



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.07.2016

CORAM:

THE HONOURABLE DR.JUSTICE P.DEVADASS

C.R.L.RC(MD) No.285 of 2016

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Mariyappan

... Petitioner/Petitioner

-vs-

1.The Sub Inspector of Police,
Srivilliputtur Town Police Station,
Virudhunagar District
(Crime No.90 of 2016)

... 1st Respondent/Respondent
No.1

2.Veerapandi
3.Paramaguru

... Respondents 2 & 3/
Respondents 2&3

PRAYER: Criminal Revision Petition is filed, under Section 397 r/w 401 Cr.P.C., to set aside the order passed by the Judicial Magistrate Court No.II, Srivilliputtur in Crl.M.P.No.1503 of 2016 on 01.04.2016 and allow this Criminal Revision Petition.

For Petitioner : Mr.G.Marimuthu

For Respondent-1: Mrs.S.Prabha
Govt.Advocate (Crl.Side)

For Respondent-3: Mr.C.Suresh Kumar

O R D E R

Mariappan, who is the defacto complainant in Crime No.90 of 2016, registered by Srivilliputtur Town Police, aggrieved by the dismissal of his return of property petition filed in Crl.M.P.No.1503 of 2016, has directed this revision.

2. In February 2016, Mariappan sustained injuries in a road accident. He was taking treatment in the Government Headquarters Hospital, Srivilliputtur. While he was in the hospital, on 01.02.2016, his ATM card was missing on 12.02.2016. He complained to Srivilliputhur Town Police. This case was registered. In the course of investigation, respondents 2 and 3 / A1 and A2, were arrested.



3. Based on the confessional statement of A1, the following properties were seized by the police:-

1. Gold chain weighing 8.200 gm
2. Mangal Sutra weighing 1.600 gm
3. One pair of silver Anklet weighing 14.530 gms
4. Toe Ring 6 Nos.
5. Mobile Phone (Touch Model) 1 No
6. Mobile Phone button Model 1 No

4. A1 filed counter that they belongs to him and the Police had forcibly took them from him.

5. Considering the rival claim, the learned Magistrate dismissed the petition.

6. According to the learned counsel for the petitioner, A2 is making a false claim.

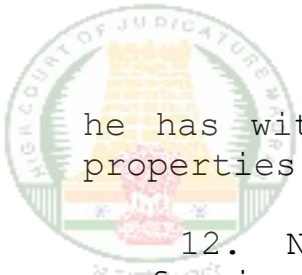
7. The learned counsel for respondent No.3 submitted that R3 has been implicated in this case.

8. The learned Government Advocate (crl.side) submitted that in the course of investigation, it came to light that A2 used A3 have to withdraw money from ATM centre using petitioner's ATM card and purchased the said properties.

9. I have considered the submissions of the learned counsels, perused the impugned order and also the materials on record.

10. Though a confessional statement cannot be used to convict a person except to the extent provided in Section 27 of the Evidence Act viz., 'so much of information leading to the discovery of a fact', it (confession) can be used for 'any other purpose', confessional statement cannot be used to record a conviction but it can be used for other purposes such as for return of property, question of sentence etc. Generally, if we see such confessional statement, it will contain the life history of the accused, under which circumstances he has committed the offence, if it is of property offence, how he has acquired the property; whether he has converted the property, namely, stolen cash used to purchase some items. For the purpose of knowing who is the owner of the property or whether those properties were purchased out of the stolen money, in otherwards, whether they are 'proceeds of crime', a confessional statement can be referred to.

11. The Police produced the said properties to the Court. In his confessional statement A1 has stated that using the ATM card



he has withdrawn money and out that, he has purchased the said properties.

12. Now, in this case, as per the information in the confessional statement of A1, the view of the prosecution is that these articles were acquired out of the money withdrawn using petitioner's ATM card.

13. When A1 was produced before the Magistrate for remand, he did not complain that the police had forcibly took his properties from him nor he gave any complaint as against the police, to the Deputy Superintendent of Police, Srivilliputhur nor he sent any complaint to Tahsildar nor he give any complaint to the Superintendent of Police, Virudhunagar District at Srivilliputhur nor he gave any complaint to the District Collector. Even while he was in jail as a remand prisoner, he did not send any such petition to the said officials or to the Magistrate alleging that the Investigation Officer had forcibly obtained his said properties from him. It is also pertinent to note that A1 has not filed any property return petition before the Magistrate. He remained absent in this revision inspite of notice. Now, reading the information in the confessional statement and the attendant circumstances we have no hesitation to hold that the case property are 'proceeds of crime' referring to the money withdrawn from the ATM centre using the ATM card of the petitioner. In this view of the matter, we differ from the view taken by the trial Court.

14. In the circumstances ordered as under:-

(1) This Revision is allowed.

(2) The impugned order passed by the learned Judicial Magistrate No.II, Srivilliputhur, in CrI.M.P.No.1503 of 2016, dated 01.04.2016, is set aside.

(3). The learned Magistrate will give interim custody of the case properties in P.R.No.99 of 2006 in Crime No.90 of 2006, to the Petitioner.

(4). The properties shall be photographed and signed by the revision petitioner and the same shall be kept in the case records.

(5). The revision petitioner shall execute a personal bond for Rs.36,000/- to the satisfaction of the said Magistrate.

(6). He shall not dispose of the case properties till final property order is passed by the concerned Court.

(7). As and when so required, he shall produce the case properties to the Court.

15. It is made clear that the observations made in this order are made only for the purpose of this property revision petition.



Uninfluenced by the observations in this order at the appropriate time and stage, the trial Court will dispose of the case on merits, based on the evidence and law.

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/True Copy/

Sd/-

Assistant Registrar (CS-II)

Sub Assistant Registrar

mpk

To

1.The Judicial Magistrate No.II,
Srivilliputtur.

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

3.The Sub Inspector of Police,
Srivilliputtur Town Police Station,
Virudhunagar District

+1CC to Mr.G.Marimuthu, Advocate Sr.no.37181

GJM/PEK/28.7.16-4p-5c

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