



WEB COPY

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.10.2015

CORAM:

THE HONOURABLE MRS.JUSTICE S.VIMALA

Criminal Revision Case (MD)No.323 of 2015

Padmini

.. Petitioner/ Petitioner /
Defacto Complainant

Vs.

1.State represented by
The Sub-Inspector of Police,
Kallidaikurichi Police Station,
Tirunelveli District.
(Crime No.47 of 2015)

2.K.Pandi @ Pandian

3.Thirumani Selvan

4.Murugesan

5.Mari Ganesan

(R2 to R5 are impleaded as per order
of this Court dated 27.10.2015 in
Crl.M.P. (MD)No.1 of 2015)

.. Respondents

Revision is filed under Section 397 r/w 401 Cr.P.C. to call for the records in Cr.M.P.No.1773 of 2015 on the file of the learned Judicial Magistrate, Ambasamuthiram, Tirunelveli District and set aside the order dated 09.04.2015 and grant the interim custody of the jewels weighing about 85.300 grms which has been seized by the respondent herein in Crime No.47 of 2015 and remanded to custody in P.R.No.56 of 2015 on the file of the learned Judicial Magistrate, Ambasamuthiram, Tirunelveli District to the petitioner.

For Petitioner : Mr.A.Thiruvadikumar

For R1 : Mr.P.Kandasamy

Government Advocate (crl. side)

For R2 to R5 : No Appearance

ORDER

The petitioner herein/defacto complainant, has filed an application for return of property under Section 451 Cr.P.C. before the learned Judicial Magistrate, Ambasamuthiram in Cr.M.P.No.773 of 2015.

2.It is the case of the defacto complainant that a chain worth about Rs.1,50,000/- weighing 85.300 grms belongs to her, as per the receipt produced before this Court and therefore, the property must be ordered to



3.The Court, while considering the petition for return of property, has chosen to dismiss the petition on the ground that the property has been pledged by the accused in the shop of a Financier and as the claim petition filed by the Financier has already been dismissed, the ownership cannot be decided at this stage and therefore, this is a fit case for dismissal. This order dated 09.04.2015, is under challenge in this revision petition.

4.The learned counsel for the revision petitioner was directed to implead the accused persons as well as the financier as a party to this petition and accordingly, impleading petition was filed in M.P.(MD)No.1 of 2015 in CrI.R.C.(MD)No.323 of 2015. The rival claimant viz., the financier has been served on 28.08.2015 and the acknowledgment has also been filed before this Court. Except the second respondent/A2, all other accused persons have been served and hence, the impleading petition is allowed. Till date, the rival claimant viz., the financier did not appear before this Court either to oppose this application or to challenge the dismissal order passed by the learned Magistrate declining to return the property to the financier.

5.Notice has also been taken to the second respondent and the notice is returned as 'no such addressee', but it is submitted that notice has been taken to the address as given in the confession statement of the accused. Therefore, it is evident that it is a willful refusal to receive the notice and therefore, service is held sufficient.

6.The case has been registered in Crime No.47 of 2015 under Section 392 IPC dated 19.02.2015. To show the ownership, the petitioner has produced the receipt for purchase of the jewels in the name of the petitioner. The learned counsel for the revision petitioner relied upon the decision reported in 1991 SCC (Cri) 219 (MASHESH KUMAR v. STATE OF RAJASTHAN) to support the proposition that confessional statement of the accused leading to recovery can be made use of for the purpose of disposal of property.

7.The issue that was considered in the case, stated supra, was whether the statement made to the police by the accused persons as to the ownership of the property, which was the subject matter of proceedings against them, *although inadmissible, as evidence against them at the trial* for the offence with which they were charged, were *admissible as evidence with regard to the ownership of the property* in an enquiry held by the Criminal Procedure Code. It has been held that such a statement leading to recovery within the meaning of Section 27 of the Evidence Act is admissible for the purpose of showing the ownership of the property.

8.Therefore, as per the confession statement given, it is the property belonging to the defacto complainant herein, which was snatched by the accused persons and finally pledged with the financier. In the absence of the financier or the accused persons contesting the claim before this Court, especially when the financier has not challenged the earlier order dismissing the claim petition filed by them, there is no other option, except to order custody of the property to the petitioner herein.

9. As the trial is not yet completed, the property has to be returned only subject to the following conditions:-

(i) The property shall not be pledged or alienated by the petitioner till the conclusion of the trial;

(ii) The texture and design of the chain shall not be altered in any manner whatsoever;

(iii) Before returning the property, the Court shall ensure that mahazar describing the complete description of the property is available and if not to make one such Mahazar and to be attested by the petitioner herein; and

(iv) The petitioner shall give an undertaking that she will produce the property as and when required by the Court.

10. In the result, the order passed by the learned Magistrate is set aside. This Criminal Revision Petition is allowed to the extent indicated above.

Sd/-

Assistant Registrar (AE)

/True copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate,
Ambasamuthiram, Tirunelveli District
2. -do- thro' the Chief Judicial Magistrate,
Tirunelveli District.
3. The Sub-Inspector of Police,
Kallidaikurichi Police Station,
Tirunelveli District.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai,

+1 CC to Mr.A.THIRUVADI KUMAR, Advocate, SR No.63297

Cr1.R.C.(MD)No.323 of 2015
27.10.2015

rj2

SH/KBM:15.12.2015:3P/6C