

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10-08-2015

Coram

THE HON'BLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No. 822 of 2015

P.Prabakaran

... Petitioner

Versus

The State
rep. by Inspector of Police
Vandavasi South Police Station
Vandavasi
Thiruvannamalai District.

... Respondent

Criminal Revision Case filed under Sections 397 and 401 of Cr.P.C. against the order dated 18.09.2014 passed in Crl.M.P. No. 1727 of 2014 in C.C.No. 158 of 2014 on the file of the learned Principal District Munsif-cum- Judicial Magistrate, Vandavasi.

For Petitioner : Mr. R.Subramaniam
For Respondent : Mr. V.Arul
Government Advocate
(Criminal Side)

ORDER

The petitioner has filed the above Criminal Revision Case aggrieved against the order dated 18.09.2014 passed in Crl.M.P. No. 1727 of 2014 in C.C.No. 158 of 2014 on the file of the learned Principal District Munsif-cum- Judicial Magistrate, Vandavasi.

2. The petitioner/defacto complainant, who is one of the Managing Partner along with other Partners are running a partnership business in the name and style of "Uzhavan Finance". In the said Finance Company, on 14.04.2014, a theft of Rs.2,55,000/- was committed. On the basis of the complaint given, the respondent police has conducted the investigation and recovered the theft amount of Rs.2,55,000/- and it was produced before the Magistrate Court along with Mahazar Memo. The petitioner with the consent of other partners have filed a petition under Section 451 of Cr.P.C. in Crl.M.P. No. 1727 of 2014 before the Trial Court seeking for return of the amount. The Trial Court, by order dated 18.09.2014 allowed

the said petition. Alleging that the condition Nos. 9(i), (iii), (iv), and (v) imposed by the Trial Court, by order dated 18.09.2014, while ordering return of the amount, are onerous and seeking modification of the same, the petitioner/defacto complainant has filed the above Criminal Revision Case.

3. Today, when the matter is taken up for admission, Mr.R.Subramaniyan, learned counsel appearing for the petitioner/defacto complainant submitted that the amount has been recovered by the respondent police from the accused and now, it was ordered to be returned to the original owner of the property, viz., petitioner, but, while ordering return of the amount, the condition Nos. 9(i), (iii), (iv), and (v) were imposed by the Trial Court viz., 9 (i) The petitioner shall execute a bond for Rs.6,00,000/- and shall furnish two sureties along with the bond for equal amount;... (iii) The petitioner shall not change the currency notes; (iv) Photograph of each and every currency note shall be taken and the same shall be produced along with the Negative; and (v) Whenever required for the case, the above currency notes shall be produced and handed over to the Court, are onerous one and though, return of the amount was ordered, it is in no way fruitful to the petitioner as the petitioner is in dire need of the above amount for using the same for his business rotation purpose and hence, seeking modification of the said conditions, the petitioner has filed the Criminal Revision Case.

4. On the above submission, this Court heard Mr.V.Arul, learned Government Advocate, who submitted that the conditions imposed by the Trial Court while ordering for return of the amount is correct and it needs no interference at the hands of this Court and hence, he prayed for dismissal of this Criminal Revision Case.

5. I heard the counsel for both sides. This Criminal Revision Case is taken up for final disposal at the stage of admission itself.

6. At this juncture, it is relevant to refer to the conditions imposed by the Trial Court by the impugned order dated 18.09.2014 while ordering return of the amount, which reads as follows:-

"9.1

- i. The petitioner shall execute a bond for Rs.6,00,000/- and shall furnish two sureties along with the bond for equal amount;
- ii. The petitioner and other witnesses (Partners of Partnership Firm) should submit their photos along with Identification Certificate.
- iii. The petitioner shall not change the currency notes.
- iv. Photograph of each and every currency note shall be taken and the same shall be produced along with the Negative.
- v. Whenever required for the case, the above currency notes shall be produced and handed over to the Court.

vi. The petitioner shall cause Panchanama."

The petitioner seeks to modify the condition Nos. 9(i), (iii), (iv) and (v) imposed by the Trial Court alleging that the petitioner cannot be expected to retain the same currency notes without changing the same, as the petitioner is running a Finance Company, naturally, he has to use the same for business rotation purpose. If necessary and whenever required, the petitioner is ready to produce equal amount.

7. The grievance expressed by the petitioner appears to be reasonable and convincing. Hence, this Court is inclined to modify the condition Nos. 9(iii) and (v) alone imposed by the Trial Court. Accordingly, the condition Nos. 9(iii) and (v) imposed by the Trial Court by impugned order dated 18.09.2014 stand modified as follows:-

"...
(iii) The Trial Court shall effect return of the amount to the revision petitioner after causing necessary photographs/videograph and panchanama in respect of each and every note. The panchanama shall be drawn up by an officer of the Court in the presence of two Panchayatdhars and in the immediate presence of the Presiding Officer of the Court, as the same is admissible in evidence as secondary evidence.

...
(v) Whenever required or whenever the Trial Court directs, the petitioner should be prepared to redeposit the sum of Rs.2,55,580/- (Rupees Two Lakhs and Fifty Five Thousand Five Hundred and Eighty) in cash before the Trial Court.

Insofar as the condition Nos. 9(i), (ii), (iv) and (vi) imposed by the Trial Court by impugned order dated 18.09.2014 are concerned, the same stands confirmed.

8. Subject to the above modification, this Criminal Revision Case is partly allowed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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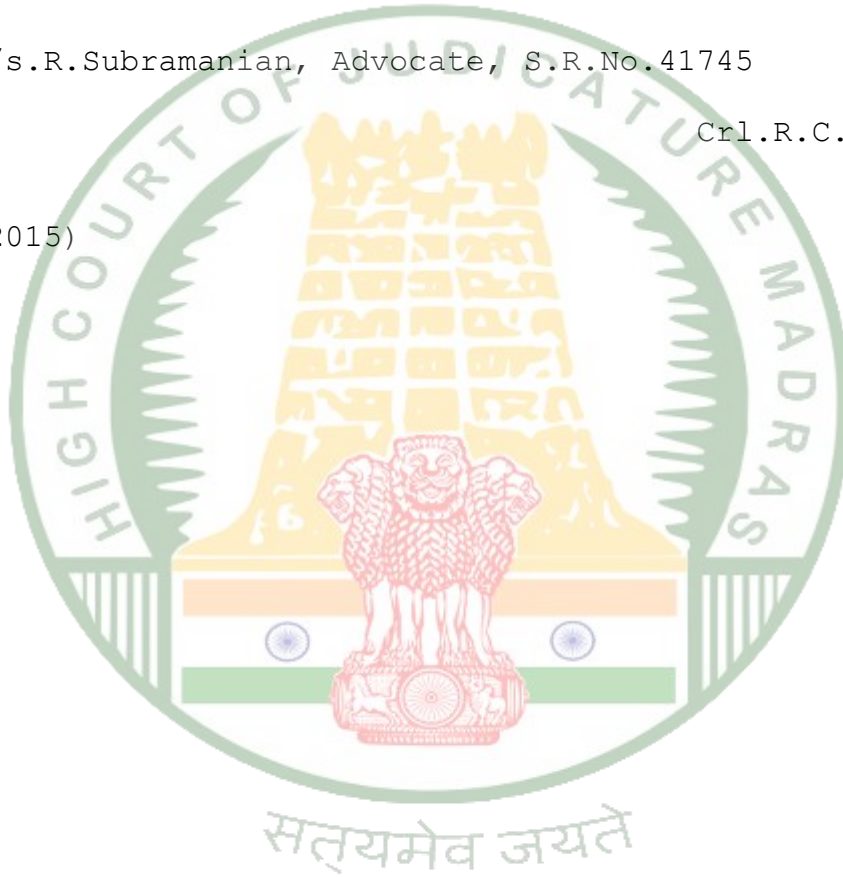
To

1. The Inspector of Police
Vandavasi South Police Station
Vandavasi
Thiruvannamalai District.
2. The Principal District Munsif
-cum- Judicial Magistrate,
Vandavasi.

+1cc to M/s.R.Subramanian, Advocate, S.R.No.41745

CrI.R.C. No. 822 of 2015

RSI (CO)
CA(25/08/2015)



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