

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 29.04.2016

Coram:

THE HON'BLE Mr.JUSTICE M.VENUGOPAL

Crl.R.C.No.720 of 2016

Thangappan

..Petitioner/Petitioner/Accused

Vs.

The Inspector of Police
G-5, Secretariat Colony
Police Station,
Chennai (Crime No.217 of 2016) ..Respondent/Respondent/Complainant.

Prayer: Petition filed under Section 397 r/w 401 of Cr.P.C., to set aside the dismissal order dated 13.04.2016 passed by the Learned XIV Metropolitan Magistrate, Egmore, Allikulam Complex, Chennai in Crl.M.P.No.964 of 2016 by allowing this Criminal Revision Petition.

For Petitioner : Mr.P.Rajkumar Pandian
For Respondent : Mr.V.Arul
Government Advocate (Crl.Side)

O R D E R

Heard the Learned Counsel appearing for the Petitioner / A.1 and the Learned Government Advocate (Crl.Side) appearing for the Respondent.

2. The Petitioner / A.1 has preferred the present Criminal Revision Petition before this Court, as an aggrieved person, as against the Order dated 13.04.2016 in Crl.M.P.No.964 of 2016 passed by the Learned XIV Metropolitan Magistrate, (Allikulam Complex) Egmore, Chennai. The Learned XIV Metropolitan Magistrate, Egmore (Allikulam Complex) Chennai while passing the impugned order in Crl.M.P.No.964 of 2016 in Crime No.217 of 2016 (filed by the Petitioner / A.1) on 13.04.2016 had among other things observed that ".....it was informed that the case property was obtained by the accused through sale of lottery tickets unlawfully and in the confession when the lottery ticket was sold the cash in hand (Rs.43,676/-) was admitted by the accused. The aforesaid confession its validity, genuineness can only be found out in the main case. However, in the seizure mahazar and in other documents, the amount was mentioned as obtained through lottery tickets and as such,

presently whether the amount was recovered from the house of the Petitioner or whether it was obtained through sale of lottery tickets and at that time, the said amount was seized could not be found out and these aspects could only be found out / determined at the time of hearing of the main case etc., and resultantly dismissed the Petition."

3. The Learned Counsel for the Petitioner / A.1 projects an argument that the trial court had violated the ingredients of relevant provision of Criminal Procedure Code and passed a mechanical order in Crl.M.P.No.964 of 2016 (relating to return of property) and in fact, the Petitioner / A.1 is a small scale painting contractor and the seized sum of Rs.43,676/- is equal to the total investment in the said business and the dismissal of the Petition in Crl.M.P.No.964 of 2016 had caused heavy hardship and loss to him.

4. The prime grievance of the Petitioner / A.1 is that the trial court had relied on the confession of the Petitioner / A.1 at the time of dealing with Crl.M.P.No.964 of 2016, which is invalid and not legally tenable in Law.

5. Expatiating his submission, the Learned Counsel for the Petitioner proceeds to take a plea that in the Impugned Order in Crl.M.P.No.964 of 2016 dated 13.04.2016, it was stated that the seizure amount has to be handed over to the Government, in case, if it is found that the amount in question was derived from and out of the Lottery Ticket sales. In this regard, the Learned Counsel for the Petitioner forcefully contents that the trial court in the preemptive manner had arrived at the aforesaid conclusion and this has resulted in a serious miscarriage to the Petitioner.

6. The Learned Counsel for the Petitioner in support of the contention that the cash of Rs.43,676/- (Rupees forty three thousand six hundred and seventy six only) seized by the police from the Petitioner / A.1 should be returned to him, relies on the decision of this Court in *Selvam V. State* by Inspector of Police, Theevatipettai Police Station, Salem District (2012 (2) CTC at Page 549) wherein it is observed and held that the trial courts should make all efforts to avoid holding of vehicles at court and police station and disposed of the petition seeking return of vehicles forthwith. The said decision is not applicable to the facts and circumstances of the present case, in the considered opinion of this Court.

7. During his last leg of arguments, the Learned Counsel for the Petitioner emphatically submits that the ingredients of Section 452 of Cr.P.C., are not employed as an exercise of penal power by a Court of Law. To put it precisely, the

'Confiscation' is not be ordered as a matter of punishment. Unfortunately, these vital aspects were not borne in mind by the trial court at the time of passing the Impugned Order.

8. Conversely, it is the submission of the Learned Government Advocate (Crl.Side) appearing for the Respondent / Police that the police based on the confession statement of Petitioner/A.1 (in the presence of two witnesses), the amount of Rs.43,676/- was seized and as on date the sale of lottery tickets is banned in Tamil Nadu State and the trial court had passed a just and fair order in dismissing the Crl.M.P.No.964 of 2016 (filed by the Petitioner), which need not be displaced by this Court at this distance point of time, sitting in Revision.

9. At this juncture, this Court has perused the contents of the Petition in Crl.M.P.No.964 of 2016 (filed by the Petitioner) under Section 451 of Cr.P.C. It is candidly clear that the Petitioner / A.1 had sought for return of sum of Rs.43,676/- (Rupees forty three thousand six hundred and seventy six only), which was allegedly seized in Crime No.217 of 2016 on the file of the Respondent / Police and at Paragraph No.6 of the affidavit in Crl.M.P.No.964 of 2016, the Petitioner / A.1 had averred as follows:-

"6. I submit that since the said money was seized by the respondent police, I could not conduct my business thereby I lost my source of income and hence I have been facing several hardships. I further submit that I am ready to execute bond to the worth of the above said amount in the event of allowing this Petition. Unless this Hon'ble Court allow this petition and direct the respondent police returns the said money to me great prejudice will caused to me."

10. A mere running of the eye over the ingredients of Section 5 of the Lotteries (Regulation) Act, 1998 unerringly points out that there is a prohibition of sale tickets in Tamil Nadu. In this regard, for better appreciation of understanding of the subject matter in issue, this Court extracts the contents of Section 5 of the Act, which runs as under:-

"5. Prohibition of sale of tickets in a State - A State Government may, within the State, prohibit the sale of tickets of a lottery organised, conducted or promoted by every other State.

11. Apart from that Section 6 of the Lotteries (Regulation) Act, 1998 speaks as follows:-

"6. Prohibition of organisation, etc., of lottery- The Central Government may, by order published in the Official Gazette, prohibit a lottery organised, conducted or promoted in contravention of the provisions of Section 4 or where tickets of such lottery are sold in contravention of the provisions of Section 5."

It is to be noted that Section 7 of the Lotteries (Regulation) Act, 1998 speaks of 'Penalty' and the same runs as under:-

7. Penalty - (1) Where a lottery is organised, conducted or promoted after the date on which this Act receives the assent of the President, in contravention of the provisions of this Act, by any Department of the State Government, the Head of the Department shall be punishable with rigorous imprisonment for a term which may extend to two years or with fine or with both:

Provided that nothing contained in this section shall render such Head of the Department liable to any punishment if he proves that the contravention was committed without his knowledge or that he exercised all due diligence to prevent the commission of such contravention.

(2) Notwithstanding anything contained in subsection (1), where a contravention under this Act has been committed by a Department of Government and is proved that the contravention has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any officer, other than the Head of the Department, such officer shall also be deemed to be guilty of that contravention and shall be liable to be proceeded against and punished accordingly.

(3) If any person acts as an agent or promoter or trader in any lottery organised, conducted or promoted in contravention of the provisions of this Act or sells, distributes or purchases the ticket of such lottery, he shall be punishable with rigorous imprisonment for a term which may extend to two years or with fine or with both.

12. Dealing with the plea that the Lotteries (Regulation) Act, 1998 nowhere contemplates confiscation of the sum of Rs.43,676/- seized in Crime No.217 of 2016 on the file of the Respondent / Complainant, this Court pertinently points out that the observation of the trial court to the effect that ".....the Petition property if it is to be found out that the amount was secured through sale of lottery tickets,

then, it would result in handing over the same to the Government, is only a passing reference during the course of deliverance of the impugned order" and the same is only tentative in nature and the same is not a final or conclusive one. In this connection, it is not out of place for this Court to make a significant mention that no charge sheet is filed as on date in Crime No.217 of 2016 and the matter is only under investigation. There is enough time for the Court to come to the conclusion at the time of final disposal of the main case (after filing of charge sheet) to finally determine whether the Petitioner/A.1 is entitled to get back a sum of Rs.43,676/- purportedly seized from him based on his confession. Viewed in that perspective, the view taken by the trial court in dismissing the Petition is flawless. Consequently, the Criminal Revision Petition fails. In fine, the Criminal Revision Petition is dismissed.

ssd

s/d-
Assistant Registrar (CS-III)

True Copy

Sub-Assistant Registrar

To

1. The XIV Metropolitan Magistrate,
Egmore, Allikulam Complex, Chennai
2. Do thro the Chief Metropolitan Magistrate,
Egmore, Chennai
3. The Inspector of Police
G-5, Secretariat Colony
Police Station,
Chennai
4. The Public Prosecutor,
High Court, Madras

pvs (co)
prk17/5

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