

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.08.2016

Coram

THE HONOURABLE MR. JUSTICE G.CHOCKALINGAM

Crl.R.C.No.880 of 2016

S.Arputharaj ... Petitioner/De facto complainant

Vs.

1. The State,
Rep. by Inspector of Police,
City Crime Branch,
Coimbatore. ... Respondent/Complainant
2. S.Dhanalakshmi ... Respondent/Accused

Prayer :- Criminal Revision Case filed under Sections 397 and 401 of Cr.P.C., against the dismissal order passed by the learned Judicial Magistrate No.VI, Coimbatore, in C.M.P.No.1820 of 2015, dated 03.07.2015 in Crime No.26 of 2014, and to set aside the dismissal order passed in the above C.M.P.No.1820 of 2015, dated 03.07.2015.

For Petitioner : Mr.Kingsly Solomon.J

For R-1 : Mr.M.Mohamed Riyaz,
Government Advocate (Crl.Side)

For R-2 : Mr.Murugeshkumar

ORDER

This criminal revision case is directed against the order dated 03.07.2015 passed by the learned Judicial Magistrate No.VI, Coimbatore, in C.M.P.No.1820 of 2015.

2. The learned counsel appearing for the petitioner would contend that the first accused was working as a Cashier and Customer Care in-charge for the period from 2002 to 2010 and from the year 2011, he was working as Service Manager in the de facto complainant's company and the second accused was working as a Cashier from the year 2011. Both the accused have

misappropriated the amounts of the de facto complainant's company by creating bogus receipts and deposited the said amounts in various banks. During the inspection, the amounts deposited by both the accused 1 and 2 were freezed by the Investigating Officer. Since, all the amounts deposited by A.1 and A.2 are belonged to the de facto complainant's company, the revision petitioner has filed the petition in C.M.P.No.1820 of 2015 before the learned Judicial Magistrate No.VI, Coimbatore, to send for the above said freezed amounts and to hand over the same to the petitioner for interim custody. But, the trial Court, without considering the facts and circumstances of the case, dismissed the said petition on the ground that the present petitioner is not an authorised agent to receive the amount on behalf of the company. Further, in the order dated 03.07.2015, the learned Magistrate had observed that already there was a resolution passed in the 15th annual general body meeting on 25.07.2013 and as per the resolution, the present petitioner has not been appointed as Manager in the de facto complainant's company and hence, the revision petitioner has no locus standi to file a petition for return of the property. It is further submitted by the learned counsel for the petitioner that the learned Magistrate, without application of mind, erroneously dismissed the petition and therefore, the order passed by the learned Judicial Magistrate No.VI, Coimbatore, in C.M.P.No.1820 of 2015, dated 03.07.2015, may be set aside and the criminal revision case may be allowed.

3. The learned Government Advocate (Crl.Side) appearing for the first respondent vehemently contended that since the case is pending and the trial is not yet over and the petitioner is not a proper person to receive the amount and he has no locus standi to file the petition for return of the property, the learned Magistrate had correctly dismissed the petition. There is no infirmity or illegality in the order passed by the trial Court and hence, the learned Government Advocate prayed that the criminal revision case may be dismissed.

4. In this case, admittedly, the criminal revision case is filed by one Mr.S.Arputharaj. He had stated that he is working as a Managing Director and he is not representing the company. Further, it is admitted that the trial is not yet over and the question of framing charges against the accused has to be decided in the trial Court. Since the ownership of the amount is disputed by the accused, it is not correct to hand over the deposited amount to the revision petitioner, who filed the petition in his personal capacity. Further, in this case, even according to the prosecution, the amounts deposited in the bank by A.1 and A.2 in their name were freezed by the Investigating Officer. The petition was filed before the learned Magistrate to send for the amounts and return the same to the petitioner for his interim custody.

5. In view of the above facts and circumstances of the case, this Court is of the considered view that the first part of the prayer viz., to send for the amounts freezed by the Investigating Officer has to be allowed and the request of the revision petitioner that the freezed amounts should be handed over to the interim custody of the revision petitioner has to be rejected. Further, after send for the amounts, the trial Court is directed to invest the amount in the bank in fetched interest during the pendency of the trial which will give benefit to the successful party at the end of the trial.

6. With the above observations, this criminal revision case is disposed of with a direction to the trial Court to send for the amounts freezed by the Investigating Officer to Court and deposit the same in any one of the Nationalised Bank to fetch more interest. At the time of pronouncing of judgment, the trial Court is directed to pass an appropriate order with regard to the above said amounts so deposited.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The Judicial Magistrate No.VI,
Coimbatore.
2. -Do- Thro' The Chief Judicial Magistrate,
Coimbatore.
3. The Inspector of Police,
City Crime Branch,
Coimbatore.
4. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.G.Murugesh kumar, Advocate Sr.44340
+1cc to Mr.Kingsly Solomon.J, Advocate Sr.43943

Cr1.R.C.No.880 of 2016

skv[co]
srg 17/08/2016