

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.11.2016

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THE HONOURABLE MR.JUSTICE C.T.SELVAM

Crl.R.C.No.1228 of 2016

Nirmala @ Sumathi

.. Petitioner

vs.

1.State represented by
The Inspector of Police,
Kadathur Police Station
Dharmapuri District

.. Respondents

Criminal Revision filed under section 397 and 401 Cr.P.C. praying to set aside the order passed by learned District Munsif cum Judicial Magistrate, Pappireddipatti, Dharmapuri District, in Cr.M.P.No.3076 of 2016 in Crime No.60 of 2011 by an order dated 18.08.2016 insofar as the dismissal of the cash and direct the return of cash of Rs.1,50,000/-

For Petitioner : Mr.V.Sakkarapani

For Respondent : Mr.K.Madhan,
Government Advocate (Crl.side)

ORDER

The petitioner preferred a complaint in respect of the occurrence where his house was broken into and jewellery and cash was done away with, petitioner preferred a complaint registered in Crime No.60/2011 on the file of respondent. On arrest of the accused seizure was effected both of gold jewellery as also cash in a sum of Rs.1,50,000/-. Petitioner sought return of the jewellery by way of a petition u/s. 451 Cr.P.C in C.P.No.52/2011 which was allowed under orders dated 10.06.2011. However, another petition in C.M.P.No.2337 of 2011 seeking return of monies was dismissed on 08.08.2011 on the ground that the return of money would have to await the outcome of the trial. As the accused have been absconding for a long period, petitioner moved further petition in Cr.M.P.No.3076 of

2016 on the file of the District Munsif cum Judicial Magistrate, Pappireddipatti, Dharmapuri district seeking return of money. Against the dismissal thereof under orders dated 18.08.2016, the present revision stands filed.

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

3. The Hon'ble Apex Court in *Sunderbhai Ambalal Desai v. State of Gujarat* AIR 2003 Supreme Court 638, observed and held as follows:

"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 produced 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 *Venkataraman 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".

4. Considering the facts on hand, this Court is of the view that it would be appropriate to pass orders on similar lines as that of the Hon'ble Karnataka High Court with some modification. Accordingly, this Court directs that trial Court viz., District Munsif cum Judicial Magistrate, Pappireddipatti, Dharmapuri district, to effect the return of sum of Rs.1,50,000/- 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 the learned District Munsif cum Judicial Magistrate, Pappireddipatti, Dharmapuri district, 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 the learned District Munsif cum Judicial Magistrate, Pappireddipatti, Dharmapuri district 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,

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.1,50,000/- from complainant which one surety for the like sum.

5. This Criminal Revision is disposed of with the above direction.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kpr

To

- 1.The District Munsif cum Judicial Magistrate
Pappireddipatti, Dharmapuri district
- 2.The Inspector of Police,
Kadathur Police Station
Dharmapuri District
- 3.The Public Prosecutor,
High Court, Chennai.

+1cc to Mr.V. Sakkarappani, Advocate, S.R.No.61941

cp (CO)
md (7/11/2016)

Cr1.R.C.No.1228 of 2016