



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.07.2016

CORAM:

THE HONOURABLE DR.JUSTICE P.DEVADASS

WEB COPY Crl.RC(MD) Nos.212, 213, 214, 215 & 216 of 2016

B.Loganathan

... Petitioner / Petitioner /  
De facto Complainant (LW1)  
in all Revisions

-VS-

Inspector of Police  
Lalapettai Police Station  
Kulithalai  
(Crime No.229 of 2013)

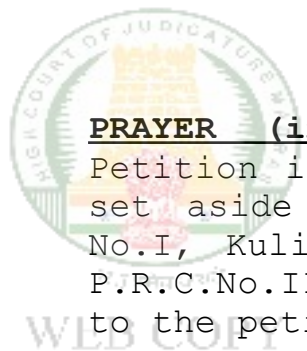
... Respondent / Respondent /  
Complainant in all Revisions

**PRAYER (in Crl.R.C.(MD) No.212 of 2016):** Criminal Revision Petition is filed, under Section 397 and 401 Cr.P.C., to call for the records and set aside the order passed by the learned Judicial Magistrate No.I, Kulithalai, dated 22.03.2016, in C.M.P.No.1046 of 2016 in P.R.C.No.II / 2014 in R.P.No.111 of 2014 and return the properties to the petitioner.

**PRAYER (in Crl.R.C.(MD) No.213 of 2016):** Criminal Revision Petition is filed, under Section 397 and 401 r/w 482 Cr.P.C., to set aside the order passed by the learned Judicial Magistrate No.I, Kulithalai, dated 22.03.2016, in C.M.P.No.1205 of 2016 in P.R.C.No.II / 2014 in R.P.No.8 of 2014 and return the properties to the petitioner.

**PRAYER (in Crl.R.C.(MD) No.214 of 2016):** Criminal Revision Petition is filed, under Section 397 and 401 r/w 482 Cr.P.C., to set aside the order passed by the learned Judicial Magistrate No.I, Kulithalai, dated 22.03.2016, in C.M.P.No.1206 of 2016 in P.R.C.No.II / 2014 in R.P.No.11 of 2014 and return the properties to the petitioner.

**PRAYER (in Crl.R.C.(MD) No.215 of 2016):** Criminal Revision Petition is filed, under Section 397 and 401 r/w 482 Cr.P.C., to set aside the order passed by the learned Judicial Magistrate No.I, Kulithalai, dated 22.03.2016, in C.M.P.No.1045 of 2016 in P.R.C.No.II / 2014 in R.P.No.12 of 2014 and return the properties to the petitioner.



**PRAYER (in CrI.R.C.(MD) No.216 of 2016):** Criminal Revision Petition is filed, under Section 397 and 401 r/w 482 Cr.P.C., to set aside the order passed by the learned Judicial Magistrate No.I, Kulithalai, dated 22.03.2016, in C.M.P.No.1044 of 2016 in P.R.C.No.II / 2014 in R.P.No.5 of 2014 and return the properties to the petitioner.

For Petitioner :Mr.V.Gopinath  
(in all cases) Senior Counsel for Mr.S.Suresh

For Respondent :Mrs.S.Prabha  
(in all cases) Govt. Advocate (CrI.Side)

### **C O M M O N O R D E R**

Since all these revisions arose out of the same crime number and are connected on factual matrix, they were heard together and are being disposed of by this common order.

2. On 21.10.2013, the revision petitioner's relatives Dewaraganathan and Nagarajan have travelled in an Omni Bus carrying 7 Kgs., of gold jewels for business purposes. Near Lalapettai Bridge, some unidentified persons posed themselves as Vigilance Police. Actually, they are fake Police. They tied Dewaraganathan and Nagarajan, took away the gold jewels in a Car and committed certain crimes including robbery.

3. A case in Crime No.229 of 2013, under Sections 419, 363, 342 and 397 I.P.C., has been registered by Lalapettai Police on the basis of the complaint lodged by the revision petitioner. In the course of investigation, Lalapettai Police recovered the said Car and also the jewels, which were in ingot form and also cash Rs.11,33,000/- representing proceeds of crime.

4. The details of the recovered given in the counter filed by the prosecution runs as under:

| Sl.No | Date of Seizure | Accused from whom the seizure was made | Articles / currency seized                                                                          |
|-------|-----------------|----------------------------------------|-----------------------------------------------------------------------------------------------------|
| 1.    | 06.11.2013      | Rajesh                                 | 1.Rs.1000 X 20<br>2.Apple iPhone with<br>Vodafone Sim Card and<br>the Mobile No.being<br>8884021326 |



|     |            |                                         |                                                                                                                                                                             |
|-----|------------|-----------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2.  | 13.11.2013 | Havyo Jones @ Jones @ Rahu              | 1.Grey Colour Verito Car (No.Plate Missing)-Later discovered as TN38 BT6222.<br>2.One Gold Bar weighing 200 grams.<br>3.One Mobile Phone with 4 Sim Cards<br>4.Rs.1000 X 10 |
| 3.  | 13.11.2013 | Havyo Jones @ Jones @ Rahu              | 1.One White Bolero Car bearing Regn. No.TN20 AT3033                                                                                                                         |
| 4.  | 15.11.2013 | Mohanakrishnan                          | 1.Rs.1000 X 50<br>2.One Samsung Mobile Phone and One Nokia Mobile Phone (With 2 Sim Cards and their no.being 7373732328 and 9943610765                                      |
| 5.  | 15.11.2013 | Asha                                    | 1.Rs.1000 X 100                                                                                                                                                             |
| 6.  | 26.11.2013 | Praveen @ Praveen Kumar                 | 1.Rs.1000 X 8                                                                                                                                                               |
| 7.  | 26.11.2013 | Manoharan @ Mano                        | 1.Rs.1000 X 7<br>2.Rs.500 X 1                                                                                                                                               |
| 8.  | 26.11.2013 | Siva @ Sivakumar                        | 1.Rs.1000 X 7<br>2.Rs.500 X 1                                                                                                                                               |
| 9.  | 26.11.2013 | Bala @ Balasubramanian                  | 1.Rs.1000 X 4<br>2.Rs.500 X 1                                                                                                                                               |
| 10. | 27.11.2013 | Murugan                                 | 1.One Melted Gold Bar weighing 197 Grams                                                                                                                                    |
| 11. | 04.12.2013 | Vignesh Kumar                           | 1.Rs.1000 X 2<br>2.Rs.500 X 1                                                                                                                                               |
| 12. | 11.12.2013 | Rajendran                               | 1.One Gold Bar weighing around 800 grams which is worth Rs.20,80,000                                                                                                        |
| 13. | 24.12.2013 | Owner - Kubera Gold Finance, Coimbatore | 1.Two melted Gold Bars                                                                                                                                                      |
| 14. | 27.12.2013 | Senthil Kumar @ Gundu Senthil           | 1.One melted Gold Bar weighing 300 gms<br>2.One melted Gold Bar weighing 280 gms<br>3.One melted Gold Bar weighing 100 gms                                                  |
| 15. | 31.12.2013 | Durai Raj @ Pattaraj Durai              | 1.One Kaithuruthi<br>2.One Umi Odu<br>3.One Kattidakkal                                                                                                                     |



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|-----|------------|-------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------|
| 16. | 06.01.2014 | Owner of Mahalakshi Jewellers, Kerala     | 1.One melted Gold Bar weighing 233 gms<br>2.One melted Gold Bar weighing 218 gms                                                                    |
| 17. | 06.01.2014 | Ashraf                                    | 1.One white Duster Car bearing Regn. No.TN33 BD4259                                                                                                 |
| 18. | 16.01.2014 | Rajendran                                 | 1.One melted Gold Bar weighing 200 gms                                                                                                              |
| 19. | 22.01.2014 | Mohamed Rafi                              | 1.Rs.1000 X 45                                                                                                                                      |
| 20. | 16.01.2014 | Pradeep Jewellery                         | 1.One melted Gold Bar weighing around 800 gms worth Rs.20,80,000/-                                                                                  |
| 21. | 21.01.2014 | Owner of Sri Krishna Finances, Coimbatore | 1.One Gold Chain with MV initial in a Bole Rope Model weighing 16.200 gms.<br>2.One Gold Chain with MV initial with Rope Model weighing 23.900 gms. |
| 22. | 21.01.2014 | Owner of MG Finance, Coimbatore           | 1.One Gold Chain with MV initial with Rope Model weighing 23.950 gms.<br>2.One Gold Chain with MV initial with S type model weighing 20.140 gms.    |
| 23. | 22.01.2014 | Sardar                                    | 1.One Gold Chain with MV initial with Rope Model 32.000 gms.<br>2.One Gold Chain with MV initial with Bole Rope Model weighing 20.370 gms.          |
| 24. | 21.01.2014 | Owner - Sri Krishna Finance, Coimbatore   | 1.One Gold Chain with MV initial with Bole Rope Model weighing 16.200 gms.<br>2.One Gold Chain with MV initial in a Rope Model weighing 23.900 gms. |
| 25. | 22.01.2014 | Owner of MG Finances - Coimbatore         | 1.One Gold Chain with MV initial with Rope Model weighing 23.950 gms.<br>2.One Gold Chain with MV initial in 2 type model weighing 20.140 gms.      |



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|     |            |        |                                                                                                                                                           |
|-----|------------|--------|-----------------------------------------------------------------------------------------------------------------------------------------------------------|
| 26. | 22.01.2014 | Sardar | 1.One Gold Chain with MV initial on it in a Rope Model weighing 32.000 gms.<br>2.One Gold Chain with MV initial with Bole Rope Model weighing 20.370 gms. |
|-----|------------|--------|-----------------------------------------------------------------------------------------------------------------------------------------------------------|

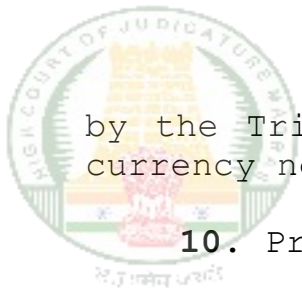
5. The revision petitioner filed C.M.P.Nos.1046, 1205, 1206, 1045 and 1044 of 2016, before the learned Judicial Magistrate No.I, Kulithalai, for his interim custody of the case-properties remanded in R.P.Nos.111 of 2014, 08 of 2014, 11 of 2014, 12 of 2014 and 05 of 2014, namely, the gold ingots weighing 3228 grams, chains (6 Nos.) each weighing 136.560 grams and cash Rs.11,33,000/-.

6. The learned Judicial Magistrate dismissed the property return petitions holding that the investigation is pending. A7 and A9 are absconding, as against A3 and A16 N.B.Ws are pending, summons to A11 yet to be served and the case-properties are yet to be marked and in such circumstances, the principles laid down in **Sunderbhai Ambalal Desai vs. State of Gujarat [2003 (1) CTC 175 (SC)]** are not applicable to this case.

7. The learned senior counsel for the revision petitioner would contend that none of the reasons stated by the learned Magistrate is sustainable in law. This is a fit case where the decision rendered in **Sunderbhai Ambalal Desai** (supra) would apply. There is no rival claim. Even the information in the confessional statement of the accused also throws light on the ownership of the revision petitioner to the seized properties. The accused persons have converted the properties into a different form. Yet, the ownership of the said properties to the revision petitioner will not convert. The currency notes recovered also came from and out of the properties robbed from the revision petitioner's relatives and they are proceeds of crime.

8. The learned senior counsel would further contend that in **Sunderbhai Ambalal Desai** (supra), it is not stated that unless the case properties are marked, it shall not be returned. Actually, the spirit of **Sunderbhai Ambalal Desai** (supra) decision is to see that the case properties belonging to the victims shall be disposed of quickly.

9. The learned senior counsel would further contend that the gold items are considerable value and with respect to which the revision petitioner is answerable to some other persons. He needs those items for his commercial and business purposes. He will produce the same at the appropriate stage as and when so demanded



by the Trial Court. He will also execute bond. As regards the currency notes, the revision petitioner will execute surety bond.

10. Prosecution filed counter.

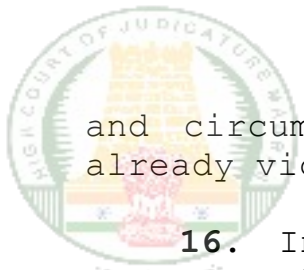
11. The learned Government Advocate (Criminal Side) in the course of her argument referred to the information in the confessional statement recorded from the accused with regard to the seizure of case-properties. Her submission is interest of the prosecution case is need to be protected.

12. I have anxiously considered the submissions of the learned senior counsel for the revision petitioner, learned Government Advocate (Criminal Side), perused the impugned orders, averments in the revision petitions, counter filed by the prosecution and also the materials on record.

13. In property offence cases, property assumes signal importance. When the property relates to the case, it becomes case-property. When it relates to case, but not required, sometimes it may personally belonging to the victim or to the accused, it becomes personal property. Properties concerned in a criminal case are of different categories. First one is, property used in the commission of the offence, namely, knife, vehicle used to carry the accused, as in the present case a Car is used by the accused to commit the crime, second one is property with respect to which an offence has been committed, as in the present case gold jewellerys and the third one is, perishable items. When they were seized and produced before the Court, Section 451 Cr.P.C., will apply. When they were seized but not produced before the Court, Section 457 Cr.P.C., will apply. In such circumstances, the Court can direct the Police to produce the case properties to the Court.

14. The victim in a property crime will be very much interested in getting back his property. But, once the property is remanded in a criminal case, then it comes to the custody of the Court. That is why, interim custody of the property is used to be given to the eligible persons. In such cases, the Court has to see who has the immediate possession of the property. However, while doing so, if the person who had the possession is not entitled to have it, then he cannot be given the property.

15. **Sunderbhai Ambalal Desai** (supra) laid down guidelines for the return of the case-properties to the parties. But, due to later course of events and inventions and innovations of the accused in committing the crime and new forms of crimes are being committed, **Sunderbhai Ambalal Desai** (supra) did not foresee. However, the glittering principles laid down in **Sunderbhai Ambalal Desai** (supra) can be applied also taking into account the facts



and circumstances of each case. The victim of crime, who is already victimized, should not again be vexed.

16. In property offences, problem arises when the accused converts the case-property into a different form. Sometimes, the accused convert the jewel items into ingots for his convenient sake, easy handling and for easy disposal. But, even in such cases, when the ownership of the case properties could be traced to the *de facto* complainant, he can be given the custody of the same prescribing certain reasonable conditions.

17. Though confession given by the accused to the Investigation Officer during investigation cannot be used to convict him except to the extent covered under Section 27 of the Evidence Act, namely, 'so much information' leading to the 'discovery of a fact', however, for other purposes, such as deciding the owner of the case-property for question of semblance, even for the benefit of the accused, information in confessional statement can be referred to.

18. Now, in this case, the information in the confessional statement recorded from the accused throws much light on the aspect of the ownership of the case property, namely, ingots. They show that these ingots were made out of the jewels, stated to have been robbed from the victim of the crime.

19. The reasoning of the learned Judicial Magistrate in dismissing the property return petitions, namely, still investigation pending, some of the accused are absconding, against some of them N.B.Ws are pending and against some summons are to be served and the case-properties are yet to be marked are not germane for the disposal of property return petitions filed under Sections 451 and 457 Cr.P.C., and these reasons were not adumbrated in the Judgment of the Hon'ble Supreme Court in **Sunderbhai Ambalal Desai** (supra) also. In my considered view, this is a fit case, where **Sunderbhai Ambalal Desai** (supra) applies.

20. In view of the foregoing, ordered as under:

- i. These revisions are allowed.
- ii. The impugned orders, dated 22.03.2016, passed in C.M.P.Nos.1046, 1205, 1206, 1045 and 1044 of 2016, by the learned Judicial Magistrate No.I, Kulithalai, are set aside.
- iii. The learned Magistrate will give interim custody of the seized gold ingots weighing 3228 grams and chains (6 Nos.) each weighing 136.560 grams, remanded in R.P.Nos.111 of 2014, 08 of 2014, 11 of 2014, 12 of 2014 and 05 of 2014 to the revision petitioner.
- iv. The learned Magistrate will return cash Rs.11,33,000/-



to the revision petitioner, after recording the currency note numbers in Property Register, if not already registered.

- v. With regard to the gold items, the revision petitioner will execute a bond for Rs.65,00,000/- (Rupees sixty five lakhs only) to the satisfaction of the said Magistrate.
- vi. With regard to the cash Rs.11,33,000/-, the revision petitioner will execute a bond for Rs.11,33,000/- (Rupees eleven lakhs and thirty three thousand only) to the satisfaction of the said Magistrate.
- vii. There should be two sureties, who shall execute a bond for Rs.65,00,000/- + Rs.11,33,000/- = Rs.76,33,000/- (Rupees seventy six lakhs and thirty three thousand only) each to the satisfaction of the said Magistrate.
- viii. A photograph of the said case-properties with the signature of the revision petitioner shall be kept in the case records.
- xi. The revision petitioner shall cause the production of the case property as and when so ordered by the Court.

Sd/-

Assistant Registrar

/True copy/

Sub Assistant Registrar

To:

1.The Judicial Magistrate No.I, Kulithalai.

2.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court, Madurai.

3.The Inspector of Police  
Lalapettai Police Station, Kulithalai.

+2 cc's to M/S.S.Suresh, Advocate in SR.No.38682

krk

CSL/ARK-PV/02.08.2016 :8p/6c

**Cr1.RC(MD) Nos.212, 213, 214, 215 & 216**  
**of 2016**  
**21.07.2016**