

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2016

CORAM

THE HONOURABLE MR. JUSTICE C.T.SELVAM

Crl.R.C.No.1566 of 2016

Jothi

... Petitioner

vs

The Sub-Inspector of Police,
Tharamangalam Police Station
Salem District

... Respondent

Criminal Revision filed under section 397 r/w 401 of the Code of Criminal Procedure, to call for the records pertaining to the order dated 18.6.2016 and made in CMP No.2865 of 2016 on the file of Judicial Magistrate, Omalur and set aside the same and consequently direct the respondent to hand over the property to the petitioner.

For Petitioner : Mr.T.Ganesan
For Respondent : Mr.M.Mohammed Riyaz,
Government Advocate (Crl.side)

ORDER

This Revision challenges the order dated 18.6.2016 passed by Judicial Magistrate, Omalur in CMP No.2865 of 2016.

2. The petitioner, who is the defacto complainant in case registered in Crime No.502 of 2015 on the file of respondent for offence under section 392

IPC, has sought return of Gold Jewellery seized in this case.

3. The Court below has dismissed the petition, informing that Gold ingot weighing 31.810 Gms., has been produced by the prosecution, whereas the petitioner has sought return of 7 Sovereigns of "Thalikodi" and hence description of case property was different and as such, petition was to be dismissed.

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

5. On considering the rival submission and perusal of counter filed as also confessional statement of one of accused recorded in the case and from whom Gold ingot weighing 31.810 Gms., was seized and produced before the Court below, this Court infers that Gold chain was snatched by such accused and one another from an elderly lady and melted into 2 Gold ingots and one was held by him, while the other Gold ingot was held by the other accused. It is seen that the other accused is yet to be arrested in this case. The petitioner is a lady aged 64 years. In the circumstances, there should be no impediment to return of Gold in present form to the petitioner.

6. In the circumstances above stated and following the decision of the

Hon'ble Apex Court in *Sunderbhai Ambalal Desai v. State of Gujarat (AIR 2003 Supreme Court 638)*, this Court directs as follows:

- (i) the Court below shall cause photograph of the Gold ingot to be taken and record panchanama thereof, the photograph taken shall be read as secondary evidence during trial and production of Gold ingot shall be dispensed with. Such photographs shall be attested by Investigation Officer, accused as well as by the petitioner to whom custody is to be handed over; and
- (ii) the Gold ingot shall then be returned to the petitioner, who shall be at liberty to deal with the same in such manner as considered appropriate.

The above order is not determinant of the ownership or other rights in respect of jewels.

7. In the result, the Criminal Revision is allowed. The order of learned Judicial Magistrate, Omalur, passed in C.M.P.No.2865 of 2016, on 18.6.2016, is set aside.

20.12.2016

Index:yes/no

ajr

C.T.SELVAM, J.

To

1. Judicial Magistrate, Omalur
2. The Sub-Inspector of Police,
Tharamangalam Police Station
Salem District
3. The Public Prosecutor,
High Court, Madras.

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