereinafter referred to as "Premises". The said premises is owned by one Suresh Kumar and Manoharan. The petitioner is a handicapped person and running the business under the name and style of "Sri Raja Chips and Snacks". The petitioner has been threatened to vacate the premises and he has given the complaint earlier on 29.07.2014 against the landlords. The same was registered in CSR No.516 of 2015 and the valuable materials in the premises were stolen by the landlords. A complaint in this regard was given to the respondent and same was registered in Crime No.895

of 2014 for the offences under Sections 448, 427 and 380 of IPC against the said Suresh Kumar and Manoharan, the owners of the premises on 07.09.2014. The petitioner has also preferred O.S.No.1830 of 2014 on the file of District Munsif, Coimbatore for permanent injunction against the landlords on 03.09.2014. The said suit is pending adjudication. In the said suit, an advocate commissioner was appointed in I.A.No.3260 of 2014 on 05.11.2014 to note down the physical features of the premises and file his report. Accordingly, Advocate Commissioner has filed his report on 17.11.2014. In his report it has been specifically stated that the key of the premises is in the custody of the respondent police. The advocate commissioner visited the premises only after the key was handed over to him by the Special Sub Inspector of the respondent police station. The petitioner further submits that he has moved a petition under Section 457(i) of Cr.P.C. On 17.12.2014 before the court of learned Judicial Magistrate No.I, Coimbatore in CrI.M.P.No.6348 of 2014 for return of the properties. The learned magistrate was pleased to call for the report from the respondent police on 29.12.2014. The report was filed on 07.01.2015. The learned Magistrate was pleased to dismiss the petition as not maintainable, since the properties mentioned in the petition is not in the custody of the court and the property is lying in the disputed area. Further the police reported that the case is closed as "mistake of fact". But, according to the Advocate Commissioner, key is in custody of the respondent police and he visited the premises only after the key was handed over to him. Since the respondent police has not acted properly, the petitioner has come forward with the present petition.

3. The learned Additional Public Prosecutor has filed a detailed counter and submitted that the prayer made in the petition is not maintainable and the respondent has not seized any material from the petitioner's shop and as per report of the Advocate commissioner, 16 items of the petitioner is very much available in the said shop and key of the shop is in the custody of the building owners namely, Suresh Kumar and Manoharan. Hence after investigation, complaint was closed as " Mistake of fact" and RCS has been filed.

4. Since RCS has been filed, this Court cannot give any direction as prayed for by the petitioner, hence the petition is dismissed. However, the petitioner is at liberty to work out his remedy by filing a protest petition before the appropriate forum.

ssd

s/d-

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

1. Inspector of Police
B2, R.S.Puram Police Station,
R.S.Puram, Coimbatore

2. The Public Prosecutor,
High Court, Madras.

+ 1 cc to Mr.C.D.Dhanasekaran, Advocate SR 66451

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