

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.09.2016

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CrI.OP No.19084 of 2016

Muniyandi

...

Petitioner

Vs

1.The State,
Rep. by the Sub-Inspector of Police
Arcot Town Police Station,
Vellore District.

2.The Tahsildar,
Taluk Office, Arcot,
Vellore District.

...

Respondents

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., to direct the 2nd respondent to produce the cash of Rs.7,68,000/- which was seized by the Election Officer before the learned District Munsif cum Judicial Magistrate, Arcot, vellore District as case property in Crime No.269/2016 pending on the file of the 1st respondent police.

For Petitioner	:	Mr.E. Kannadasan
For Respondent	:	Mr.C.Emalias,
No.1		Addl. Public Prosecutor
For Respondent	:	Mr.V.Jayaprakashnarayanan,
No.2		Special Government Pleader

ORDER

This Criminal Original Petition has been filed seeking a direction to the 2nd respondent to produce the cash of Rs.7,68,000/- which was seized by the Election Officer, before the learned District Munsif cum Judicial Magistrate, Arcot, Vellore District as case property in Crime No.269/2016 pending on the file of the 1st respondent police.

2. On 13.05.2016, a team of election officials headed by one Mr.M.Selvakumar, Block Development Officer, Panchayat Union, Kaniambadi, on reliable intelligence, searched the premises of the petitioner and recovered a sum of Rs.7,68,000/- on the reasonable suspicion that the said money has been kept for

distribution to voters. The said money was seized under the cover of Mahazar dated 13.05.2016 in the presence of the petitioner and the money has now been deposited in the Sub-treasury of Arcot vide Receipt No.6/2016 dated 13.05.2016 itself.

3. Since, nobody came forward to claim the amount, Mr.M.Selvakumar lodged a police complaint, based on which, a case in Arcot Police Station crime No.269/2016, was registered on 17.05.2016 for offences under sections 188 and 171(E) IPC against Muniyandi, (the petitioner herein). Thereafter, it appears that the copy of the FIR and Mahazar have been sent to the District Munsif cum Judicial Magistrate, Arcot, on 23.05.2016. Subsequently, the petitioner filed a petition in CrI.M.P.No.2944/2016 in Crime No.269/2016 before the District Munsif- cum-Judicial Magistrate, Arcot, under section 451 Cr.P.C. for return of the seized cash and the Magistrate has dismissed the petition on 29.07.2016 on the following reasons :-

"Considering the fact that the respondent police has not seized the said cash property in Cr.No.269/2016, this court comes to a conclusion that the court cannot direct the respondent to produce the same before this court and to grant the interim custody of the cash property to the petitioner.

Hence, this petition is dismissed."

4. Heard Mr. E.Kannadasan, learned counsel for the petitioner, Mr.C.Emalias, learned Additional Public Prosecutor for Respondent No.1 and Mr.V.Jayprakash Narayanan, Special Government Pleader for Respondent No.2.

5. It is brought to the notice of this Court that the seized cash was deposited in the treasury and the same was reported to the court through the FIR itself. It is not necessary for the criminal Court to have domain over the property, only when, the same is physically produced before the Court. Constructive possession is permissible in law, especially, in a case of this nature, where instead of producing the entire cash before the trial Court, the authorities have deposited the cash in the treasury and have reported the matter to the Court. Under such circumstances, this Court is of the view that the sum of Rs.7,68,000/- is in the custodia legis of the District Munsif- cum-Judicial Magistrate, Arcot and he need not insist upon the police to once again produce the property before him.

6. Under such circumstances, the impugned order is set aside and the matter is remanded to the District Munsif- cum- Judicial Magistrate, Arcot, to pass orders on merits in accordance with law. If the Magistrate decides on merits to return the cash to the petitioner, he can give a further direction to the Sub-Treasury, Arcot, to send the money by cheque in the name of the petitioner to the Court and the cheque can be handed over to the petitioner by the Magistrate after making necessary entries in the property register and the same can be intimated to the Sub-Treasury, Arcot.

With the above directions, the criminal original petition is closed.

-s/d-

Assistant Registrar (CS-II)

True Copy

Sub-Assistant Registrar

vsi2/sms

To

1. The Sub-Inspector of Police
Arcot Town Police Station,
Vellore District.

2. The Tahsildar,
Taluk Office, Arcot,
Vellore District.

3. The Sub-Treasury,
Arcot.

4. The Public Prosecutor,
High Court, Madras - 104.

+1 CC to M/s. E. Kannadasan, Advocate Sr.No.50137

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MPI (CO)

MD : 09/09/2016