

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 19.11.2015

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THE HONOURABLE MR.JUSTICE C.T.SELVAM

Crl.R.C.No.883 of 2015

Gajendran

.. Petitioner

vs.

1.Kumar

2.Ravi

3.The State represented by
Inspector of Police,
Chromepet Police Station,
Chennai.

Crime No.2231 of 2015

.. Respondents

Criminal Revision filed under section 397 r/w 401 Cr.P.C. praying to set aside the order in Crl.M.P.No.6122 of 2015 dated 13.08.2015 passed by learned Judicial Magistrate Tambaram and may pleased to return the cash of Rs.20,56,000/- seized by the third respondent police in Crime No.2231 of 2015 on the file of the third respondent police as interim custody to the petitioner.

For Petitioner : Mr.R.Sasikumar

For R3 : Mr.C.Iyaparaj,
Government Advocate (Crl.side)

सत्यमेव जयते

No Appearance for R1 and 2

O R D E R

Petitioner challenges the order of learned Judicial Magistrate, Tambaram, Chennai, passed in Crl.M.P.No.2986 of 2013 on 29.11.2013.

2. In brief, the case of the prosecution is that respondents 1 and 2, under false promise of obtaining admission for the petitioner's son in the Balaji Medical college, Chennai, received a sum of Rs. 30,00,000/-. However, they neither secured admission nor returned the money. When the petitioner demanded return of money, respondents 1 and 2 threatened him with dire

consequences. Petitioner preferred a complaint on 17.07.2015 and a case was registered in Crime No.2231 of 2015 on the file of third respondent for offences under sections 294(b), 406,420,468,506(ii) IPC. Pursuant thereto the accused were arrested and a sum of Rs.20,56,000/- has been seized from them. Petitioner filed Crl.M.P.No.2986 of 2013 before the Court below seeking return of monies and the same was dismissed. Hence, this revision.

3. Heard learned counsel for petitioner and learned Government Advocate (Crl.side).

4. The Court below, in passing the order under challenge, has reasoned that return of monies to the petitioner could not be permitted since the same was cash which if used for any other purpose or put in circulation, would cause great hardship to the prosecution which is to mark the property at the time of trial. The reasoning of the Court below clearly is erroneous. The Apex Court, in the decision in *Sunderbhai Ambalal Desai v. State of Gujarat* AIR 2003 Supreme Court 638, has held thus:

"11.With regard to valuable articles, such as, golden or silver ornaments or articles studded with precious stones, it is submitted that it is of no use to keep such articles in police custody for years till the trial is over. In our view, this submission requires to be accepted. In such cases, Magistrate should pass appropriate orders as contemplated under Section 451 Cr.P.C at the earliest.

12.For this purpose, if material on record indicates that such articles belong to the complainant at whose house theft, robbery or dacoity has taken place, then seized articles be handed over to the complainant after:-

(1) preparing detailed proper panchnama of such articles;

(2) taking photographs of such articles and a bond that such articles would be prepared if required at the time of trial; and

(3) after taking proper security.

13.For this purpose, the Court may follow the procedure of recording such evidence, as it thinks necessary, as provided under Section 451 Cr.P.C. The bond and security should be taken so as to prevent the evidence being lost, altered or destroyed. The Court should see that photographs of such articles are attested or countersigned by the complainant, accused

as well as by the person to whom the custody is handed over. Still however, it would be the function of the Court under Sections 451, Cr.P.C to impose any other appropriate condition."

Following the said decision, the Hon'ble Karnataka High Court in Venkataraghavan v. State of Karnataka & another 2006 CRI.L.J. 1571 directed that :

"4. The seized currency notes shall be handed over to the respondent No.2-Smt. Shashi Prabha personally by the Presiding Officer of trial Court after,

(a) getting detailed proper panchanama prepared of such notes.

The detailed panchanama of the currency notes in question should be drawn by the Registrar of the City Civil and Sessions Court, Bangalore in the presence of two panchas and in the actual and physical presence of the Presiding Officer of the trial Court.

(b) taking photographs of such currency notes at the expense of State.

The photographs of such notes shall be taken in the presence of Registrar of City Civil and Sessions Court, Bangalore and the same shall be preserved by the trial Court to be marked during trial. The trial Court should see that photographs of currency notes are attested or counter signed by the accused and respondent No.2 herein (complainant), the Registrar of City Civil and Sessions Court and two panchas.

(c) after taking self bond to the extent of about Rs.2 lakhs from complainant which one surety for the like sum".

5. Following the rationale of the above said judgments, this Court directs the trial Court viz., learned Judicial Magistrate, Tambaram, Chennai, to effect return of monies of Rs.20,56,000/- to the petitioner after:

(a) getting detailed proper panchanama prepared of such notes.

The detailed panchanama of the currency notes in question should be drawn by such Court Officer as designated by learned Judicial Magistrate Court, Tambaram, Chennai, in the presence of two panchayatdars and in the actual and physical presence of the Presiding Officer of the trial Court.

(b) causing a videograph of such currency notes at the

expense

of the petitioner

The videograph shall be taken in the presence of such Court Officer as designated by learned Judicial Magistrate Court, Tambaram, Chennai, and two panchayatdars and the same shall be preserved by the trial Court to be marked during trial. A certificate is to be recorded by the Court officer as also the two panchayatdars and the person recording the videograph informing the place, date and time of recording the same. Such certificate shall also be marked along with the videograph in the course of trial.

(c) after taking self bond to the extent of about Rs.20,56,000/- from the petitioner which one surety for the like sum.

This Criminal Revision is disposed of with the above direction.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

1.The Judicial Magistrate Court,
Tambaram, Chennai.

2.The Inspector of Police,
Chromepet Police Station,
Chennai.

3.The Public Prosecutor,
High Court, Chennai.

+lcc to Mr.R.Sasikumar, Advocate Sr.62787

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srg 15/12/2015

Cr1.R.C.No.883 of 2015